

SUPERIOR PRESIDENT VS. SUBMISSIVE CONGRESS: RELATIONS BETWEEN LEGISLATIVE AND EXECUTIVE IN THE US AND ITS REFLECTION ON THE "ARMENIAN GENOCIDE" BILLS

(ÜSTÜN BAŞKAN UYSAL KONGRE KARŞI KARŞIYA:
ABD'DEKİ YASAMA-YÜRÜTME ARASINDAKİ İLİŞKİ VE BUNUN
"ERMENİ SOYKIRIMI" YASA TEKLİFLERİNE YANSIMASI)

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Abstract: *In this study, rather than focusing on whether Armenian allegations reflect the truth or whether the issue constitutes genocide, how the nature of the US political system reflects on the legislative attempts in regards to the Armenian allegations is examined. Within this framework, the nature of legislation-execution when important foreign policy matters are in question is studied and how the president takes the lead and dominates the issue in the process of foreign policy specification. In the study, it is advocated that the President and the Congress go through a struggle to specify the foreign policy, the Presidents come out of the struggles as winners, the presidents approach the Armenian issue in a more different manner than the members of the Congress and this approach prevents the enactment of a bill that Armenians expect. While the study presents the influence of the political system on foreign policy decisions, it also reveals how the foreign policy decision making mechanism works in a presidential government. The results demonstrate that the nature of the legislative-executive relations is another factor determining the outcome of the Armenian attempts.*

Keywords: *US Congress, Armenian Genocide Allegations, Legislative-Executive Relations, US Foreign Policy, US President*

Öz: *Bu çalışmada, Ermeni iddialarının gerçeği yansıtmıyıp yansıtmadığı, yaşananların soykırım suçunu oluşturup oluşturmadığı gibi hususlar değil, ABD siyasî sisteminin içinde bulunduğu durumun, Ermeni iddialarını dile*

getiren yasama faaliyetlerine nasıl tezahür ettiği incelenmektedir. Bu çerçevede, önemli dış politika meseleleri söz konusu olduğunda, ABD siyasi sisteminde yasama ve yürütme organları arasındaki ilişkinin nasıl şekillendiği irdelenmekte, dış politika belirleme sürecinde Başkan'ın üstünlüğü nasıl ele geçirdiği ve bu alana egemen olduğu açıklanmaktadır. Çalışmada, Başkan ve Kongre'nin dış politikanın belirleyicisi olma yönünde bir mücadeleye giriştiği, bu mücadeleden Başkanların galip çıktığı, Başkanların Ermeni iddialarına Kongre üyelerinden farklı bir şekilde yaklaştığı, bu yaklaşım farklılığının da Ermenilerin beklediği bir kararın/yasanın kabulüne engel olduğu savunulmaktadır. Çalışma, siyasî sistemin dış politika kararlarına etkisini ortaya koyarken, Başkanlık sisteminde dış politika karar alma mekanizmasının nasıl işlediğini de gözler önüne sermektedir. Varılan sonuçlar göstermektedir ki, yasama-yürütme ilişkilerinin niteliği de Ermeni girişimlerinin akıbetini belirleyen önemli etkenlerden biridir.

Anahtar Kelimeler: ABD Kongresi, Ermeni Soykırımı İddiaları, Yasama-Yürütme İlişkileri, ABD Dış Politikası, ABD Başkanı

Introduction

Since the US political system is founded on the principle of “separate forces sharing power” every power entrusted to each branch has delicately been balanced with the powers of the other branches while each branch has been assigned with the task of suppressing the extremities of the others. The possibility of any branch becoming principal within the system and particularly the creation of a dominant central administration have tried to be prevented.

Writers of the constitution, who find the assembling of all authority and power under the monopoly of a single person (monarch/king), as is the case of Great Britain, dangerous from the aspect of individual liberties,¹ have tried to ease their concerns with the legislative, executive and judiciary having “separate but equal” powers.² In the political and administrative sense, these branches are separate from each other, but looking from a functional perspective, each one has the means to influence the others through the mechanism of “checks and balances”. However, within the US system in which the branches can have an impact on the others, some disputes could arise concerning the use of certain powers between the Congress and Presidency. This situation manifests itself especially in foreign policy issues and in cases of emergency.

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According to the US Constitution, there is sharing of authority and coordination between the President and Congress in determining foreign policy.³ However, it has been observed many times that disagreements have emerged on the sharing of authority between the legislative and executive bodies even regarding the clearly written points (such as the declaration of war) in the Constitution. In such situations of disagreements, it could be seen that the executive branch increases its powers against the legislature, intervenes in the sphere of activity of the legislative organ and that therefore the influence of

1 One of the founding fathers, James Madison, defines the legislative, executive and judiciary power being gathered in the hands of a single person or group as *tyranny*, regardless of whether this person or group came through dynasty or through election and argues that the US political system must be capable of preventing this. For further information: James Madison, “The Particular Structure of the New Government and the Distribution of Power among Its Different Parts”, (Federalist Papers No. 47), *Independent Journal*, 30 January 1788.

2 Charles O. Jones, *Separate but Equal Branches: Congress and the Presidency*, New Jersey, Chatham House Publishers, 1995, pp. viii-ix.

3 Louis Fisher, “Foreign Policy Powers of the President and Congress”, *Annals of the American Academy of Political and Social Science*, Vol. 499, (September 1988), p.149.

the Congress is restricted.⁴ Although this situation has weakened the fact that the Congress is an important actor in determining foreign policy, it has not eradicated it.

Although the Constitution entails the sharing of power between the legislature and executive body, besides some exceptions, the conviction that foreign policy lies within the President's realm of authority is continually becoming stronger.⁵ In particular, there are interpretations that some decisions of Presidents having to pursue a more assertive foreign policy during the Second

Despite many legislative attempts of the Congress, an important reason for the bills recognizing the so-called Armenian genocide not yet being adopted is the change the legislative-executive relationship in the US has undergone in favor of the executive branch. This change has brought forth a "superior President" together with a "submissive Congress" in foreign policy.

World War and the Cold War have significantly decreased the Congress's impact in the process of foreign policy making.⁶ Views on this manner have reached a climax during President Bush's term following the September 11 attacks.⁷ It could be viewed that justifications such as "national security" and the "protection of national interests" offer a source of legitimacy for the Presidents, especially during times of crises, to extend their authorities to the final point, while the Congress has refrained from taking an effective stance in regards to long-termed, wide-ranging and confidential issues of foreign policy.⁸

While the influence of the Presidents in foreign policy is gradually increasing, it is inevitable for the loss of influence of the Congress to have reflections on many areas. Within this framework, bills incorporating the Armenian genocide allegations entail an appropriate case study for understanding how the Congress has weakened in the process of shaping foreign policy, because the struggle between the Congress members who bring the proposals to the agenda and the Presidents who prevent their adoption is a concrete manifestation of the race for supremacy between the two institutions in foreign policy matters. The Presidents have always come out victorious from this rivalry until now and

4 Stephen E. Ambrose, "The Presidency and Foreign Policy", *Foreign Affairs*, Vol. 70, No. 5, (Winter 1991), pp.124-125.

5 William C. Olson, "The US Congress: An Independent Force in World Politics?", *Foreign Affairs*, Vol. 67, No. 3, (July 1991), p.547.

6 Steven S. Smith, Jason M. Roberts and Ryan V. Wielen, *The American Congress*, Cambridge, Cambridge University Press, 2006, pp.293-295.

7 Jack Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration*, New York, W.W. Norton, 2009.

8 John Haskell, *Congress in Context*, Boulder, Co, Westview Press, 2010, pp.302, 310-314.

has displayed the limit of the Congress in its power in determining foreign policy.⁹ One of the main allegations of this paper emerges at this very point: Despite many legislative attempts of the Congress, an important reason for the bills recognizing the so-called Armenian genocide not yet being adopted is the change the legislative-executive relationship in the US has undergone in favor of the executive branch. This change has brought forth a “superior President” together with a “submissive Congress” in foreign policy.

Based on this conviction, the inability of Congress to enact a resolution regarding Armenian genocide allegations so far is examined irrelative to the authenticity/credibility of both Armenian and Turkish historical theses or the effect of Turkish and Armenian lobby activities on the Congress. The genocide bills under analysis are assessed within the scope of legislative-executive relations in the US. This approach is believed to allow for the issue to be observed from a different perspective.

This paper is organized as follows. In the *first* section, the relationship between the legislative and executive powers in the US political system will briefly be analyzed within the framework of the mechanism of “checks and balances” which allow harmonious functioning between the powers. The *second* section addresses the balance between the legislative and executive branches in a narrower scope and establishes how this balance is formed in the area of foreign policy and how this balance changed to the disadvantage of the Congress over time. The *third* section studies the legislative initiatives concerning the Armenian allegations as a case study which concretizes the reflections of theoretical information provided in the first two sections in practice and how the Presidents have caused these initiatives to fail. In the *conclusion* section, by taking into notice the relationship between the Congress and Presidency, forecasts are conveyed regarding the outcome of similar efforts in addition to concluding remarks.

1. Congress and President in the Constitution

It is noteworthy that in response to a question of “You served under eight different Presidents, didn’t you?” Samuel Rayburn, who served as Speaker of the House of Representatives for 17 years, said “I did not serve *under* any President, I worked *with* eight Presidents”¹⁰ With this response, Rayburn has emphasized that the President and Congress are in no hierarchic order. Indeed, constitutional provisions prevent the legislative and executive organs to

9 Donald A. Ritchie, “Congress Confronts the Armenian Genocide”, Jay Winter (ed.), *America and the Armenian Genocide of 1915*, Cambridge, Cambridge University Press, 2003, pp.276-293.

10 Donald A. Ritchie, *The U.S. Congress: A Very Short Introduction*, New York, Oxford University Press, 2010, p.86.

establish an authority over each other and make cooperation between the two organs necessary. However, it is disputed whether the situation in practice, particularly in the area of foreign policy, is truly like this.

Although it was envisaged for the Congress and President to have equal power when the Republic was first established, the authority in the area of foreign policy of Presidents, who never abstained from intervening in legislation, surpassed the Congress's power over time. In fact, no longer being an area in which the Congress and President must act together, foreign policy has started being addressed under the President's exclusive authority. In order to show why the balance between the President and Congress was ruined and how the Congress became passive in foreign policy decision making, the basic characteristic of the system founded during the establishment of the Republic must first be brought to light.

1.1. Separation of Powers in the US Constitution

In the theory of constitutional law, there are two main forms of administration. The first is the system of "unity of powers" where the administering power is organized as a whole and there is a centralized administration, the second is the system of "separation of powers" where the administering power is used by more than one and different institutions. The subtypes of the separation of powers system, by differing from each other in terms of the characteristics of the relationship between the legislative and executive institutions, take the name either of parliamentary or presidential system.

In the US, which is accepted as the best example of the presidential system, the Congress and Presidency have turned into an institution holding the identity of an entity and "body" separate from each other. The staffs of the two bodies are different from each other. Separate from each other, the legislative and executive bodies take office through different methods and by direct popular election. The Congress and President resume office independent from each other and this situation is the fundamental factor that maintains the "separation and equality" of the powers sharing their authorities.¹¹

In accordance with the principle of separation of powers, legislative, executive and judicial activities on a federal level of administration have been shaped in theory as separate, but equal and interdependent. All governmental activities of public organizations are carried out within the framework of the principles of responsibility towards the President and later on rendering account to the

11 Günsev Evcimen, "Başkanlık Hükümeti Sistemi: 'Ratio Politica'sı ve Türkiye", *Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi*, Vol. 47, No. 1, (1998), pp.317-318.

Congress.¹² According to the Constitution, the Congress makes laws, the administration or President implements the laws and the Supreme Court and other federal courts, by interpreting and implementing the laws, concludes the cases tried in federal courts. Although executive power is essentially gathered in the hands of the President, the Congress establishes the ministries and various committees, deciding on their task, authority and sources, system of personnel, appointing of administrators and the term of office of committees.¹³

The government which does not emerge from the Congress has no political responsibility towards it. The President cannot be dismissed by the Congress for the policies it pursues. The President is not responsible towards anyone. While the Congress cannot force the President to resign, likewise the President has no right to abolish the Congress. The powers’ being “separate but equal” has made such a structure necessary.¹⁴ Therefore, the separation of powers in the US system, compared to that in the parliamentary system, is stricter. While the parliament lies at the center of all political activities within parliamentary systems, this is not the case in the US system. The power not being concentrated on only one body makes it necessary for a sensitive type of communication and coordination to be established. Since this is the situation, the system functions productively when the legislative, executive and judicial branches compromise; or else, it could reach a deadlock.¹⁵

In the event of the principle of separation of powers being violated by any organ in the system, it will be up to the Supreme Court to resolve the problems that could arise. For instance, Franklin D. Roosevelt, who tried to implement many measures in the 1930’s to combat economic crisis, had fallen into dispute with the Supreme Court many times and the Court prevented some of the President’s legislative attempts. Upon this, in order to discharge the judges appointed before his term aged 70 and above and to work together with those he appoints himself, Roosevelt has sought for a law to be adopted which would restructure the Court. This time however the Congress has come into play; by not accepting the law sought by the President, it has shown that the President’s authority has a limit.¹⁶

Another example that sheds further light on the function of the separation of

12 Uğur Ömürgönülşen, “Amerika Birleşik Devletleri’nde Kamu Yönetimi”, Birgül Ayman Güler (ed.), *Kamu Yönetimi Ülke İncelemeleri*, Ankara, İmge Yayınevi, 2009, pp.318-319.

13 *Ibid.*, p.319.

14 *Ibid.*, p.318.

15 Hasan Fendoğlu, “Başkanlık Sistemi Tartışmaları”, *Stratejik Düşünce Enstitüsü*, (November 2010), p.16.

16 Brian Duignan (ed.), *The Executive Branch of the Federal Government: Purpose, Process, and People*, New York, Britannica Educational Publishing, 2010, pp.240-248.

17 U.S. Supreme Court, *Youngstown Co. v. Sawyer*, 343 U.S. 579 (1952). For the ruling of the court see: <http://supreme.justia.com/us/343/579/case.html>

powers within the US system is the *Youngstown Co. v. Sawyer*¹⁷ case filed upon President Harry S. Truman seizing the steel plants in the country with the allegation that during time of war, the supreme military command had granted him the authority of determining production of steel. In this case, the Supreme Court has ruled that the President being charged with implementing the laws does not give him the authority to enact laws, that the President could only provide suggestions to the Congress for the enactment of laws he sees necessary, that the President has no right to seize private property unless a law is made in the Congress in this direction and that by reaching such a decision, the President has exceeded his constitutional authority.¹⁸ This way, the principle of each law having a unique function as one of the main determinants of the separation of powers has been underlined in this case.

