6-11-1958

Defense Reorganization

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In a message to Congress on April 3, 1958, President Eisenhower set forth his recommendations for reorganization of the Department of Defense. On April 16, 1958, a bill, H.R. 11958, was introduced which was announced as the Administration's proposals to enact the President's proposals into law. The Administration's bill was referred to the House Committee on Armed Services. Hearings were promptly held by that Committee at which major officials for the Administration testified at length.

At the conclusion of these hearings the House Committee on Armed Services introduced a new bill, H.R. 12541. The Committee bill was developed in consultation with Administration representatives and with representatives of the White House. Before the bill was introduced, the President announced his congratulations to the committee and stated that "by and large the bill seems to deal positively with every major problem I presented to the Congress." He expressed reservations on two points.

In later strongly worded public statements, the President expressed his displeasure with three points in the Committee's bill. Those three points are as follows:

I. Direction, Authority, and Control Exercised Through the Respective Secretaries of the Military Departments

II. Roles and Missions

III. Legalized Insubordination

I. Direction, Authority, and Control Exercised Through the Respective Secretaries of the Military Departments

Under present law, the National Security Act of 1947, as amended, places the Departments of the Army, Navy, and Air Force, within the
Department of Defense and makes them military departments in lieu of their prior status as Executive Departments. The Secretary of Defense is the head of the Department of Defense and is designated as the principal assistant to the President in all matters relating to the Department of Defense. The Secretary of Defense has, under the National Security Act, direction, authority, and control over the Department of Defense. Present law also prescribes (Sec. 202(c)(4)) that the Departments of the Army, Navy, and Air Force shall be separately administered by their respective Secretaries under the direction, authority, and control of the Secretary of Defense.

The President has contended vigorously that the provision that the military departments be "separately administered" is a "hindrance to efficient administration" and that it is "inconsistent and confusing." During the hearing on the Administration's bill, witnesses were asked to cite instances where the authority of the Secretary of Defense was challenged or hampered in any way by these words. No convincing evidence could be produced. No single instance was cited wherein the authority of the Secretary of Defense was effectively challenged.

Nevertheless, the issue has been raised and the Committee on Armed Services examined in detail the question of how the Secretary of Defense was to exercise his authority and what position the military departments were to have if they were not to be separately administered by their respective Secretaries.

As a result of this study, the Committee bill provides that "each military department shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense exercised through the respective Secretaries of such departments."
The Committee had the firm assurance of the President and all of the Administration witnesses that merger of the military departments was not contemplated. It was, in fact, unthinkable from an administrative point of view. If the military departments are not to be merged, it follows they must be separately organized.

The President stated in his message of April 3, that he did not question the necessity for continuing the military departments, and that there is a clear necessity for the Secretary of Defense to decentralize the administration of the huge defense organization.

In keeping with these feelings, which the Armed Services Committee apparently shared, the Committee's bill removes the language found offensive by the President and substituted language which provides for precisely the type of organization the Administration contended was necessary.

However, the Administration objected to the words "exercised through the respective Secretaries of such departments." They contend that such language is ambiguous and can be interpreted in such a way as to make the Secretaries of the military departments administrative bottlenecks to effective, direct control by the Secretary of Defense.

If the military departments are to be separately organized, not merged into one conglomerate unmanageable mass, each department must have a head and that person must be responsible for the affairs of his department. Without such a responsible head who has clearly established boundaries of responsibility, the integrity of each department is gone and with it goes the decentralization which the President says is necessary.

Without the language requiring the Secretary of Defense to exercise his authority, direction, and control through the Secretaries of the military departments, the Secretaries of the military departments lose their power and
authority to administer their departments. The military departments become one great amorphous mass with every official in the Department of Defense possessing a license to bypass the service secretaries. Under these conditions, there is no need for service secretaries. They could not be held responsible for their respective departments. Either there will be three military Secretaries operating under the direction, authority, and control of the Secretary of Defense and responsible for their military departments, or there should no longer be three military Secretaries responsible for these military departments.

To provide that authority shall be exercised through the Secretaries of the military departments does nothing more than establish a chain of command which is clearly understood by every military man and by every person familiar with the principles of leadership and sound business organization. The chain of command prescribed here is the same as that prescribed in military organization manuals as a basic principal of sound organization. The commander exercises his command through his subordinate unit commanders. The validity of this doctrine has been established through centuries of military experience. When the doctrine is not followed, there is chaos, confusion and a disintegration of the organizational structure.

As the House Armed Services Committee observed in their Report No. 1765 of May 22, 1958, "Elimination of this line of command and responsibility from the Secretary of Defense to the Secretaries of the military departments would mean, for all practical purposes, the commingling of the operations of all departments and services within the Office of the Secretary of Defense which would become a huge over-centralized, and unmanageable administrative conglomeration."
The chain of command prescribed in the Committee bill pinpoints responsibility and clarifies beyond argument the civilian line of command within the Department of Defense. It in no way impinges upon the authority of the Secretary of Defense over his department, nor does it hamper in any way his and the President's direct control over unified and specified commands.

The Administration would delete the prescription that the Secretary of Defense exercise his direction, authority, and control over the military departments through the respective Secretaries of those departments. Yet, spokesmen for the Administration have affirmed and reaffirmed their intentions to preserve the integrity of the departments and their military services. They have said merger is not planned nor would it be desirable. They have declared that decentralization is essential and that the Secretaries of the military departments must be responsible for their departments. It is impossible to reconcile their objections to this provision with their repeatedly expressed statements of their intentions.

II. Roles and Missions

The proposal of the President, with regard to certain aspects of the authority sought for the Secretary of Defense, would take a Constitutional power exclusively legislative in nature and transfer it to an appointed officer in the executive branch of the government. The Administration bill would permit the Secretary of Defense to transfer, reassign, abolish, or consolidate any function, including combatant functions, by simply notifying the Armed Services Committees 30 days before the change was to take effect.

If Congress were to thwart such a move, it would be necessary to pass a law prohibiting such action by the Secretary of Defense. Since the
Secretary's proposal would undoubtedly have Presidential approval prior to its submission, then it could be expected that the President would veto this legislative action. Consequently it would be necessary for Congress to muster the necessary votes to override a veto in order to protect a statute on this subject.

H. R. 12541, the product of the House Armed Services Committee hearings and deliberations, would make some changes in this procedure. Under this bill, if a member of the Joint Chiefs of Staff were to object to the transfer of a function from one service to another, the matter would be brought to the attention of the Congress. If, within 60 session days, Congress were to pass a concurrent resolution in opposition to such a proposed plan, the action could not be taken. Thus, the difference between the two bills is that under the House version a majority of the Congress could thwart the nullification of a law by the Secretary of Defense, while under the President's proposal it would take two-thirds of each body of the Congress to prevent such action.

The President has taken violent exception to the provisions of H.R. 12541 on the basis that this would vest "astonishing authority in one military man," would be an impediment to progress, subordinate civilian judgment, and repudiate flexibility of combat functions.

These objections of the President are indeed surprising when examined in context with the subject. For example, his first objection is that the House bill would vest too much authority in one military man. It is apparent that he refers to the ability of one member of the Joint Chiefs of Staff to bring the issue of the transfer of a combatant function from one service to another before the Congress. The fact that this is merely a statutory vehicle for presenting to Congress basic issues of military policy, which are properly the concern of Congress, escapes the President as does the more important fact that his bill would in truth vest even more astonishing authority
in one man, the Secretary of Defense. This authority in the Secretary of
Defense is indeed extraordinary because it is contrary to the explicit pro-
visions of the Constitution and violates the fundamental philosophy upon which
our government is formed. The Constitution gives certain responsibilities with
regard to our military forces to the Congress. They include the responsibility
of providing for the common defense, of providing and maintaining a Navy and
raising and supporting Armies. In addition Congress has the exclusive legisla-
tive power. To deliver to the Secretary of Defense the responsibility for
prescribing the broad and general roles and missions of our armed services
would be in violation of each of these Constitutional provisions.