Another decision indicating that the President's power is limited was taken in 1974 in the case of *United States v. Nixon*.¹⁹ Within the context of the Watergate Scandal investigation, President Nixon had developed an argument based on justifications of the separation of powers and the privacy of communication of high level officials that Presidents have some privileges and had abstained from providing the documents requested from him to the prosecution office. By emphasizing the importance of the principle of separation of powers in maintaining the border drawn between the organs, the Court has ruled that separation of powers principle can under no circumstance immunize the Presidents from judicial procedure.²⁰ After all, the Court had decided on the documents requested from the President to be given and Nixon was obliged to resign from presidency. Moreover, an important point exists in the ruling regarding the President's authority in foreign policy. By referring to a domestic policy-foreign policy distinction, the decision states that when the President's authority is the point in question, his authorities in foreign policy is stronger than those in domestic politics and accepts that the executive power will be more privileged in national security, intelligence and military issues.²¹

The domestic policy-foreign policy distinction made in the abovementioned ruling concerning the President's authority also exists in political science literature. It is argued that the President is a more pronounced actor in foreign policy, but the Presidents are not as equally powerful against the Congress in domestic politics. Within this framework, the theory that there are "two

18 David L. Hudson, "What is an Example of a Separation of Powers Problem?", *The Handy Law Answer Book*, Canton, MI, Visible Ink Press, 2010, p.14.

19 M. J. C. Vile, "Separation of Powers", *Encyclopedia of the American Constitution*, Leonard W. Levy and Kenneth L. Karst (eds.), New York, Macmillan Reference, Vol. 5, 2000, 2nd ed., pp.2381-2385.

20 U.S. Supreme Court, *United States v. Nixon*, 418 U.S. 683 (1974). For the ruling of the court see: <http://supreme.justia.com/us/418/683/case.html>

21 Michael A. Genovese and Robert J. Spitzer, *The Presidency and the Constitution: Cases and Controversies*, New York, Palgrave Macmillan, 2005, pp.99-103.

separate presidencies” in domestic and foreign policies come to the fore. Aaron Wildavsky, the prominent representative of this view, has provided the first example of the “two presidencies theory” by saying that *“the US has one President, but it has two presidencies; one presidency is for domestic affairs and the other is concerned with defense and foreign policy”*. This view, which indicates that the Presidents attain what they wish in regards to an issue of foreign policy which they are determined about, explains that the Presidents are not successful to this extent in issues of domestic policy and links this situation to the developments taking place after 1945, rather than to the Constitution.²²

Partially due to constitutional provisions and partially because of some judicial decisions and the obligations brought forth by the international system especially after the Second World War, the Presidents have started being perceived as the person “unitarily” responsible for the structuring of foreign policy.²³ However, constitutionally, the Congress has also been organized as a powerful organ equipped with significant authorities.

1.2. Distribution of Responsibilities Between the Legislature and Executive

With the statement *“all legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives”*, the first section of the Constitution’s first article show that the Congress, formed of two chambers, will use all its legislative powers. The second section of the same article indicates the structure of the House of Representatives and the qualifications requisite for becoming a representative, while the third section entail certain provisions concerning the Senate. Powers of Congress are listed in section eight of the first article.

The first section of the Constitution’s second article entails the provision that *“the executive Power shall be vested in a President of the United States of America”*. The Constitution also lists the President’s tasks and powers, but does not assign any specific tasks of governance to his deputy, cabinet or other federal officials. In the second article of the Constitution, the following provisions exist regarding the President’s powers:

(Section 2) *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 the actual service of the United States; he may require the*

22 Aaron Wildavsky, “The Two Presidencies: Presidential Power is Greatest When Directing Military and Foreign Policy”, *Society*, Vol. 4, No. 2, (1966), p.7.

23 *Ibid.*, pp.9-12.

opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

(Section 3) *He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.*

Despite the provision in the first article of the Constitution on “all legislative powers” being granted to the Congress, it should be reminded that the President also has a significant legislative role: the President can veto any draft law approved by the Congress and if two-thirds of the majority from both chambers do not override the veto, the proposal cannot receive a statutory provision. Furthermore, in their annual and special speeches delivered in the Congress, the Presidents could also propose for the legal regulations, which they deem necessary, to be put into practice. This situation arises from forming public opinion and motivating members of Congress towards legislative actions, whereas the executive power has no authority to prepare a draft law. The origination of all laws from Congress is a natural consequence of the separation of powers being implemented in a strict manner.

Another point which is as important as the President being “head of

government" should also be underlined. According to the second section of Article two of the Constitution mentioned above, the President is head of the army and navy and is the commander-in-chief. This authority, as will be emphasized later on, provides a great advantage in guiding foreign relations, because based on being "head of government" and "commander-in-chief", Presidents argued that the Constitution gives them an advantage in determining and conducting foreign policy.

At this point, it will be noteworthy to recall the thoughts of Hamilton, one of the founding fathers, regarding what kinds of differences the President would have from the King of Great Britain. Hamilton indicates that the King has a supreme power that determines all foreign relations on its own, whereas the US President will share its power with the Senate, a wing of legislation, in foreign relations.²⁴ This idea brought forth by Hamilton has been internalized in the US Constitution and the small number of provisions expressed in the Constitution regarding foreign policy has not been exempt from the principles of "separation of powers" and "checks and balances". Therefore, authorities within foreign policy have been imprecisely shared between the legislative and executive departments.²⁵

The powers of the President and Congress have been specified in the US Constitution and although a limit has been drawn for each in accordance with the principle of separation of powers, it is not possible for the departments to work entirely independently from each other, because the "checks and balances" mechanism allow the departments to influence each other and forces the legislature and executive to establish a harmonious relationship among them.

1.3. Balance between the Legislative and Executive According to the Constitution

Founding fathers, who have found one of the branches dominating the entire system dangerous in terms of individual liberties and are concerned with the system falling towards this, viewed the checks and balances mechanism as a measure that would prevent the degeneration of the system. Due to this mechanism, neither the Congress possess unlimited authority in the area of legislation, nor does the President has the opportunity to act totally independently from the Congress on determining executive power.²⁶ While

24 Alexander Hamilton, "The Real Character of the Executive", (Federalist Papers No. 69), *New York Packet*, 14 March 1788.

25 Louis Henkin, "Foreign Affairs and the Constitution", *Foreign Affairs*, Vol. 66, No. 2, (Winter 1987/1988), pp.284-285.

26 Michael Foley and John E. Owens, *Congress and the Presidency: Politics in a Separated System*, Manchester, Manchester University Press, 1996, pp.2-3.

separation of powers require a hierarchy between organs, divergence, specialization in a certain area and independence from the others, checks and balances, as an important constituent of the US system, create equality, cooperation and mutual dependence.²⁷

In *federalist papers*, the system of checks and balances has been argued to be the means to restricting government power and preventing its misuse. Checks and balances is a mechanism included into the system for one of the powers not to extremely strengthen to the disadvantage of the others, one of them being restrained by the others when required and therefore, for power not to be concentrated upon a single organ, which almost has the function of providing assurance. James Madison, among the founders of the Constitution, consider a strong separation of powers, which would cause the powers not to have any influence on each other, as “the principle of separation of powers not being able to be completely implemented” and argue that each department should have constitutional control over each other.²⁸

The function of this mechanism is as follows: the power to set rules, which is the main function of Congress, could be restrained by the President’s veto power. Policies of legislation to reach their purposes and to be implemented depend on the President’s execution of these rules and the Congress using the resources allocated to be spent for this purpose. On the other hand, the impact of policies of legislation depend on the Congress approving the appointments to be made to high-level positions (for instance ambassadors, judges of supreme courts) which will put these policies into practice, the appropriation of financial resources for the implementation of these policies and allocation of resources in areas to be determined by the executive power, and the ratification of treaties if the implementation of these policies concern international relations, because the third paragraph of the second section of the second article of the Constitution state that the President could use his powers like making treaties and appointing ambassadors with the “advice and consent” of the Senate.

The requirement for an international treaty to be approved by the Senate before entering into force through the President’s signature constitutes a good example of the “checks and balances” effect legislature has over the executive organ. In order not to encounter a situation where the candidate nominated by the President for a supreme court will not receive approval, due to the checks and balances mechanism Presidents have to negotiate with senators and determine the possibilities of receiving approval beforehand. In fact, in some situations

27 *Ibid.*, pp.334-335.

28 James Madison, “These Departments Should Not Be So Separated as to Have No Constitutional Control Over Each Other”, (Federalist Paper No. 48), *New York Packet*, 1 February 1788.

it could even be the case where Presidents put forward those individuals who are more likely to receive approval before their own preferences, having to give up on the real candidates.²⁹

At this point, it would be appropriate to bring to mind that the situation named as divided government is able to take the checks and balances mechanism a step further. It is evident that the party, to which the President is a member, remaining a minority in both or either wings of Congress could disrupt the decision making process. In fact, Woodrow Wilson, President during and after the First World War (1913-1921) who, by aspiring from parliamentary systems, maintained close cooperation with the leaders in Congress and was able to direct legislation, encountered difficulties after his party became minority in the Congress in 1918. Wilson, who had achieved many successes in activities of legislation during his first years in office, has failed in convincing the Senate to ratify the Versailles Treaty, to which he was a party, and the Covenant of the League of Nations.³⁰ In situations where the divided government is the case, the Congress has the opportunity not to take the President's initiatives into consideration and even to counterattack. For instance, with the re-adoption of a law with a two-thirds majority in Congress that was vetoed by the President, the President could be deprived of the ability to restrain the Congress.³¹

Concerning checks and balances, it is also noteworthy to mention the Congress's function of inspection. The impeachments in the Senate following the investigation conducted by the House of Representatives, is the process of federal executive and judicial members being inspected, questioned and penalized by the Congress if necessary. These decisions, not being able to be appealed, are reached with a two-third majority in the Senate and if the person being tried is found guilty, the punishment given is being "removed from duty".³²

The examples mentioned show the importance of the legislative and executive organs working together in harmony and fulfilling their duties to the system in

29 Ritchie, *Ibid.*, pp.90-91.

30 *Ibid.*, pp.85-88.

31 Republican Richard Nixon, who served as President between 1969 and 1974, had to work together with a Congress in which the Democrats were a majority. Nixon, who vetoed the War Powers Resolution that was adopted in Congress during the period of unrest created by the Watergate Scandal and the Vietnam War, with the resolution being re-adopted by a qualified majority (2/3) in Congress, has not been able to use his veto power once again and has not been able to prevent a bill which he did not desire to become law. (More detailed information concerning this resolution is mentioned in the second section of this paper)

32 Until now, the Senate has addressed nineteen cases, eight people all judges have been punished for being found guilty. President Andrew Johnson in 1868 and President William J. Clinton in 1999 have been tried in the Senate following the investigation of the House of Representatives and both have been found not guilty. For more information see: "The Senate's Impeachment Role," *United States Senate*, http://senate.gov/artandhistory/history/common/briefing/Senate_Impeachment_Role.htm#1

functioning well. Incidents in which the Senate does not approve a treaty³³ or a person suggested by the President to become an ambassador not being appointed for failing to receive approval have been experienced in the past.³⁴

Since this article focuses on the reflections of the balance tried to be established between the legislature and executive on determining of foreign policy, it is necessary to observe what kinds of responsibilities and powers constitutional provisions place on the Congress and President in the area of foreign policy. Therefore, in the next section, powers and responsibilities the President and Congress possess in the area of foreign policy is studied within the framework of the Constitution. Then, the situation of its exercise is addressed, explaining that a competition exists between the President and Congress in the area of foreign policy, where in some situations the Congress, while in others the President is the dominant power in determining foreign policy. Within this context, it is emphasized that the Cold War and September 11 Attacks present an appropriate setting for extending the President's powers and limiting the Congress's influence and that Presidents make use of their powers, although at the risk of exceeding them by interfering in the legislative process.

2. The Role of the President and Congress in Foreign Policy

The US Constitution indicates by which organ some specific tasks and powers concerning foreign relations will be performed. However, no clear statement being expressed in the Constitution regarding under which organ's control foreign policy will be in has caused constitutional debates, disagreements and sometimes crises.³⁵ Edward S. Corwin, writer of the most read and referenced source on this issue, describes this situation in the Constitution as "*an invitation to struggle for the privilege of directing American foreign policy*".³⁶

33 Until now the Senate has not approved the ratification of 21 international treaties. Some treaties have not gone beyond the committee's process, while some have been withdrawn by the Presidents after comprehending that they will not be able to receive approval. For further detail see: "Treaties," *United States Senate*, <http://senate.gov/artandhistory/history/common/briefing/Treaties.htm#1>

34 The approval of a senior official takes place through the voting occurring after some questions are posed in the concerning commission of Congress orally and in writing. Each senator has veto power on this issue; if a senator indisputably opposes appointment, that appointment is not made. In order to ease the drawbacks created by this system, Presidents are able to temporarily appoint ambassadors based on the 3rd paragraph of the 2nd section of the Constitution's 2nd article. Those appointed this way must receive approval from the Senate before legislative session ends. Francis J. Ricciardone, nominated as candidate by President Obama for the US Embassy in Ankara, being prevented by Senator Samuel Brownback for not using the term "Armenian genocide" could entail an example to this issue. Ricciardone was assigned to Ankara by Obama while the Congress was in recess and had replied to the questions of senators a second time in August 2011 at the Senate's Foreign Relations Committee. Ricciardone, whose temporal status was removed after the voting in the Senate, has been able to be officially appointed in September 2011. For information on appointments while in recess see: Henry B. Hogue, "Recess Appointments: Frequently Asked Questions," *CRS Report for Congress*, RS21308, March 12, 2008. For Ricciardone's appointment see: "Senate Panel Approves Controversial Nominee to Serve as Ambassador to Turkey; Menendez, Boxer, Risch Oppose", *ANCA Press Release*, September 13, 2011.

35 David G. Adler, "The Constitution", *Encyclopedia of American Foreign Policy: Studies of the Principal Movements and Ideas*, Alexander DeConde... [et.al.], Vol. 1, New York, Charles Scribner's Sons, 2nd ed., 2002, p.323.

36 Edward S. Corwin, *The President: Office and Powers*, New York, New York University Press, 1957, p.171.

2.1. Constitutional Provisions

From a general approach, it is envisaged that in the Constitution, the Congress and President are co-equal entities in foreign policy and both will act together in harmony. In fact, by expressing in a speech delivered in the Congress that “the Congress shares power and responsibility in foreign policy”, President Ronald Reagan has indicated that these two organs work together in the process of determining foreign policy.³⁷

The provisions on issues relating directly to foreign policy are about the declaration of war, the forming and use of armed forces, appointment of foreign representatives and the making and ratification of international treaties. While some of these have been granted exclusively to one foundation, some entail the sharing of power and cooperation between two foundations. For instance, according to the constitution, declaring war is an authority granted only to the House of Representatives:

Founding fathers have viewed the power to declare war as one of the most important authorities monarchs possess and have granted this power not only to a single person, but to the Congress in which the people is represented.

“To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water...”³⁸

Furthermore, the House can also indirectly contribute to the shaping of foreign policy by using its power of purse regarding issues of the preparation of the budget and the allocation of funds. For instance, the House of Representatives reaching a negative decision on allotting funds for financial aid to be provided to a military operation conducted abroad or to a foreign country, is inevitable to have an impact, although indirectly and limitedly, on the foreign relations of the US.

Founding fathers have viewed the power to declare war as one of the most important authorities monarchs possess and have granted this power not only to a single person, but to the Congress in which the people is represented. At this point, the sensitivity the writers of the Constitution feel towards power being vested in the executive organ has played an important role. However, this situation does not mean that significant power has not been granted to the President, as the Constitution mentions an important duty the President is to fulfill by himself in times of the Congress declaring war:

37 Fisher, *Ibid.*, p.154.

38 Section 8 of Article 1 of the US Constitution.

“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 the actual service of the United States”³⁹

Apart from these powers granted exclusively to the House of Representatives and the President, important authorities have also been given to the Senate in foreign relations. The Senate plays an important role in the preparation and ratification of international treaties: According to the second section of Article 2, the Senate is responsible for giving “advice and consent” to the President on making treaties and appointing diplomatic officials, provided a two-thirds majority is reached. In other words, Presidents are not able to use the power to make international agreements or to assign a person to a foreign representative office on their own and are required to form cooperation with the Senate.⁴⁰

Although it was envisaged in the Constitution for the Senate to start an initiative by making suggestions to the President, generally Presidents bring treaties to the Senate for ratification after concluding them.⁴¹ As a matter of fact, the duty given to the Senate is not only about providing consent to the President that it is appropriate to ratify the treaty. However, even during the early years of the Republic, with first President George Washington making treaties with local Americans without the advice and consent of the Senate and submitting the final text to the Senate for ratification, this constitutional provision has started being eroded. In other words, rather than being a foundation that gives advice to the President, the Senate has become a foundation that ratifies the treaties made by the President.

When studying the Constitution, it could be understood that foreign policy is not left to the exclusive dominance of a single institution. Therefore, in the context of constitutional regulations, it is not quite easy to answer the question of “who is making foreign policy?” Justice Robert H. Jackson, in a famous essay on political authority under US Constitution, has said that the Constitution has not been able to establish a clear distribution of duties in the area of foreign policy by saying “*there is a zone of twilight in which [the president] and Congress may have concurrent authority, or in which its distribution is uncertain*”.⁴²

39 Section 2 of Article 2 of the US Constitution. Alexander Hamilton, in *Federalist Papers*, indicate that the power to be Commander-in-Chief granted to the President could only be valid if the Congress grants such power and therefore, it is actually the Congress who has a say in the commanding of the army. According to Hamilton, the President could only get involved after an armed struggle starts and when compared with the power of the English King, the President’s power remains very limited. Alexander Hamilton, “The Real Character of the Executive”, (Federalist Papers No.69) *New York Packet*, (14 March 1788).

40 Hubert H. Humphrey, “The Senate in Foreign Policy”, *Foreign Affairs*, Vol. 37, No. 4, (July 1959), pp.525-526.

41 Michael J. Glennon, “Senate and Foreign Policy”, Leonard W. Levy and Kenneth L. Karst (eds.), *Encyclopedia of the American Constitution*, Vol. 5, New York, Macmillan Reference, 2000, 2nd ed., pp.2361-2363.

42 Henkin, *Ibid.*, p.285.

Similarly, James P. Richards, complaining about the Congress's role in foreign policy being overlooked and the existence of a false but widespread perception that the executive power conducts foreign policy on its own, believes that this uncertainty forms the basis for an endless struggle between the Congress and President in the process of making foreign policy.⁴³

Although the Constitution has not been able to draw a clear framework, there are three points American constitutional scholars agree upon to a great extent: 1) Daily foreign policy activities have been addressed by authors of the Constitution in the area of the executive organ. 2) Except for responding to sudden armed attacks, the use of armed forces against foreign countries is not within the authority of the executive, but in the power of the Congress. 3) The Congress's ability to control legislative activities and financial resources invites the Congress to get involved in the foreign policy process concerning issues of foreign policy that require these.⁴⁴

The general consensus on the three points mentioned above has not been adequate in eliminating the uncertainty on what kind of function separation of powers will have in the area of foreign policy. Therefore, three different approaches have emerged on who will make foreign policy. While one group asserts that the President is the determining power in foreign policy⁴⁵, another group argues that it is the Congress who controls foreign policy. Those in the third group believe that the Congress has the final say, but that sharing of power which is balanced with the executive organ is necessary.⁴⁶ This much is certain that constitutional provisions have laid the foundation for the President and Congress to compete against each other to obtain dominance in foreign policy.

2.2. Struggle for Supremacy in Foreign Policy

It worth mentioning here that there are two opposite views regarding how much power the President should have. The first one, called the "constitutional" theory of the presidency, argues for limited presidential power and is represented by Abraham Lincoln. The other view, namely the "stewardship" theory of the presidency, argues for expansive presidential power. The following passage of Theodore Roosevelt is well known for its clear indication of rationale behind expansive presidential power:

43 James P. Richards, "The House of Representatives in Foreign Affairs", *The Annals of the American Academy of Political and Social Science*, Vol. 289, No. 1, (1953), pp.66-67.

44 Anthony G. McGrew, "Foreign Policy and the Constitution: Invitation to a Perpetual Institutional Struggle", Richard Maidment and John Zvesper (eds.), *Reflections on the Constitution: The American Constitution after Two Hundred Years*, Manchester, Manchester University Press, 1989, p.176.

45 Baker Spring, "Who Makes The American Foreign Policy?", *The Heritage Foundation Research Report*, (April 29, 2011), <http://www.heritage.org/research/reports/2011/04/who-makes-american-foreign-policy>.

46 McGrew, *Ibid.*, pp.176-177.

*... My belief was that it was not only his right but his duty to do anything that the needs of the nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of executive power I did and caused to be done many things not previously done by the President and the heads of the departments. I did not usurp power but I did greatly broaden the use of executive power...*⁴⁷

Richard Grimmett, who studies the power of the President and Congress in directing US foreign policy, indicates that in some periods the Congress dominates foreign policy, while in others Presidents come to the fore overshadowing the Congress. Grimmett puts it as follows:

*The roles and relative influence of the two branches in making foreign policy differ from time to time according to such factors as the personalities of the President and Members of Congress and the degree of consensus on policy. Throughout American history there have been ebbs and flows of Presidential and congressional dominance in making foreign policy.*⁴⁸

As the US isolating itself from European politics could also be understood from the second half of the 19th century being mentioned as “congressional government”,⁴⁹ this period corresponds to the years in which the Congress was very active. Although the President had obtained the opportunity to forge ahead once again in the struggle for supremacy with the start of the First World War, the Senate not ratifying the Versailles Treaty, which was completed by President Wilson, had ended the President’s relative superiority and until the Second World War, Congress domination has been experienced once again.⁵⁰

The Congress’s activity in the period between the two wars has come to an end with the Pearl Harbor Attack and Franklin D. Roosevelt has taken control of foreign policy by almost completely ignoring the Congress. For instance, the policy of forcing the Allies to surrender and the agreement reached with the Union of Soviet Socialist Republics (USSR) at Yalta has personally and completely been the President’s choice and the Congress has had no significant effect in determining this policy,⁵¹ because Roosevelt has argued that the

47 “William Howard Taft: Limited Presidential Power” *Encyclopædia Britannica: the American Presidency*, <http://www.britannica.com/presidents/article-9116971>

48 Richard F. Grimmett, “Foreign Policy Roles of the President and Congress”, *CRS Report for Congress*, RL30193, (1 June 1999), pp.1-2.

49 Woodrow Wilson has given the title “*Congressional Government*” to his book he wrote in 1885 and in which he argued that the Congress has become an extremely strong institution.

50 James M. Lindsay, “Deference and Defiance: The Shifting Rhythms of Executive-Legislative Relations in Foreign Policy”, *Presidential Studies Quarterly*, Vol. 33, No. 3, (September 2003), p.533.

51 Ambrose, *Ibid.*, p.124.

President should be able to act in a manner he/she finds appropriate unless the constitution and laws forbid it and has brought a new perspective to the power and authority of the executive organ.

In order to overcome the economic difficulties of the 1930's, Roosevelt has assumed the role of leadership and by making use of this opportunity, has raised the executive power to a stronger position than it ever was,⁵² Roosevelt's practices in broadening the President's powers have entailed an example for the Presidents succeeding him. The conditions created by the Second World War and the Cold War have gradually weakened the decisiveness of the Congress within foreign policy. The President has started playing such a great role in deciding on foreign policy that when the American community is currently asked the question “who is making foreign policy?” most of the answers will be “the President”.⁵³

2.2.1. The Second World War and the President's Increasing Authority

During the 1930s, the combination of the Great Depression and the memory of tragic losses in First World War contributed to pushing American public opinion and policy toward isolationism which meant non-involvement in European and Asian conflicts and non-entanglement in international politics,⁵⁴ In fact a Neutrality Act has been enacted in Congress four times in the 1930s and it has received great acceptance among public opinion.⁵⁵ Therefore, different ways have been pursued to not enter the war that started in Europe, but also to support England due to US interests.

Senator Arthur Vandenberg, who delivered a speech in Congress shortly before the outbreak of the war, through his statement regarding the policy of isolation has expressed an idea that was widespread among the American people in that period:

True, we do live in a foreshortened world in which, compared to Washington's day, time and space are relatively annihilated. But I still thank God for two insulating oceans; and even though they be foreshortened, they are still our supreme benediction if they be widely and prudently used...

52 Şaban Tanıyıcı and Birol Akgün, *Amerikan Başkanlığı: Cumhuriyetten İmparatorluğa*, Ankara, Orion Kitabevi, 2008, pp.97-98.

53 Lindsay, *Ibid.*, p.531.

54 “American Isolationism in the 1930s”, *US Department of State Office of the Historian*, <http://history.state.gov/milestones/1937-1945/AmericanIsolationism>

55 In order to prevent the US from being included in the latest developments in Europe, the Congress has drawn up neutrality acts four times in 1935, 1936, 1937 and 1939. For detailed information see: “The Neutrality Acts, 1930s”, *US Department of State Office of the Historian*, http://history.state.gov/milestones/1921-1936/Neutrality_acts

*We all have our sympathies and our natural emotions in behalf of the victims of national and international outrage all over the globe; but we are not, we cannot be, the world's protector or the world's policeman*⁵⁶

After the start of the Second World War, the US has begun to elude from its isolationist approach. While 64 percent of the community favored the maintenance of peace in May 1940, this ratio has decreased to 32 percent right before Pearl Harbor (December 1941).⁵⁷ The Pearl Harbor Attack occurring right when the community showed less reaction to the idea of entering war has greatly changed the US's stance on not interfering in European affairs.⁵⁸ Even Vandenberg, one of the leading isolationists, describes the Pearl Harbor attack as "the day isolationism ended".⁵⁹ The attack has caused the US to re-enter European diplomacy and the US has found itself in a war that has lasted until 1945. However, when the war ended, another one has started: the Cold War.

During the Cold War period, the US has tried to channel world policies as the founder and dominant actor of many international organizations like NATO, United Nations, International Monetary Fund and the World Bank. In this time span, the US has undergone institutional changes as required by its new role. In this sense, the first change that comes to mind is the Executive Office of President, established in 1939, being enlarged to a great extent.

The rapid increase in the number of officials working at the White House, comprised of those who the President trusts and works very closely with particularly on issues like determining a hidden agenda as necessitated by the Cold War, has provided a great advantage to the President in the process of determining policy and has greatly reduced the President's need for ministries and other public institutions.⁶⁰ In short, Presidents have highly evaded their dependence on other institutions due to expert staff incorporated within their scope. This situation has made it easier for the President to come to the forefront in determining foreign policy. Presidents who reach a more autonomous position with their own staff have started increasing their influence in making decisions concerning foreign policy. Then, the administrative structure of the executive organ has started being broadened. Within this framework, the National Security Act of 1947 has allowed the President to gain a central role in determining foreign policy by deciding on establishing a

56 Henry A. Kissinger, *Diplomacy*, New York, Simon & Schuster, 1994, p.385.

57 *Ibid.*, p.392.

58 *Ibid.*, p.393.

59 Manfred Jonas, "Isolationism", *Encyclopedia of American Foreign Policy: Studies of the Principal Movements and Ideas*, Alexander DeConde... [et.al.] Vol. 2, New York, Charles Scribner's Sons, 2nd ed., 2002, p.347.

60 Justin S. Vaughn and José D. Villalobos, "White House Staff", *New Directions in the American Presidency*, Lori Cox Han (ed.), New York, Routledge, 2011, pp.123-124.

National Security Council, Central Intelligence Agency and the Department of Defense.⁶¹

These new foundations responsible towards the President have been characterized as the President’s “mini Foreign Ministry”. It has also been observed that from time to time the close advisors of the President have played more significant roles than the secretaries. For instance, despite the objections of Secretary of State George Marshall, President Truman has decided on recognizing Israel in 1948 by taking the advice of his close advisor Clark Clifford, known also for forming the Truman Doctrine.⁶² It could be seen that the US deciding to take the stage among world states by abandoning its isolation policy and its policies in this direction have strengthened the presidential system and the role assumed by the President within this system.⁶³

Over time policy decision makers and public opinion have become used to the idea that the Cold War could constitute a threat to US interests at any time and therefore foreign policy should be formed by expert staff. The thought that Congress cannot be as successful as the President in protecting national interests has made it easier for Presidents to establish dominance in this area, because especially during the first years of the Cold War, the American community had believed that Soviet threat could only be confronted with a strong President and had found it necessary for authority to be under the control of the executive branch.