The President's contention that it subordinates civilian judgment,
authority and responsibility and is an endorsement of the concept of military
superiority over civilian authority is equally difficult to understand. To
say that the fact that Congress would have a reasonable opportunity to act in
prevention of the repudiation of a law by the Secretary of Defense constitutes
in any way a derogation of civilian judgment or authority is almost beyond be-
lief. The fact that the House bill will in some measure prevent the repeal
of a law by unilateral executive fiat should leave no doubt that civilian
authority is strengthened. It is not certain how much military thought would
be behind such a Pentagon plan but it is reasonably certain that very little
military thought would be involved in the legislative action required to re-
view such a proposal under the House bill.

The National Security Act sets forth in broad terms the general
functions of each of the services. The President and the Secretary of Defense
have the authority, and have frequently exercised it, to assign the details of
these combatant functions. There is no evidence that this system has failed
to meet the requirements of flexibility. Congress has indicated its willingness
by repeated action to change or add to the National Security Act. If developments indicate that changes are required then the executive, acting under the Constitution, should present such recommendations to the Congress. Now it might be said that this would not provide a system with sufficient speed. There is no reason to draw this conclusion because certainly if the matter were presented in its proper picture the Congress could and would act at least within the 30-day period which the President's bill sets forth. The important difference is that this would be compliance with our Constitutional legislative process while the plan of the President would be in direct violation of this procedure.

It has been said that so long as Congress has the "purse-strings" then it need not worry about its ability to discharge its constitutional responsibilities with regard to the armed services. An examination of recent history discloses immediately the fallacy of this proposition. There are many instances whereby the will and intent of Congress, expressed by way of appropriations for particular purposes has been denied by executive action. Congress may appropriate whatever it desires but unless the executive will expend that money for those purposes the legislative action has little effect.

"Examples: Truman and Air Force; Eisenhower and Marines and National Guard; McElroy and 900,000-man army."

If Congress is to perform its duties and live up to its Constitutional responsibilities, control of the general missions and functions of the several services must be retained.

III. **Legalized Insubordination**

The National Security Act of 1947, as amended, now provides in Sec. 202(c)(6) as follows:
"No provision of this Act shall be so construed as to prevent a Secretary of a military department or a member of the Joint Chiefs of Staff from presenting to the Congress, on his own initiative, after first so informing the Secretary of Defense, any recommendation relating to the Department of Defense that he may deem proper."

The bill which received the unanimous approval of the House Armed Services Committee (H.R. 12541), retains this provision.

President Eisenhower has declared that this section encourages and sanctions insubordination. He has labelled it "legalized insubordination."

The President's objection to this provision apparently rests upon the feeling that it legalizes an implied threat from any Secretary or service chief who dislikes a decision made by the Secretary of Defense; and that it is in derogation of the President's position as Commander in Chief.

There was no evidence presented to the Committee to indicate that this provision of law had caused any difficulty in the past. In fact, there is no evidence that it has ever been used.

The Administration's strong opposition to this feature of the Committee's bill is very strange in light of the fact that since 1948 a Federal statute has prohibited the restriction of any member of an armed force in communicating with a member of Congress, unless the communication is unlawful or violates a regulation necessary to the Security of the United States. 10 USC 1034.

This provision has been the law of the land through the administrations of two Presidents. President Truman did not deem it necessary to recommend the repeal of either this provision or the one in the National Security Act. Apparently they did not constitute an onerous burden to his administration. Section 202(c)(6) was in the National Security Act in 1953 when President Eisenhower adopted Reorganization Plan 6 and reorganized the Defense Department. No mention of it was made at that time. Apparently it did not constitute "sand in the gear
box" during his first term, for it has never been mentioned until now. No complaints have been lodged against this feature of the National Security Act until this time. One would think that by now both the restriction in the National Security Act and the broader protection for all members of the Armed Forces in Title 10 would have become festering sores to the orderly administration of the Defense Department. If the National Security Act provision is to be repealed why should not 10 USC 1034 also be repealed?