The idea that the President is more authorized than Congress in determining foreign policy or that it is legitimate for the President to dominate this field is also widespread among Congress members⁶⁴. Senator Arthur Vandenberg’s statement that “*the Constitution gives the President exclusive priorities in international relations... there is no practical way for us to take those priorities from him*” is considered as an important indication at this point.⁶⁵ In fact, there are even those who believe that Congress members experience an “inferiority complex” towards the President due to their ineffectiveness.⁶⁶

61 Meena Bose, “The Presidency and Foreign Policy”, *New Directions in the American Presidency*, Lori Cox Han (ed.), New York, Routledge, 2011, pp.180-181.

62 Albert Bowman and Robert A. Divine, “Presidential Advisors”, *Encyclopedia of American Foreign Policy: Studies of the Principal Movements and Ideas*, Alexander DeConde... [et.al.], Vol. 3, New York, Charles Scribner’s Sons, 2nd ed., 2002, p.185.

63 Ömürgönülşen, *Ibid.*, p.319.

64 John T. Rourke, “Congress and Cold War”, *World Affairs*, Vol. 139, No. 4, (Spring 1977), p.259. As a result of questions posed to 82 Congress members in a survey conducted in 1969 as mentioned by Rourke, only four members have thought that the Congress should strive to have equal power with the President. According to Rourke, this is an important reason for Congress members leaving foreign policy to the President’s realm of authority.

65 John T. Rourke, “Congress, the Executive, and Foreign Policy: A Propositional Analysis”, *Presidential Studies Quarterly*, Vol. 10, No. 2, (Spring 1980), pp.183-184.

66 John F. Manley, “The Rise of Congress in Foreign Policy-Making”, *The Annals of the American Academy of Political and Social Science*, Vol. 397, No. 1, (1971), p.70.

Another reason for Presidents being more actively concerned with foreign policy is due to the privilege and supremacy they possess in the field of intelligence. All intelligence units sharing the information they have with only the President as to keeping it hidden from public opinion provides the President an advantage in determining foreign policy and in particular, in determining policies of defense and security.⁶⁷ Moreover, it is indicated that the belief of intelligence units that rather than long-term goals of the country, the priorities of Congress members is to win elections again in the short run, has created an approach that Congress members cannot be trusted.⁶⁸

A reason for Congress losing its influence in foreign policy issues concerning national security is based on the election system, because Congress members work in line with the community's expectations as possible and in order to be re-elected, spend a significant amount of their time on fulfilling their responsibilities. House of Representatives members in particular organize election campaigns biennially that require large financial resources and spend most of their working hours in electoral districts in order to receive the support they need.⁶⁹

Candidates for Congress who believe remaining indifferent to the electorates' requests and expectations as a sufficient reason for losing the elections, consider addressing local problems more of a priority than dealing with national issues.⁷⁰ When taking into account that 80-90 percent of members of the House of Representatives have been re-elected in the following elections, it becomes clear that the representatives have not been able to remain insensitive to the requests in the electoral districts.⁷¹ (This situation, as will be addressed later on, is very important for Armenian Genocide bills.)

Congress members not having enough knowledge on foreign policy issues has also emerged as an important factor in the Congress putting more emphasis on domestic policy issues. The Representatives, who prefer to work more on issues that concern the electorates, believe that foreign policies requiring expertise and intelligence should be determined by the President who has a specialized team in this area.

67 Haskell, *Ibid.*, pp.316-317.

68 Jennifer D. Kibbe, "Congressional Oversight of Intelligence: Approaches to Solving the Problem", *Prepared for presentation at the 2009 American Political Science Association Annual Meeting*, Toronto, Canada, (5 September 2009).

69 David R. Mayhew, *Congress: The Electoral Connection*, New Haven, Yale University Press, 1974, pp. 13-19 and 81-82; Rourke, *Congress, the Executive, and Foreign Policy*, p.183.

70 Kay King, "Congress and National Security", *Council on Foreign Relations (CFR)*, Special Report, No. 58, (November 2010), p.9.

71 Haskell, *Ibid.*, p.102. Based on the information provided by Haskell, the ratio of deputies re-elected in the 23 elections held from 1964-2008 for the House of Representatives ranges from 85 to 98 percent. That is to say, the number of deputies keeping their chairs in the Assembly with a total of 435 members ranges from 370 to 426.

Presidents, who put forth that very important threats have been encountered during the Cold War period concerning security, has played a more active and effective role in determining foreign policy. According to one interpretation, although the Congress wanted to have a role in complicated foreign policy issues, it has not wanted to be responsible as much. As a result of Presidents acting more willing, while Congress members act more timid, the President's significance has relatively increased in foreign policy and the Congress has lost its influence in this area.⁷² Hence, while President Truman, who served in the early years of the Cold War, applied in Korea the doctrine which was referred to with his name and was based on surrounding communism everywhere, he never consulted the Congress.⁷³ While bringing the US into the Korean War, President Truman has also not found it necessary for the Congress to declare war.

Dwight D. Eisenhower replacing Truman has also served in a period where the race for nuclear weapons and long-range missiles had gained momentum and in which the fear caused by Pearl Harbor was intense and instead of consulting the Congress on certain foreign policy issues, has only notified the Congress after taking the decisions he pleased. For instance, Eisenhower allowing the CIA to conduct secret operations for the overthrowing of the governments of Iran in 1953 and Guatemala in 1954 has been kept hidden from Congress (and therefore public opinion).⁷⁴ Eisenhower who said that "*I prefer to be relieved of duty than to fail in protecting America's vital interests*", has clearly shown his sensitivity in the issue of national interests and that he will know no bounds to exceeding his powers if necessary.⁷⁵

As could be seen from the Cuban Missile Crisis and the Bay of Pigs Invasion, John F. Kennedy, who took the chair of President in the early 1960's in which the Cold War was felt the most intensely, has also shaped foreign policy without almost not requiring the Congress at all,⁷⁶ because during this period, the Congress had taken an approach towards leaving the administration of politics entirely to the President. Presidents in return have highly benefited from the Congress's partisan approach and its support given to the President.

Following the 1940's, the Presidents starting to act without paying attention to Congress and pushing the limits of their powers has been considered as Presidents acting like "emperors" and a concept called "imperial presidency"

72 John T. Rourke, *Congress and the Presidency in U.S. Foreign Policy: A Study of Interaction and Influence 1945-1982*, Boulder, Co., Westview, 1983, p. xv.

73 Ambrose, *Ibid.*, pp. 124-125.

74 Duignan, *Ibid.*, p.260.

75 Robert Accinelli, "Eisenhower, Congress, and the 1954-55 Offshore Island Crisis", *Presidential Studies Quarterly*, Vol. 20, No. 2, (1990), p.332.

76 Ambrose, *Ibid.*, pp.125-126.

has emerged. For instance, Arthur Schlesinger, in his popular book he has given this title, by drawing attention to the policies in the Korean and Vietnam Wars and to the structuring in the office of Presidency of the Nixon and Johnson governments, he has defended that the President has exceeded his limits drawn out in the Constitution and has become an uncontrollable power.⁷⁷

2.2.2. The Vietnam War, War Powers Act and the Congress's Search for Authority

As a result of increasing concerns felt after the legislative branch lost its function, Congress members have started legislative activities directed towards limiting the President's authority. As expected, initiatives with the purpose of making the Congress more effective, have wanted to be prevented by Presidents. However, by turning the President's gradually increasing dominance within foreign policy upside down, the Vietnam War has caused the establishment of a more balanced legislative-executive relationship in this area and the Congress to reach a more effective position in foreign policy just as was the situation before the 1940's.⁷⁸

It is a general conviction that the Vietnam War has caused trauma among American community and has pushed the Congress in actively being involved in foreign policy.⁷⁹ It is not a coincidence that the "War Powers Resolution" (WPR) emphasizing that the President and Congress must act together in the process of determining foreign policy (particularly in situations of using military personnel) has been adopted at a time when Nixon's prestige was shattered due to the Watergate Scandal.⁸⁰ The WPR is somewhat a brake that the Congress has tried to bring against the increasing powers of the President. The Congress has merely declared to the President that he should also join in the process of determining foreign policy.

The WPR which is a concrete indication of the Congress members' reaction towards their President, who pays no attention to them, is based on the justification that a policy of using military power could only be implemented with the approval of the Congress⁸¹. In order to limit the President's authority and confirm that the Congress has a say in foreign policy and national security,

77 Arthur M. Schlesinger, *The Imperial Presidency*, Boston, Houghton Mifflin, 1973.

78 Manley, *Ibid.*, pp.60-63.

79 Lee H. Hamilton and Michael H. Van Dusen, "Making the Separation of Powers Work", *Foreign Affairs*, Vol. 57, No. 1, (Fall 1978), p.17.

80 Hamilton and Van Dusen, *Ibid.*, pp.18-19.

81 James Meernik, "Congress, the President, and the Commitment of the U. S. Military", *Legislative Studies Quarterly*, Vol. 20, No. 3, (August 1995), pp.377-392.

the Congress has adopted this act with a majority⁸² enough to prevent the President from vetoing it.

The Resolution’s first paragraph of the second section entitled “Purpose and Policy” emphasizes that the use of US military forces could only be possible through the collective judgment of both the Congress and the President, while the third paragraph of the same section indicates that the President’s power as Commander-in-Chief can only be used in situations where the Congress declares war, specific statutory authorization is granted or an emergency is created by attack on the US. The third section of the Resolution confirms that the President in every possible instance shall consult with Congress in introducing armed forces into hostilities.

In short, the WPR emphasizes that the President’s powers are not endless, that the Congress has a say in foreign policy and the legislative and executive organs have the power to control each other according to the Constitution.⁸³ However, the aforementioned Resolution has failed in limiting the Presidents as expected. No President until now has accepted that the Congress could draw a limit with this Resolution, which they allege to be contradictory to the Constitution.⁸⁴

The Presidents who ignored the Congress while determining foreign policy and intervening in the legislative organ have also continued after the adoption of this resolution. For instance, when the military operation directed towards Serbia in 1999 had come to the agenda, President Clinton, by expressing that foreign policy is within his area of authority as President and does not require Congress approval, has seen no harm in ignoring the Congress and commanding the armed intervention of US military forces through his own initiative.⁸⁵

Grimmett, who researches how conformingly Presidents act to the WPR, indicates that the Presidents act as if this resolution does not exist and that in

82 In a situation where a resolution passing through both wings of Congress is adopted with a two-thirds majority, it is not possible to be vetoed by the President. The WPR has received two-thirds majority in both wings and President Nixon, who was believed to certainly veto it, has not been able to use his veto power.

83 Richard F. Grimmett, “The War Powers Resolution after Thirty-four Years”, *CRS Report for Congress*, RL32267, (10 March 2008).

84 John O. McGinnis, “Constitutional Review by the Executive in Foreign Affairs and War Powers: A Consequence of Rational Choice in the Separation of Powers”, *Law and Contemporary Problems*, Vol. 56, No. 4, (1993), pp.293-294.

85 Geoffrey S. Corn, “Clinton, Kosovo, and the Final Destruction of the War Powers Resolution,” *William and Mary Law Review*, Vol. 42, No. 4, (2001), pp.1186-1190. Upon Clinton deciding to participate in the Kosovo operation without consulting the Congress, 39 members of Congress have sent a letter to the President expressing that this decision is contradictory to the Constitution and the WPR and that Congress approval is necessary. Following this initiative that failed to pursue the President in abandoning his decision, California Representative Thomas J. Campbell has filed a lawsuit against Clinton, but the court has ruled that the Congress has indirectly accepts the President’s decision by allocating resources to the military operation and therefore, the accusation directed towards the President cannot be accepted.

practice the resolution is far from maintaining a balance between the legislative and executive branches.⁸⁶ Consequently, similar to Truman entering the Korean War in 1950 without a declaration of war, George H. W. Bush when entering Iraq in 1991, Clinton when entering Serbia in 1999 and lastly George Bush when entering Iraq and Afghanistan expressing that Congress approval is not required to organize a military operation, displays that the WPR has not attained its purpose, because it is clear that based on the Constitution and the WPR, these kinds of military operations require Congress approval.

President Bush's approach that became concrete with his statement before the Gulf War of "*I don't think that a decision of Congress is required*"⁸⁷ is not an exception but has become the common approach of all Presidents serving after 1945. Following Truman's example, no President has required the Congress's declaration of war.⁸⁸ Despite the US entering into hundreds of armed conflicts, there being a declaration of war by the Congress only five times until now is a clear indication of this.

The legislative-executive balance being corrupted within the area of foreign policy authorities has gained more clarity following the September 11 attack. President George Bush has started a period in which the President, tried to be constrained after the Vietnam War, once again dominated foreign policy and has in fact caused the President to turn into an incontestable authority.

2.2.3. September 11 and the President's Supreme Authority in Foreign Policy

The Bush Administration, who argued that after September 11 the US was under a major threat, that laws prepared for ordinary periods were not sufficient for such extraordinary times and that the President could resort to all kinds of means in order to protect his country and people, has been criticized with this stance for violating the principles of sharing of power and making joint decisions in foreign policy as emphasized in the Constitution.

Vice-President Dick Cheney, the leading name within the Bush administration who is behind the attempts directed towards broadening the President's power and area of authority, has said that there has been an erosion of the President's power and capabilities after the Vietnam War, that this situation entails an obstacle to the President performing his duties and that the President cannot

86 Richard F. Grimmett, "War Powers Resolution: Presidential Compliance," *CRS Report for Congress*, RL33532, (23 September 2010).

87 Michael J. Glennon, "The Gulf War and the Constitution", *Foreign Affairs*, Vol. 70, No. 2, (Spring 1991), p.84.

88 Ritchie, *Ibid.*, p.97.

be in a position where he submits to the Congress's requests.⁸⁹ Eventually, the White House has declared following September 11 that it will refrain from applying the laws which would harm the authority of the administration.⁹⁰

Vice-President Dick Cheney's aide David Addington is also shown as one of the ideologists of the "unitary executive" theory which defends that the President could take one-sided decisions and cannot be confined by the Congress or judicial bodies⁹¹. With the conviction that the President making a request to the Congress to take a decision means that the President has no sufficient power, he has tried to keep the Congress outside of foreign policy issues as much as possible.⁹²

President Bush's legal advisors have argued that when national security is in question, the Congress has no power to restrict or control the President since the President is "commander-in-chief" and "chief of state".⁹³ According to the Bush administration, the President has an inherent and an unlimited authority on the point of deciding on foreign policy and the use of armed power.⁹⁴ Allegations in this direction have once again revived the "imperial presidency" discourse.⁹⁵ It has been argued that within the context of President Bush's "war on terror", his stance that it is even legitimate to torture the prisoners belonging to Al-Qaeda by completely ignoring the Geneva Convention entails the most extreme point of imperial presidency.⁹⁶

The Bush Administration's allegations that the executive branch cannot be confined have also been the subject of some cases tried in the Supreme Court. For instance, in the case of *Hamdi et al. vs. Rumsfeld*, US citizen Yaser Hamdi, caught in Afghanistan in 2002 on charges of being a Taliban member, and brought to the US, has been arrested for an unknown period based on the view that the arresting of a military official is legitimate. During the trial, Hamdi's father had argue that his son's essential human rights have been violated, whereas the Bush Administration has asserted that the President, based on his title of "commander-in-chief", could order the arresting of anyone he finds to

89 Gordon Silverstein, "Bush, Cheney, and the Separation of Powers: A Lasting Legal Legacy?", *Presidential Studies Quarterly*, Vol. 39, No. 4 (December 2009), p.878.

90 John Yoo, "How the Presidency Regained Its Balance", *The New York Times*, 17 September 2006.

91 Dana Milbank, "In Cheney's Shadow, Counsel Pushes the Conservative Cause", *The Washington Post*, 11 October 2004. p.A21.

92 Goldsmith, *Ibid.*, pp.99-141.

93 Goldsmith, *Ibid.*, p.97.

94 David G. Adler, "Presidential Power and Foreign Affairs in the Bush Administration: The Use and Abuse of Alexander Hamilton", *Presidential Studies Quarterly*, Vol. 40, No. 3, (September 2010), pp.531-543.

95 Timothy S. Boylan, "War Powers, Constitutional Balance, and the Imperial Presidency Idea at Century's End", *Presidential Studies Quarterly*, Vol. 29, No. 2, (June 1999), pp.232-249.

96 James P. Pfiffner, *Power Play: The Bush Presidency and the Constitution*, Washington, DC, Brookings Institution Press, 2008, p.149.

be an enemy combatant and neither the Congress nor the legislation have the right to interfere.⁹⁷

The Supreme Court, by finding Hamdi to be justified, has ruled that the decision to arrest him is groundless, but at the same time has indicated that the President has wide ranging powers within the context of war on terror. Sandra Day o'Connor, one of the judges of the trial, by expressing that the war will not grant unlimited powers to the President although the Congress has granted authority, has said that the Bush Administration abuses the "war on terror" justification and has exceeded the limit of authority bestowed to him by the Congress.⁹⁸

Within the framework of the allegation that the Bush Administration has unlimited power, through the "statement of administration policy", many bills have been threatened to be vetoed by the President with the idea that it will harm the "unitary executive". For instance, bill numbered 965, due to entailing a deduction in the funds allocated for the US soldiers serving in Iraq, has been criticized by the President for "endangering national security" and it has been declared that unless the requested changes are made, the President will veto the bill when it is submitted for signature.⁹⁹ President Bush's presidential statements he frequently uses are clearly entering within the authority of the Congress and the separation of powers being disregarded. This approach must be recognized as the concrete indication of the executive attempting to disable the Congress by intervening in legislation.

Executive orders emerge as another instrument which the Presidents use in order to impose their own policies on the Congress. Executive orders, "based on the constitutional power granted to them for being head of government", are orders issued by Presidents for the concerning units of the executive branch. To give an example to executive orders, one of the first points that come to mind is executive order no. 9066 issued by President Franklin Roosevelt.¹⁰⁰ With this order issued by the President following the Pearl Harbor attack approximately 112.000 people of Japanese origin living in the West of the US have been subjected to forced migration.¹⁰¹

97 Genovese and Spitzer, *Ibid.*, pp.215-223.

98 Fred Barbash, "Supreme Court Backs Civil Liberties in Terror Cases", *The Washington Post*, 28 June 2004, <http://www.washingtonpost.com/wp-dyn/articles/A11657-2004Jun28.html>

99 "Statement of Administration Policy: S.965-U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act", (27 March 2007).

100 "Executive Order 9066 - Authorizing the Secretary of War To Prescribe Military Areas", 17 February 1942, http://www.ourdocuments.gov/doc_large_image.php?doc=74

101 *Toyosaburo Korematsu*, an American citizen of Japanese descent, being forced to migrate, had been arrested by the FBI in 1942 for remaining in a region which was determined as being a military area. On grounds that executive order no. 9066, which formed the foundation for him being displaced, was racial discrimination, Korematsu had appealed to the Supreme Court for the order being contradictory to the Constitution and the case was concluded on 18 December

These kinds of practices, which could be considered as intervention in the power of the legislative organ, being resorted to more frequently recently is an important factor in the Congress losing its function and power. While the number of orders issued after 1945 is around 6000,¹⁰² 300 executive orders being issued only by the Bush Administration will be helpful in understanding what is meant by "unitary executive".

There is another instrument which Presidents use to fulfill their legislative powers: executive agreements. Executive agreements are international texts which create the same effects as treaties. Its difference from treaties is that it does not require the Senate's "advice and consent" and solely depends on the decision of the executive.

By preferring to make executive agreements, Presidents do not give the Senate the opportunity to use its constitutional right and are able to resolve international relations within the range of their own powers without bringing them to Congress. This way, no situation is experienced where the Senate does not give approval and the agreement found appropriate by the President is able to be implemented in a short manner. In fact, executive agreements cannot be distinguished from treaties in terms of brining international liabilities to the US.¹⁰³ A serious increase in the number of executive agreements has taken place following September 11.

What is important here is that resort to this method has become more widespread after the Second World War. While executive agreements accounted for one third of all international agreements in the early years of the Republic, during the period after the Second World War 90 percent of the agreements were prepared as executive agreements.¹⁰⁴ These numbers show that the Congress in the post-war period and especially the Senate having the authority to ratify treaties are not able to use a right accorded to them and that the President has broadened his power in international relations.

To sum it up, although it was wanted for the President to have unquestionable

1944. It was ruled in the decision that "Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because the US is at war with the Japanese Empire, because the properly constituted military authorities feared an invasion and felt constrained to take proper security measures. Therefore there is no contradiction to the Constitution on the basis of racial discrimination". The decision has emphasized that in extraordinary war situations, the government has the right to change its citizens' places. U.S. Supreme Court, *Korematsu v. United States*, 323 U.S. 214, (18 December 1944), For the text of the decision of the case see: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case& court=us&vol=323&page=214>

102 "Executive Orders", *The American Presidency Project*, University of California, Santa Barbara, www.presidency.ucsb.edu/executive_orders.php

103 John Yoo, "Laws as Treaties?: The Constitutionality of Congressional-Executive Agreements", *Michigan Law Review*, Vol. 99, No. 4, (February 2001), pp.757-852.

104 Yoo, *Ibid*, p.758.

superior power in foreign policy at a time when the Constitution was being prepared, based on the thought that it would not be legitimate for the Congress to restrict Presidents for being the highest authority of the executive and the commander-in-chief of armed forces, Presidents after the Second World War have not refrained from putting their bilateral decisions into practice. Even more, Presidents have argued that it is legitimate for them to intervene to the legislative body in situations they deem necessary. When national security is the point in question, this stance of Presidents has become harsher and they have tried to direct the Congress in line with their own desires and intentions.

Although it was wanted for the President to have unquestionable superior power in foreign policy at a time when the Constitution was being prepared, based on the thought that it would not be legitimate for the Congress to restrict Presidents for being the highest authority of the executive and the commander-in-chief of armed forces, Presidents after the Second World War have not refrained from putting their bilateral decisions into practice.

Many policies implemented during the Cold War period and during the period of war on terror after September 11 personally being prepared by Presidents strongly confirm this finding.

Apart from the requirements of foreign policy agenda, factors such as the President being more in the limelight, personally representing his country abroad, negotiating international treaties and public opinion regarding the President as the most legitimate actor among the determinants of foreign policy have contributed to the President's significance in foreign policy to increase.¹⁰⁵ When the Congress's willing approach to leave decisions concerning foreign affairs to the President joins with the Presidents' will to bring this area under their own dominance, in time the Congress has lost its influence which it was able to maintain until the 1930's. In fact, there

are even those who argue that the Congress had totally submitted to the President.¹⁰⁶

Parallel to national security based issues such as the Cold War and "war on terror" gaining significance, it could be seen that the significance of Presidents in determining international relations has increased while on the opposite Congress members focusing more on local problems and requests received from electors have indirectly caused the Congress to lose power in foreign policy. Although in the Constitution it states that foreign policy should be conducted through the balance achieved between the legislative and executive

105 Ralph G. Carter, "Congressional Foreign Policy Behavior: Persistent Patterns of the Postwar Period", *Presidential Studies Quarterly*, Vol. 16, No. 2, (Spring 1988), pp.349-350.

106 Haskell, *Ibid.*, p.303.

organs, it is clear that this balance has been disrupted after the Second World War. It is certain that this development will affect the US’s foreign relations, because a great number of Congress members reaching a decision together and the President and a group close to him making a decision will cause very different results to be obtained.

While it does not seem very likely for Presidents to pursue a policy that will be to the disadvantage of national interests in order to win elections again, it is more likely for Congress members to act in accordance with their own interests by thinking not on an international dimension but within a local framework, because Representatives and Senators wanting to be re-elected is accepted as an indisputable fact. Hence, House of Representatives member Frank Smith, by saying “*all members of the Congress have a primary interest in being re-elected. Some members have no other interest*”, has displayed the importance of personal interests for Congress members. Therefore, it is possible that sometimes Congress members will put their personal interests before national interests.¹⁰⁷ In short, the power of the presidency has grown despite the Constitution granting few enumerated powers to the President. Times of war and domestic crisis such as the Great Depression and September 11 incidents have caused the powers of the presidency to grow. Moreover, Congress has sometimes assisted this growth with delegations of power to the executive branch.¹⁰⁸

The exploration above posits that the President has reached the position of being the only determinant of foreign policy. On the other hand, the Congress has developed an inclination to act in accordance with the decisions reached, to support the President by enacting the laws he wants and for foreign policy to be conducted over parties, to accept the executive’s superiority in this area.¹⁰⁹ Therefore, the primary source in foreign policy decision making has emerged as the Presidency, whereas the Congress has generally had to follow the President in the process of policy making concerning issues of vital importance and to act in accordance with the President’s will.

If this finding is taken into notice, it will be plausible to expect Presidents to oppose a legislative activity which they believe will have repercussions on US national interests. In the case study which will be addressed based on this conclusion in the next section, by means of opposing the “Armenian genocide” bills/resolutions which they classify as “a development that will put American

107 James M. Lindsay, *Congress and the Politics of U.S. Foreign Policy*, Baltimore, Johns Hopkins University Press, 1994, pp.2-5.

108 Sue Burum, “Constitutional Theories of Executive Power: Effects on Current and Future Decision Making in the Executive Branch and on the US Supreme Court”, *National Social Science Journal*, Vol. 33, No. 2, (2010), p.32.

109 Randall Woods, “Bipartisanship”, *Encyclopedia of American Foreign Policy: Studies of the Principal Movements and Ideas*, Alexander DeConde... [et.al.] Vol. 1, New York, Charles Scribner’s Sons, 2nd Edition, 2002, pp.155-163.

interests into danger by harming relations with Turkey”, Presidents display their dominance in determining foreign relations. By means of this case study, the difficulty in determining foreign policy when national interests are in question, and the struggle between the legislative-executive are tried to be concretized.

3. Congress and President within the Framework of “Genocide” Resolutions

Bills which argue that “1.5 million Armenians have died due to the relocation decision taken during the Ottoman Empire and this constitutes a crime of genocide; the US must recognize these deaths as genocide and determine its foreign policy according to this”, is an important element of relations in the US-Turkey-Armenia triangle.

Diplomatic relations between countries are shattered during the discussion of each bill in the committee. Turkey underlines what kinds of difficulties will emerge for the US if such a bill becomes a law, whereas Armenia argues that if the bill is adopted, the US will have taken a step that will constitute an example for the entire world. The Armenian diaspora, by finding a sponsor each year without seizing to pursue this issue, shows effort in bringing the bill to the Congress; on the opposite, by emphasizing the difficulties to be created for the US with such a law, Turkey makes the suggestion for the President to take the bill off the Congress’s agenda. This situation, which shows that the two countries approach the matter very differently, cause the issue to remain unresolved and for the bills to appear on the agenda once again.

Congress members, who especially represent the regions in which the densest number of Armenians live, appear more willing in submitting the bill to the Congress in accordance with the Armenian claims and expectations, while US Presidents, by referring to the possible repercussions of such a law, try to prevent the adoption of the bill by intervening in the legislative process.

Only five of the tens of bills/resolutions referred to the commissions until now have been able to be adopted in the committee and none of the initiatives have been able to receive a statutory provision. Many times the President and/or cabinet members have openly called on the Congress to drop the bill from the agenda. The process has each time resulted according to what the Presidents want, the process has not been able to be completed and therefore, the bills have become null and void.

The endless attempts of the Congress to adopt a law concerning the Armenian genocide allegations and the Presidents’ determination in preventing this

constitute a concrete reflection of the struggle between the legislative and executive departments to dominate foreign relations. If it is recalled that in the previous section it was said that the Presidents had domination in foreign policy and made decisions according to national interests rather than personal ones, it will be understood why the Presidents have opposed the genocide bills which they consider as "a law that will put the US's vital interests in the Middle East to jeopardy".

On the other hand, it is thought that the Congress members who bring the bills to the agenda calculate the Armenian votes which have significant influence in the narrow zoned electoral system. For instance, Californian Representative Republican James Rogan who has no specialization in foreign policy, presenting a bill in 2000 which foresees the recognition of the Armenian genocide allegations is linked to him entering a difficult election race and the polling district being the place which harbors the most concentrated Armenian population in America.

Ret. Ambassador Ö. Engin Lütem also defends that the bills are to please the Armenian voters. According to Lütem, although many errors of facts in the justification section of the bills were brought to the attention of the House of Representatives by Turkish organizations and people for over ten years, these reactions being ignored show that the purpose of the bills is rather than addressing the facts, to satisfy the Armenian community in the US.¹¹⁰

In the following pages an analysis of the constantly renewing legislative attempts of Congress members and the approach of the Presidents to prevent this exist and the background of the Armenian genocide allegations, the bills entailing these allegations, how the issue is addressed during the legislative process and the Presidents' reactions towards these initiatives are studied.