Repeal of the provision guaranteeing the right of Secretaries of the military departments and the chiefs of services to come to Congress with their recommendations would present an anomalous situation indeed. The service chiefs, as members of the armed forces, would still enjoy the protection afforded by section 1034, title 10, U.S. Code, while the Secretaries of the military departments would be unprotected, for they are civilians.

It is passing strange that the Administration should develop strong feelings about this provision at the same time that the public information and congressional liaison activities of the military departments are being consolidated and centralized in the Office of the Secretary of Defense. While it may be pure coincidence, it encourages doubt and suspicion as to the aims of the Administration.

It is likewise worthy of note that the Administration's desire for repeal of this provision in the National Security Act reflects a lack of understanding of the Constitutional powers and responsibilities of Congress in the field of military affairs and the armed forces. The President is Commander in Chief and has all of the awesome power of command that such a title implies; but the Constitution also places what appear to be larger and more varied responsibilities for military affairs upon the Congress. The officers of the armed forces and the secretaries of the military departments take an oath to
support and defend the Constitution. Thus, they are placed in an extremely
difficult moral position if they do not have the right to go to Congress after
first so informing the Secretary of Defense.

Mr. President, this concludes my statement on the three points in
the House Committee's bill with which the President expressed strong dis-
pleasure. I would also like to call to the attention of the Senate some rec-
ommendations which I made earlier this year in a series of speeches on the
Defense Department. At that time I summarized the highlights of my remarks
on the Defense Department establishment as follows:

1. The power of Congress to prescribe roles and missions for the
armed forces must remain with the Congress and not be transferred to the
Executive.

2. The collective judgment of the Joint Chiefs of Staff is a
superior mechanism than would be the creation of a single chief of staff or
principal military advisory to the President.

3. The number of assistant secretaries, their assistants, com-
missions and committees in the Pentagon should be reduced drastically and
the civilian bureaucracy in the Department of Defense should be overhauled.

4. The Cordiner Report or something approximating it should be
adopted.

5. The minimum IQ's of all enlistees and inductees should be
raised to a more realistic standard.

6. If the Cordiner Report, or something similar to it, is adopted, the
draft should be abolished.

It is to be noted that of those six recommendations, recommendation
No. 4, having to do with the Cordiner Report, has been adopted. I should like
to urge the Senate to give serious consideration to the remaining proposals
for strengthening the Department of Defense and for bringing about a reorganiza-
tion within it to the end that greater efficiency, better management, and a
more realistic recognition of what needs to be done will be the result.

I would think, Mr. President, that it would be advisable for the
Senate Armed Services Committee to call before it, in its consideration of
the House measure, such recognized experts on the subject as Ferdinand
Eberstadt, Hanson Baldwin, former Secretary of Defense, Charles E. Wilson,
Admiral Robert Carney, General Clifton B. Cates, and others who, on the basis
of their expert knowledge, should be of great assistance to the Committee in
arriving at a reasonable, sound and Constitutional conclusion.

Mr. President, I ask unanimous consent to include with my remarks
two news analyses by Hanson W. Baldwin of the New York Times, entitled,
"Pentagon Reorganization" and "Revised Pentagon Bill".

Mr. President, one of the most vital speeches relative to the re-
organization of the Department of Defense was given on the Floor of the House
of Representatives on June 5, 1958, by the Honorable Paul Kilday, one of the
real Congressional authorities on defense matters. I ask unanimous consent
that this speech by Mr. Kilday be inserted at this point in the record, and
I would most strongly urge my colleagues to read it with great care.