3.1. Genocide Resolutions Coming to the Agenda of the Congress

The Armenian diaspora has firstly led to resolutions being adopted in states which recognize the "genocide" with the idea that these will form a basis for their activities in the Congress. Following these resolutions adopted in states, the primary goal of the Armenian diaspora has been for a resolution to be adopted in the Congress or for a law to be enacted in this direction. Attempts for this have not been able to reach the ultimate goal yet. However, the resolutions of years 2000, 2005, 2007 and 2010 mentioned below have been adopted in the concerning commission of the House of Representatives.

110 Ömer E. Lütem, "ABD'de Yeni Karar Tasarıları," *Center for Eurasian Studies*, 17 June 2011. <http://www.avim.org.tr/degerlendirmetekli.php?makaleid=4843>

3.1.1. H.Res.398/H.Res.596 and the Clinton Administration

Resolution numbered H.Res.596, submitted by Californian Representative George Radanovich, is almost the same as H.Res.398 entitled “Training on and Commemoration of the Armenian Genocide Resolution”, which was submitted by the same Representative to the House of Representatives on 18 November 1999 and then referred to the Committee on Foreign Affairs. The difference between the resolutions in terms of content is that apart from resolution 398 verifying that “the US records holds documentation on the Armenian genocide”, it also foresees US diplomats working in the field of human rights to be provided with training on the “Armenian genocide”.¹¹¹

Resolution 398 has been transferred to the Subcommittee on International Operations and Human Rights on 15 February 2000 and a session has been held on 14 September 2000 regarding the resolution.¹¹² In this session, (Ret. Ambassador) Gündüz Aktan and Prof. Dr. Justin McCarthy have given presentations against the resolution. Gündüz Aktan had called on the Armenians to bring their allegations to the Hague Justice Portal.¹¹³ On the other hand, McCarthy had proposed for Ottoman, Russian and Armenian archives to be opened and researched by historians.¹¹⁴ Democrat Representative Tom Lantos from California and Republican Representative Dan Burton from Indiana have also been among the leading persons opposing the resolution.

In the hearings taking place in the subcommittee, pro-Armenian historians have said that there is no need for Turkish archives to be opened and that based on existing information there is already an agreement that genocide has been committed towards the Armenians. On 21 September, the subcommittee has decided to submit the resolution for voting to the Committee on Foreign Affairs. The Committee has addressed the resolution on 28 September, but the resolution has partially been softened due to the strong opposition of some Congress members and its discussion has been delayed to a week later.¹¹⁵

Radanovich, the sponsor of H.Res.398, has partially amended the resolution and submitted it to the House of Representatives once again. This way, H.Res.596 replacing H.Res.398 has been discussed on 3 October 2000 in the Committee and as a result of the voting, has been adopted with 24 votes against 11. Following this development it has been put on the calendar to be addressed

111 “H.Res.398: United States Training on and Commemoration of the Armenian Genocide Resolution,” *106th Congress*. <http://www.gpo.gov/fdsys/pkg/BILLS-106hres398ih/pdf/BILLS-106hres398ih.pdf>.

112 “Washington’la Kritik Günlr”, *Milliyet*, 13 September 2000, p.17.

113 “Cem: Lahay Pazarlığına Girmeyiz”, *Milliyet*, 17 September 2000, p.24.

114 “Erivan’a Hodri Meydan”, *Milliyet*, 16 September 2000, p.13.

115 “Tasarı Duvara Tosladı”, *Milliyet*, 29 September 2000, p.15.

in the House on October 4 and a report has been issued by the Committee regarding the resolution. Apart from the justifications of the resolution, reasons for representatives opposing the resolution have also been mentioned in the report and views on Turkish-American relations have been listed.

The resolution has been put on the agenda to be discussed in the House on 19 October. On the day the meeting was to be held, Speaker of the House Dennis Hastert had received a letter hours to the voting from President Clinton and had removed the resolution off the agenda of the House. Not only had Hastert prevented the resolution, which he also personally supported, from being addressed, but also requested from the leader of the Republican Party which had a majority in the House for it not to be brought to the agenda again during the 106th Congress.¹¹⁶

Also with the effect of warnings received from Turkey, it has been observed that US President Clinton has shown efforts to remove the resolution from the agenda. In the letter he sent to Hastert in which he expressed he feels deep concern, President Clinton who wrote *"I fully understand how strongly both Turkey and Armenia feel about this issue. Ultimately, this painful matter can only be resolved by both sides examining the past together"*, has also written *"I urge you in the strongest terms not to bring this Resolution to the floor at this time"*, clearly expressing that he does not have a positive view on the Congress's attempt.¹¹⁷

In his letter, Clinton has emphasized that the addressing of the resolution in the House will create grave concerns for American "national security". Clinton, who expressed that the US has significant interests in the region which he defined to be a "troubled region of the world", has warned that the improved relations between Turkey-Armenia could be harmed if the resolution is considered¹¹⁸. Chairman of the Joint Chiefs of Staff Henry Shelton has also sent a letter to Hastert expressing *"we must show our feelings of gratitude to Turkey which has provided support to the Operation Discovery from the North and the operations in the Balkans"*. Gerald Ford and (Ret. General) Brent Scowcroft, having served as national security advisor to George W. H. Bush, have also been among those sending a letter to Hastert, by warning him that the US will seriously be harmed if the term "genocide" is used.¹¹⁹

116 "Clinton Durdurdu", *Milliyet*, 20 October 2000, p.12.

117 After the bill was removed from the agenda of the House upon Clinton's "national interests" justification, Prime Minister Bülent Ecevit, in a letter sent to the President had thanked him by saying *"I convey to you my gratitude for your letter which had a great impact"*. "Ecevit'ten Clinton'a Şükran Mektubu", *Milliyet*, 21 October 2000, p.21.

118 For the full text of the letter President Clinton wrote to Hastert on 19 November 2000 see: <http://www.anca.org/596-hastert.html>

119 "Former US National Security Adviser Opposes US Resolution on Armenian Issue," *Turkish Daily News*, 14 September 2005; "Ermeni Tasarısı Amerikan Çıkarlarına Aykırı," *VOA News*, 12 September 2005.

In the letter written in response to the mentioned letter, Hastert has said “*The President has raised grave national security concerns, he has requested that the House not consider H.Res.596... I have acceded to this request*”. By expressing that he personally supports this resolution being brought to the House floor, Hastert has stated “*The President believes that passage of this resolution may adversely impact the situation in the Middle East and risk the lives of Americans. This is not an idle request... We must take these concerns into consideration...*”¹²⁰

In short, a resolution supported by many members of Congress has been taken off the agenda due to the President’s warnings that “it will harm national security”. It is apparent that Clinton, who although not has used the word “genocide” at all in his 24 April Statements but indicated many times that 1.5 million Armenians have died in the years 1915-1923, has opposed the resolution for reasons such as national interests, Turkish-American relations and Turkish-Armenian relations.

In the first section of this article it was indicated that Congress members gave more importance to short term foreign policy issues and issues which took voter requests into account rather than national security and long term issues of foreign policy. By brining to mind this issue, it must be underlined that the date on which the Representatives brought the resolution to the agenda occurred right before the elections to be held in November 2000. As a matter of fact, by saying that “*the resolution is not an attempt against Turkey, it is only a struggle to win the very critical indecisive Armenian voters in some electoral districts*”, American historian Prof. Justin McCarthy, who spoke to the Milliyet newspaper, has declared that what took place was actually based on a calculation of votes.¹²¹ Moreover, Hastert, who was Chairman of the House at that time, starting to work at a lobby company that defends Turkey’s interests following his retirement, strengthens McCarthy’s idea.

Similarly, the *American Journal of International Law*, which commented on the resolution, has written that Democrat Representative from California James E. Rogan, as one of the sponsors of the resolution, has launched such a genocide campaign in order to be re-elected from one of the regions in which the greatest number of Armenian-Americans live, but that he has not been able to be re-elected since the resolution did not pass into law.¹²² This evaluation also points out that those supporting the resolution viewed it as investment in the election.

120 For the full text of the press release of 19 November 2000 by Hastert that he removed the resolution from the agenda see: <http://www.anca.org/596-hastert.html>

121 “Tarihten Korkmayın”, *Milliyet*, 28 September 2000, p.15.

122 “Defeat of House Resolution on Armenian Genocide”, *The American Journal of International Law*, Vol. 95, No. 2, (April 2001), pp.396-397.

This failure has not been able to halt Armenian endeavors. Resolutions with similar scope have come to the agenda in the 2000's by finding more sponsors each year and some have succeeded in passing from the Committee. The first examples to these are H.Res.316 and H.Con.Res.195 that were adopted on the same day in the Committee on Foreign Affairs in September 2005.

3.1.2. H.Res.316, H.Con.Res.195 and H.Res.106 and the Bush Administration

Resolution H.Res.316 entitled "Affirmation of the United States Record on the Armenian Genocide Resolution"¹²³ which calls the President to ensure that the foreign policy of the US reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian genocide, has been presented to the House of Representatives on 14 June 2005 by George Radanovich who was also sponsor of similar initiatives before.

H.Con.Res.195, "urging the Government of the Republic of Turkey to acknowledge the culpability of its predecessor state, the Ottoman Empire, for the Armenian Genocide and engage in rapprochement with the Republic of Armenia and the Armenian people"¹²⁴ by another prominent Armenian advocate Representative Adam Schiff has been submitted to the Committee on Foreign Affairs of the House of Representatives in June 2005.

Both proposed bills, similar to the ones before, have alleged that 1.5 million Armenians were subjected to genocide and this "genocide" was the first of the 20th century. The explanation supporting the genocide allegations and the resolutions referring to law and documents call upon the President to commemorate the victims of the Armenian genocide. Therefore, it could be seen that the resolutions also serve the purpose of the President declaring that he recognizes the genocide which is the second goal of the diaspora.

The two resolutions have been addressed in the Committee on Foreign Affairs of the House of Representatives on 15 September 2005. Most of the deputies speaking during the session have made statements that support the resolutions

123 "H.Res.316: Affirmation of the United States Record on the Armenian Genocide Resolution" *109th Congress*, <http://www.gpo.gov/fdsys/pkg/BILLS-109hres316ih/pdf/BILLS-109hres316ih.pdf>

124 There is a provision in H.Con.Res.195 that does not exist in the others. According to this, if the Republic of Turkey acknowledge the culpability of the Ottoman Empire for the "Armenian genocide", engage in rapprochement with Armenia and meets certain criteria of the EU, the Congress will support the accession of Turkey to the EU. In other words, the Congress conditions its support for Turkey's EU membership to the recognition of the Armenian "genocide". "H.Con.Res.195: Commemorating the Armenian Genocide of 1915-1923, urging the Government of the Republic of Turkey to acknowledge the culpability of its predecessor state, the Ottoman Empire, for the Armenian Genocide...", *109th Congress*, <http://www.gpo.gov/fdsys/pkg/BILLS-109hconres195ih/pdf/BILLS-109hconres195ih.pdf>

and has emphasized that the Grand National Assembly of Turkey (GNAT), had not allowed US forces to open a front from Turkey to Iraq on 1 March 2003.¹²⁵

Although it is possible to evaluate the consecutive preparation of the resolutions as Armenian groups accelerating Congress activities in this period, it cannot be overlooked that the situation of Turkish-American relations back then also had great influence, because the discourse that the March 1 Bill being approved by the GNAT had put US interests in Iraq into danger has become stronger during this period among Congress members. A clear indication of this situation is Tom Lantos, who had strongly supported the Turkish side against the resolution in 2000, (despite emphasizing that technically the events cannot be classified as “genocide”) declaring that he changed his stance due to the March 1 Bill.¹²⁶

During the talks, Committee Chairman Republican Henry Hyde, by stating “*it is said that if these resolutions are adopted, relations with Turkey, as one of the allies in the key position, will be harmed... Denial of that fact cannot be justified on the basis of expediency or fear that speaking the truth will do us harm*”, he has argued that the resolution should be adopted. Republican Representative Christopher Smith, by saying that “*friends would not allow its friends to violate human rights or commit crimes against humanity*”, he has implied that rejecting the resolution would not suit friendship. At the end, resolution 316 has been adopted with 40 votes against 7 and resolution 195 has been adopted with 35 votes against 11.¹²⁷

Sponsor of resolution 195 Adam Smith who took the floor after the voting in the House has assessed the sudden adoption of both resolutions in the Committee on Foreign Affairs as “a significant incident”; has said that the only obstacle the Congress faces is Turkey’s resistance and by referring to the March 1 Bill, has argued that Turkey did not fulfill the requirement of being a close ally. Schiff, who has asked the question “*while recognizing the events as genocide in Sudan which is politically a weak country, not recognizing what Turkey did as genocide for being a powerful and brother country be the policy of the US?*”, has expressed that he wants the resolution to be ratified and adopted in the Assembly as soon as possible.¹²⁸

These developments which took place in 2005 show that it is difficult to say that for a resolution to be adopted in Congress concerning the genocide allegations, the Armenian diaspora is the only determining element, because it

125 “Turkey Rejects U.S. Troop Proposal”, *CNN*, 01 March 2003.

126 “Ermeni Tasarıları Komisiyondan Geçti”, *VOA News*, 15 September 2005.

127 “Sword of Damocles Dangling Over Turkey”, *Hurriyet Daily News*, 22 September 2005.

128 Congressional Records, House of Representatives, H8063-8064, 15 September 2005.

could be seen that the condition of Turkish-American relations also play an important role in determining the approach of Congress members towards the resolution. At times when Turkish-American relations are on good terms, the influence of the Armenian lobby decreases, whereas when relations are tense, the Armenian lobby's chance to convince the Representatives increase.¹²⁹ Within this framework, it could be observed that Turkish-American relations becoming tense as a result of the March 1 Bill makes the adoption of resolutions easier.¹³⁰ None of the resolutions adopted in the Committee being adopted with a great difference in votes of 40 against 7, as was the case in 2005, confirms this.

However, whether the resolutions will be addressed in the House has not been able to gain clarity at the time of the voting. But it has been understood that due to the strong opposition of the Bush Administration, the resolutions, which were adopted shortly after with a significant majority, would not be brought to the agenda of the House. As in year 2000, the statements received from the Presidency and initiatives towards halting the legislative process have again been successful and the resolutions have not gone beyond being approved in the Committee.

Attempts for legislation in regards to the Armenian "genocide" during President Bush's term have again come forth on the agenda in 2007 by surpassing the level of Committee. This time, a different situation has existed in Congress, because as a result of the general elections held at the end of 2006, political balances have changed and the majority in the House of Representatives has passed from the Republicans to the Democrats. Therefore, Democrat Nancy Pelosi, former leader of the minority party and one of the leading Armenian advocates, has served as Speaker of the House of Representatives as the leader of the majority party.

As a result of this change in the Congress, apart from Nancy Pelosi, the prominent supporters of the Armenian diaspora Senator Harry Reid, Joe Biden, Hillary Clinton and Barack Obama, who was elected as President later on, became more influential within the 110th Congress. For this reason, in the comments made right after the November 2006 elections, the idea that the new Congress will create a more difficult situation for Turkey and Turkish-American relations would be tensed was dominant.¹³¹ Adam Schiff's statement following the election that *"I believe we have seized the greatest chance in the*

129 Sedat Laçiner, "Türk-Amerikan İlişkilerinde Ermeni Faktörü", *Avrasya Dosyası*, Vol. 11, No. 2, (August 2005), pp.109-111.

130 "Politics Appears to Play Grand Role in US Acceptance of Armenian Genocide Resolutions", *Hürriyet Daili News*, 16 September 2005.

131 "New US Congress to Pose More Troubles for Turkey", *Turkish Daily News*, 9 November 2006.

last ten years for the adoption of an Armenian genocide resolution”¹³² must be evaluated in this context.

As soon as the 110th Congressional term started, so have new initiatives for the recognition of the Armenian genocide allegations. It could be seen that in the emergence of such initiatives, apart from the strengthening of the group in Congress which supports Armenian claims, the Hrant Dink murder also plays a role, because American citizens of Armenian origin have assessed the murder of Hrant Dink has a development that confirms the necessity of genocide resolutions being adopted and have called on President Bush not to prevent the resolutions to be brought to Congress.¹³³

Hence, H.Res.102, which condemns Hrant Dink’s assassin and calls upon Turkey to conduct an investigation to reveal the criminals¹³⁴, has been submitted to the House of Representatives 12 days after Dink’s murder on 29 January 2007. On 30 January 2007, H.Res.106, again prepared by Democrat Representative Adam Schiff which foresees the President’s recognition of the Armenian genocide has been taken to the House of Representatives and remitted to the Committee on Foreign Affairs on the same day.¹³⁵

Adam Schiff has taken the floor in the House of Representatives on 23 April 2007 and delivered a five minutes’ speech. Beginning with a statement that 24 April will be the 92nd anniversary of the Armenian genocide, Schiff has said that the Ottoman Empire subjected 1.5 million Armenians to genocide on the pretext of war, that it is wrong to refrain from this resolution on this issue for Turkish-American relations further suffering, that the claim that the timing of the resolution is problematic since Turkey is striving to develop its relations with Armenia has lost credibility with the Hrant Dink murder and that thousands of pages of evidence documenting the atrocities exist in US archives.¹³⁶

The aforementioned resolution has been discussed in the Committee on Foreign Affairs on 10 October 2007 and as a result of the voting held, has been adopted with 27 votes against 21. Right before the voting, promptings were made to President Bush that the resolution should not be approved and in case of it being approved, the Speaker of the House was warned not to bring the

132 “Change in US Congress Boosts Prospects for Genocide Resolution”, *Turkish Daily News*, 27 December 2006.

133 “Dink’s Murder a Reminder of Need for Genocide Recognition, US Armenians Say”, *Turkish Daily News*, 22 January 2007.

134 “H.Res.102: Condemning the Assassination of Human Rights Advocate and Outspoken Defender of Freedom of the Press, Turkish-Armenian Journalist Hrant Dink on January 19, 2007”, *110th Congress*, <http://www.gpo.gov/fdsys/pkg/BILLS-110hres102ih/pdf/BILLS-110hres102ih.pdf>

135 “H.Res.106: Affirmation of the United States Record on the Armenian Genocide Resolution, *110th Congress*, <http://www.gpo.gov/fdsys/pkg/BILLS-110hres106ih/pdf/BILLS-110hres106ih.pdf>

136 Congressional Records, House of Representatives, H3756, 23 April 2007.

resolution to the House floor.¹³⁷ The foreign press has assessed the adoption of the resolution as Pelosi defying President Bush.¹³⁸

In the 24 April statements of George Bush, serving as President for eight years, by calling out to his Armenian citizens, he has tried to placate them by expressing that they have been subjected to forced migration and massacre in the final years of the Ottoman Empire. Although he was pressured to categorize Armenian deaths as genocide,¹³⁹ he has never used this word. The stance he took when proposals to recognize the genocide came to the Congress agenda in 2005 and 2007 has been quite different than that of members of Congress.

The Bush Administration’s different approach to the Armenian genocide allegations than Congress members has once again emerged during the Ambassador crisis experienced between the President and the Senate,¹⁴⁰ because Bush had dismissed Ambassador to Yerevan John Evans, who had classified the Armenian deaths as “genocide” in contradiction to the US Government’s official policies, from duty in May 2006¹⁴¹ and had nominated Ambassador Richard Hoagland, who denied the genocide allegations, as candidate. However, Hoagland was not able to take office since the Senate did not approve this candidate in December 2006 as a result of the attempts of Senators who support the Armenian allegations.¹⁴² Despite the objections received from Congress, President Bush had presented Hoagland to the Senate’s approval again in January 2007, again failing to receive approval.¹⁴³

In 2005 and 2007, by presenting their national interests as a justification, the

137 “Gül Warns Bush Over Armenian Bill”, *Hürriyet Daily News*, 10 October 2007; “Turkish Parliament Warns the US Congress on Resolution”, *Hürriyet Daily News*, 8 October 2007.

138 “Congress Defies Bush on Armenian ‘Genocide’ Status”, *The Independent*, 11 October 2007, p.32.

139 As 24 April, accepted as the anniversary of the genocide, nears, pressures upon the Presidents to recognize the genocide allegations increase and requests are made for the Presidents to categorize the deaths as genocide in their 24 April statements. Within this framework, it has been seen many times that Congress members have sent a letter to the Presidents. Among them, the letter sent to President Bush in April 2005 by 32 Senators and 175 Representatives is significant, because Senator Barack Obama elected as President in 2008, Vice President Joe Biden and Hillary Clinton serving as Foreign Minister in the Obama Administration has been among those signing the letter. For details see: “Bush’a ‘Soykırımı Tanı’ Mektubu”, *BBC Türkçe*, 20 April 2005.
http://www.bbc.co.uk/turkish/europe/story/2005/04/050420_armenian_us.shtml

140 “Genocide Question Hits Home: Use of the Term by the Former U.S. Ambassador to Armenia Sets Up A Battle in Congress”, *Los Angeles Times*, 7 January 2007.

141 Evans, appointed as Ambassador to Yerevan by President Bush in August 2004, by saying “I will today call it (the 1915 events) the Armenian genocide” in a speech delivered in February 2005, has displayed a different stance than the official policy, because he has emphasized that this is not the official policy of the US, but is his own personal opinion. But still, the American Foreign Service Association has cancelled giving a prize to the Ambassador based on this justification. By taking the floor on 13 June 2005 at the House of Representatives, one of the Congress members Frank Pallone, who is close to the Armenian diaspora, has conveyed the disappointment felt due to the Association’s decision and has argued that Evans has been punished only for speaking out the truth. For details see: Congressional Records, House of Representatives, H4373-4374, 13 June 2005.

142 “Bush’s Nominee for Envoy to Armenia Fails to Win Senate Approval”, *Turkish Daily News*, 21 December 2006.

143 “Bush Re-nominates Controversial Ambassador Despite Armenian Protests”, *Turkish Daily News*, 11 January 2007; “Senator Threatens to Block Bush’s New Pick For Ambassador to Armenia”, *Turkish Daily News*, 25 April 2008.

Bush Administration has objected to the initiatives towards the recognition of the genocide that came to the Congress agenda and has tried to prevent the adoption of resolutions. President Abdullah Gül expressing in his letter sent to President Bush his gratitude for his attempts to prevent the recognition before the voting to be held in October 2007 and his warnings that bilateral relations will be harmed have found reaction within the US government. For instance, right before the Committee meeting held on October 10, Bush has warned the Committee members by saying *“This resolution is not the right response to these historic mass killings and its passage would do great harm to our relations with a key ally in NATO and in the global war on terror”*.¹⁴⁴

Secretary of State Condoleezza Rice has also considered the adoption of the resolution as an initiative that will disrupt the Middle East peace process. On the other hand, by bringing to mind that 70 percent of the shipment to Iraq was conducted through Turkey, Secretary of Defense Robert Gates has displayed

his opposition to the resolution by saying that an important supply line would be lost. In a statement made to the Congress members, General David Patreus, commanding US military power in Iraq, has made the warning that the passage of the resolution will cause Turkey’s support to come to an end.

From the statements of the Department of State and President Bush himself, it could be seen that while wars continue in Iraq and Afghanistan, the Bush administration has evaluated the negative consequences that could arise in the case of bilateral relations with Turkey being strained due to resolutions concerning the Armenian genocide allegations, as an issue of “national security”.

Apart from steps taken by the existing administration towards preventing the recognition of the Armenian genocide allegations, eight former Secretaries of State have sent a letter to Nancy Pelosi, making the warning that the resolution should not be brought to the House agenda. By saying that *“passage of the resolution would harm our foreign policy objectives to promote reconciliation between Turkey and Armenia. It*

would also strain our relations with Turkey, and would endanger our national security interests in the region, including the safety of our troops in Iraq and Afghanistan... Passage of this resolution could quickly extend beyond symbolic significance. The popularly elected Turkish Grand National Assembly might react strongly to a House resolution, as it did to a French National Assembly resolution a year ago. The result could endanger our national security interests in the region...” the secretaries of State have warned Pelosi, Speaker of the House. This letter, which referred to Turkey’s strategic importance, is a clear

144 “Bush Warns Congress not to Recognise Armenian ‘Genocide’”, *Guardian*, 10 October 2007.

indication of the concerns of these figures, who served at the peak of diplomacy, regarding their national security interests.

From the statements of the Department of State and President Bush himself, it could be seen that while wars continue in Iraq and Afghanistan, the Bush administration has evaluated the negative consequences that could arise in the case of bilateral relations with Turkey being strained due to resolutions concerning the Armenian genocide allegations, as an issue of "national security".

Hence, results obtained in 2007 from a public opinion poll conducted in the non-governmental organizations of *Terror Free Tomorrow* and *Ari Foundation*, have displayed that the possibility of the passage of a resolution regarding the Armenian genocide allegations being adopted causing the US to encounter serious problems is not an unfounded concern, because 83 percent of those participating in the poll have indicated that in case such a resolution is adopted, they will strongly oppose Turkey's assistance to the US in Iraq, 78 percent have indicated that they will boycott American products, 79 percent have said that they will strongly support the Turkish Government reacting to the US and 73 percent have expressed that the positive conviction towards the US will turn in the opposite direction.¹⁴⁵ These results, which display that the Turkish community strongly opposes a likely genocide motion, have also been conveyed by Turkish officials and the US has been warned many times by referring to Turkey's importance.¹⁴⁶

The explanations in this direction have left the supporters of the Armenian resolution to face political risks and have forced them to take a step back. A week after the adoption of the resolution in the Committee, by reporting to the *New York Times* that she is unsure whether the motion will be voted upon in the House, Pelosi has indicated that a step can be taken backwards.¹⁴⁷

As a result of pressures to prevent the motion increasing, the prominent deputies sponsoring resolution have sent a letter to Pelosi, suggesting delaying the date of the resolution being brought to the House floor to a later date and in effect, Pelosi has not been able to bring it to the agenda.¹⁴⁸ In short, as was the case before, a motion receiving great support in the House of Representatives has once again become null and void by means of the US President and Turkey's warnings. Furthermore, considering the Bush administration's general approach, it seems reasonable to assume that it will

145 "Poll: Turkish Views on U.S. Congress Armenian Resolutions", *Terror Free Tomorrow*, <http://www.terrorfreetomorrow.org/upimagestft/Terror%20Free%20Tomorrow%20ARI%20Movement%20Final%20Report.pdf>

146 "Turk Warns Against House Genocide Motion", *The New York Times*, 15 October 2007.

147 "House Speaker Now Unsure if Armenian Genocide Motion Will Reach a Vote", *The New York Times*, 18 October 2007.

148 "Vote on Armenian 'Genocide' Resolution Put Off", *CNN*, 25 October 2007.

veto any resolution concerning the “Armenian genocide” to be adopted in the Congress.

It could be seen that resolutions on the Armenian genocide allegations, which found great support in the Congress during Bush’s period, have also been prevented by the President based on justifications that it will harm Turkish-American relations and endanger American national interests. This way, the superiority possessed by Presidents over the Congress (or the ineffectiveness of the Congress as decisive) regarding issues of foreign policy and national security has once again emerged. A similar process was also experienced during the period of Barack Obama.

3.1.3. H.Res.252 and the Obama Administration

Initiatives concerning the Armenian genocide allegations which Clinton in 2000 and George Bush in 2005 and 2007 had to put up a struggle against have also come to the Congress agenda during Barack Obama’s period.

Obama winning the Presidential election in November 2008 has slightly increased the Armenian diaspora’s hopes for a bill to be adopted in the Congress. Also with the rise in expectations that the Jewish lobby, whose support was previously received by Turkey, will no longer support Turkey due to some developments experienced in Turkish-Israel relations, the genocide allegations has once again come to the agenda with H.Res.252 of the 111th Congress.

H.Res.252, prepared by Adam Schiff and brought to the House of Representatives on 17 March 2009 by 148 co-sponsors, also envisaged the President’s affirmation that the Armenian genocide was documented in US records. This resolution called “upon the President to ensure that the foreign policy of the US reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing and genocide documented in the US record and in the President’s annual message commemorating the Armenian genocide issued on April 24 to accurately characterize the systematic and deliberate annihilation of 1,5 million Armenians as genocide”.¹⁴⁹

Similar to the earlier initiatives, before and after the discussion of this resolution, tensions have occurred in Turkey-US relations. The Turkish Government has requested from the US President to apply pressure for the resolution not to be brought to the House floor and has emphasized that if the

149 “H.Res.252:Affirmation of the United States Record on the Armenian Genocide Resolution”, *111th Congress*, <http://www.gpo.gov/fdsys/pkg/BILLS-111hres252ih/pdf/BILLS-111hres252ih.pdf>

US Government fails to prevent the adoption of the resolution, Turkey will take some steps against US interests.¹⁵⁰ Despite the reactions received from Turkey, the resolution has been addressed in the Committee on Foreign Affairs on 4 March 2010. With the voting taking place in the Committee with a total number of 46 members of whom 27 are Democrats and 19 are Republicans, the resolution has been adopted with 23 votes against 22. On the Republican side, 13 deputies have voted against, 6 have voted in favor; from the Democrats side 9 deputies have voted against and 17 have voted in favor of the resolution.¹⁵¹

The adoption of the resolution in the Committee has, as expected, drawn Turkey's strong reactions. Turkey, calling upon its Ambassador in Washington to Ankara for "consultation", has declared that if the resolution is adopted in the House, Turkish-American relations will seriously be harmed. Messages have been conveyed to President Obama on the sensitivity of the issue and similar to the earlier initiatives have called on him to prevent this resolution.¹⁵² On the other hand, Armenia has declared that it is pleased with the adoption of the resolution which they consider as a step taken towards the prevention of crimes against humanity.¹⁵³

From the aspect of Turkey, the situation has somewhat been different this time compared to the earlier legislative activities, because President Obama, Vice-President Biden and Secretary of State Clinton are individuals who have previously declared many times that they will recognize the "Armenian genocide". The concern this created has further grown with Obama categorizing the Armenians deaths as "*Meds Yeghern*" in his 24 April statements, because this concept, which means "Great Crime", is accepted by the Armenians as an equivalent of genocide. Although not using in his statement the term "genocide", which is a legal term, has partially comforted Turkey, Obama indicating that his personal opinion has not changed has created the conviction that he still regards the events of the past as "genocide".¹⁵⁴

A point that must be underlined regarding H.Res.252 is that President Obama, Vice-President Biden, Secretary of State Clinton and Speaker of the House Pelosi have promised beforehand that they will recognize the "Armenian genocide". All of them are individuals which the Armenian lobby trusts and

150 "Furious Turkey Threatens to Downgrade US Links after Vote on Armenian Genocide: Strategic Partnership at Risk despite Obama's Attempts To Stop Congress Resolution", *The Guardian*, 6 March 2010.

151 "ABD'deki Ermeni Tasarısı Kabul Edildi", *CNN Türk*, 6 March 2010.

152 "Washington Büyükelçisi Ankara'ya Çağrıldı", *Ntvmsnbc*, 4 March 2010; "Soykırım Tasarısı Kabul Edildi", *Radikal*, 05 March 2010.

153 "Ermenistan Karardan Memnun", *Ntvmsnbc*, 05 March 2010,

154 "Obama 'Soykırım' Demedi: ABD Başkanı 1915 Olayları İçin Bu Yıl da 'Büyük Felâket' İfadesini Kullandı", *Haber Türk*, 23 April 2011.

believe will work towards the adoption of the resolution. For instance, Obama has written a letter to Secretary of State Rice to show that the US had to convey its reaction when Bush dismissed US Ambassador to Yerevan John Evans from duty for classifying the 1915 events as “genocide and had to recognize the events as genocide. Obama, emphasizing US-Armenian relations during the election campaign, had made a promise on 19 January 2008 on his own personal website to recognize the Armenian deaths as “genocide”.¹⁵⁵

Thus, different than the former administrations, the Obama Administration has displayed a clear stance against the resolution right from the beginning. Although diplomatic sources indicate that the adoption of the resolution will greatly damage bilateral relations and Turkish-Armenian reconciliation, Secretary of state Hillary Clinton and high-level officials of the Department of State have not shown much great efforts until the final day. The warning made before the meeting in the Committee of Secretary of State Clinton on the likely negative consequences of the resolution, by calling Committee Chairman Democrat Howard Berman by phone, has also remained inconclusive. Moreover, due to the tensions experienced in relations with Turkey, the Israeli Government and the Jewish lobby and organizations in the US have this time displayed a passive stance.¹⁵⁶

By referring to the Protocols between Turkey and Armenia and expectations that relations between the two countries will develop, Obama, although in a weak and belated manner, has intervened for resolution 252 not to be adopted. Right after the voting held in the Committee, Secretary of State Clinton has indicated that they will “work very hard” so that the resolution is not addressed in the House floor, while another member of the State Department, by saying “we believe it will stop where it is”, has implied that the resolution will not be able to pass on to the next phase such as being addressed in the House floor.¹⁵⁷

The possibility of the resolution adopted in the Committee being taken up in the House has also not been taken seriously within Turkish public opinion and it was believed that as a result of the pressure received from the President, it would not be submitted to the House.¹⁵⁸ Thus, the resolution recorded on the House of Representatives’ calendar on 22 September 2010 has not been taken to the House floor. Although Pelosi, having to withdraw from being Speaker of the House with the Republicans winning the majority in the Congress in the November 2010 elections, had made one last attempt to bring the resolution to

155 For the letters Obama sent to President Bush and his other statements concerning the “Armenian genocide” could be retrieved from the website (www.anca.org) of the Armenian National Committee of America.

156 “Ermeni Tasarısı Kabul Edildi”, *Sabah*, 04 March 2010.

157 “Official: Armenian Genocide Resolution Unlikely to Get Full House Vote”, *CNN*, 06 March 2010.

158 “Suat Kımıkhoğlu: Genel Kurul’a Gelmeyecek”, *NTV (live phone connection)*, 04 April 2010.

the House floor before completing her duty in December 2010, she has not been able to be successful.¹⁵⁹

Looking at the Obama Administration, it could be said that perhaps the most efficient staff was on duty for the adoption of a resolution that records the Armenian genocide allegations. No matter how much a positive outlook the Obama administration has towards the Armenian allegations, the strategic importance of Turkish-American relations and US's national interests in the Middle East have gained priority and the statements received from the Presidency and the State Department have prevented the resolution from being taken to the House floor. Again the diaspora's expectation has not been fulfilled and just as the Bush and Clinton administrations, the Obama Administration, which they very much trusted, has also not refrained taking initiatives to prevent the resolution.

The pressure of the Obama Administration, by causing H.Res.252, carrying the signatures of 149 deputies, to fall off the agenda has shown that Turkish-American relations are more important and prioritized than the Armenian claims. Independent from which party the President belongs to or whether or not he embraces the Armenian allegations, this situation indicates that the Presidents approach this issue differently than Congress members in terms of "national interest".

President Obama who, while he was Senator and throughout his candidacy as President, promised many times that he would recognize the Armenian deaths as "genocide", but did not keep his promise after taking the Presidential seat and moreover, taking steps to prevent the legislative activities in this direction is an important matter. This situation is a natural consequence of Congress members, while being able to tend towards local and personal interests, approaching it from a different perspective as a result of the person taking the presidential seat thinking on a national and global level.

Conclusion

The US Constitution, drawn up with the philosophy based on cooperation and negotiation between departments, has in Neustadt's words, created "separate institutions sharing power". This situation has created an appropriate foundation for disputes in directing foreign policy. Especially in situations that entail the use of armies, disagreements have arisen between the legislative and executive in the determining of foreign policy.

159 "Soykırım Hamlesi Sonuçsuz", *Ntvmsnbc*, 17 December 2010.

The vagueness in the Constitution regarding foreign policy issues, various mistakes and negligence in the practices and certain resolutions of the Supreme Court have caused disagreements to arise in the sharing of power between the legislative-executive. These disagreements, due to the executive being able to adopt resolutions that are not factionalized in a more practical and easier way, have caused the Presidents' powers to broaden and the Congress to fall into a passive position in times of difficulty. When foreign policy and national interests were in question, the checks and balances mechanism did not fully serve its function and a struggle for power and to be effective has occurred between the President and Congress.

During the periods of the Second World War and the Cold War, justifications such as national interests and security, sudden attack, combating communism and nuclear arms race have paved the way to the Presidents having more authority. Both the Congress refraining from reaching decisions on such critical matters and the Presidents not willing to share issues requiring privacy with Congress have resulted in the Presidents supremacy in foreign policy. On the other hand, the Congress has tried to be helpful for the President by supporting the Presidents' decisions, not creating the perception to the world that there is a disagreement between the legislative-executive branches and reaching foreign policy goals determined by the President by adopting laws suitable to the Presidents' expectations. A great part of the post-Second World War period has passed with "superior President-submissive Congress".

On grounds that the "commander in chief" title granted to them by the Constitution has bestowed them some kind of superiority in foreign policy, Presidents during the Cold War period have considered foreign relations, tried to be kept far from domestic political conflicts and local requests, within their own exclusive authority. As a result of this, when the possibility of a resolution being adopted in Congress that would not be approved by the President or a resolution wanted by the President not being adopted emerges, Presidents have not refrained from intervening in Congress.

On the other hand, since the Watergate Scandal and the Vietnam War created a negative atmosphere against the Presidents in the 1970's, it has paved the way for the Congress to re-enter into a power struggle and take some steps towards restricting the Presidents (as in the case of WPR). From that date onwards, it has become difficult to say that the Congress is entirely under the effect of Presidents in the area of foreign policy. With the Cold War coming to an end, the Congress has gained relative effectiveness. However, following the terrorist attacks on September 11, the President has once again gained the opportunity to become a superior authority and has utilized it in the best possible way.

Bush Administration defending that the application of the regulations prepared for ordinary situations in extraordinary conditions will not be healthy, the allegation that the situation they are in forces the Presidents to be the sole authority in foreign and security policy and the conviction that they could even resort to illegal means (like torture) for the sake of national interests have caused the Congress to fall into a secondary and submissive position once again and the executive to act like the only authority.

The struggle for power between the President and Congress becomes concrete with the bills regarding the Armenian genocide allegations, because Congress members, by acting in accordance with personal and local interests most of the time, bring the Armenian allegations to the agenda before the elections, whereas the Presidents think on a broader dimension and try to prevent legislative initiatives based on the justification that such a bill could endanger the relations of the US with the entire Middle East and their vital interests. Due to relations between Turkey, which supported the wars in Iraq and Afghanistan with the strategic importance vested in it, and the US, being perceived by Presidents as an issue of national security, Presidents who convey that damage done to Turkish-American relations will harm US national interests, have opposed motions concerning the “Armenian genocide” based on these justifications.

The aforementioned “Armenian genocide” bills clearly show that there is a basic difference between the approach of Congress members and the Presidents towards the issue. As mentioned in the first section of the paper, as a result of a narrow zonal election system and the financing of campaigns being based on donations, the Representatives holding elections once every two years is very sensitive to the requests of the electorate. This situation forms the basis for them giving importance and priority to “national interests” rather than to “personal political interests”. In this case, it seems reasonable for Representatives to carry the requests of the electorate to the Congress agenda in order to be re-elected and to obtain financial support. Those preparing the bills coming from provinces in which the Armenian population is dense further strengthen this thesis. California Representative James E. Rogan, who sponsored such a motion but not able to achieve its adoption, failing to be re-elected is also meaningful in this sense.

Within this framework, all of the resolutions mentioned above being passed through the House of Representatives and the Senate not displaying a similar stance is noteworthy. Another point that draws attention is that members of the House of Representatives who submit the bills adopted in the Committee to the Congress are mostly from the California, the State where the Armenians are most populated. Although similar genocide resolutions were brought to the

Senate, none of them have been approved in the Committee. Apart from Senators becoming more authorized in the area of foreign policy, also their election through the ballot vote in nearly all states, rather than the Representatives to come from narrow districts, also plays a role in creating this difference, because the Armenian population which the Senators are subject to in the election system has a negligible role. Also with the effect of being elected for six years instead of two years like the Representatives, Senators who are able to remain more insensitive towards Armenian claims, have not yet signed any bill/resolution to be adopted in the concerning committee until now.

The best example that shows that the approaches of Congress members and the President are very different lie in the difference between the stance of

The condition of Turkish-American relations and the dependence of the US on Turkey will be one of the elements of Presidents determining the fate of bills likely to come to the agenda.

Barack Obama while he was senator and his approach after taking the Presidential seat. Senator Obama had worked towards the genocide allegations being officially recognized and had made promises to the Armenians many times during the Presidential election campaign, but after assuming Presidency he neither used the word “genocide” in his statements, nor did he take any initiative for the genocide resolutions to be adopted. On the contrary, just as the

President Bush and Clinton, President Obama also applied pressures for the bills not to be enacted.

The condition of Turkish-American relations and the dependence of the US on Turkey will be one of the elements of Presidents determining the fate of bills likely to come to the agenda. It is apparent that the negative atmosphere created by the March 1 Bill has immediately received response in the Congress and that despite President Bush’s initiatives of prevention, the two separate resolutions have suddenly and with a serious difference (40 against 7, and 35 against 11 votes) been adopted in 2005. Tom Lantos, who in 2000 heavily criticized the resolution which recognizes the Armenian allegations and voted against it, based on the negative consequences the rejection of the March 1 Bill will create, changing his stance in favor of the Armenians while the resolutions were being discussed in 2005 clearly display that Turkey-US relations is one of the main determinants of the outcome of the resolutions.

The point that must be underlined in this context is that all of the bills adopted in the Committee have taken place after 2000. Four of the five bills passed by the Committee being adopted in 2005-2010 also draw attention and this must be considered as the indirect effect of US-Turkey relations, which was harmed after the March 1 decision of the Turkish Parliament, on the resolutions.

Apart from what the reasons are for Congress members preparing such resolutions or the Presidents attempting to disrupt these activities, the Congress still not being able to achieve the bills it wants despite the tens of initiatives it undertook display the Congress's limited role in foreign policy. Through the motions, the Congress has taken steps that will directly affect Turkish-American, Turkish-Armenian and Armenian-American relations and that will indirectly affect Middle East and Caucasian policies, but such a development that could create a widespread effect has been prevented by the Presidents. The interventions of the Presidents constitute a significant example which displays that the Congress has remained ineffective in directing US foreign policy and the presidential power has become of an encroaching nature.

While these cases are obvious, the possibility of the Armenian genocide bills being adopted in the Congress in the short run seems weak. The resolutions, that so far failed to be addressed in the House, passing through the stages of being accepted by the senate and approved by the President, will not depend only on the Armenian lobby. As long as Turkey's strategic importance continues and Turkish-American relations do not enter a deep depression, it does not seem very likely that the resolutions will be supported by the Presidents. At least this is what the incidents occurring until now show. It is also clear that some representatives make calculations of votes through the bills and will continue to do so from now on; therefore, similar legislative initiatives might be repeated.

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