

‘INSTITUTIONALIZED STALEMATE’

by Henry A. Kissinger

As an episode in Soviet-American global competition, the conflict in Nicaragua has served to illuminate a recurring problem in American governance: the difficulty of getting Capitol Hill and the White House together on a coherent U.S. foreign policy. Since the Vietnam debacle, the zigzags in U.S. policy overseas have intensified. The War Powers Act (1973) and Congress's initial refusal to fund anti-Communist guerrillas in Angola (1976) were just two early symptoms of the same distrust that led both to the Boland Amendments and to the White House's schemes that skirted them. Last summer's Iran-contra hearings focused on a congressional ban on military support of the contras by U.S. intelligence agencies in effect from September 1984 to December 1985. What should have been examined, contends Henry Kissinger, were "the balance between the executive branch and Congress," and each side's ambivalence.

The conventional wisdom that modern presidents and their agents in the executive branch have a tendency to break laws is too simple, too denigrating. Most public officials endure the pressures of official life because they want to make a contribution to a better world.

The real issue is not whether officials may substitute their judgment for that of Congress—not even the most zealous White House staffer would claim that—but whether our system of checks and balances is moving toward the former with ever less concern for balance between the coequal branches of government. Nearly insoluble constitutional and personal dilemmas arise when each branch acts on the premise that the other is causing disaster and must be thwarted at all costs.

There were serious errors of judgment in the Iran-contra affair, ranging from the decision to ransom hostages with arms, to the arming of a country whose victory would imperil the interests of the industrial democracies, to pursuing covert policies totally contradictory to publicly stated positions. But these do not amount to a crisis of institutions.

These arise when each branch pushes its prerogatives to the limit, destroying the restraint without which the system cannot work. The funding of contra operations clearly falls into this category.

On the formal level, the case is obvious. The executive branch cannot be allowed—on any aim of national security—to circumvent the congressional prerogative over appropriations by raising its own funds through the sale of government property. But equally, Congress has an



If the U.S. Congress has been ambivalent about the contras, U.S. cartoonists have not. In his satiric Doonesbury strip, Garry Trudeau has frequently targeted both the Nicaraguan resistance and its American supporters.

obligation to put forward a clear-cut expression of what it desires. And both branches must seek to settle controversial issues not by legalisms and subterfuge, but by a serious national debate setting forth premises, opportunities, and risks. This is emphatically not what has happened.

The Reagan administration is of the view—which I share—that Sandinista rule in its current form is a long-term threat to the stability of Central America and hence to the United States' security. It has thus sought to bring pressure on the Sandinista regime, to induce it to become more democratic or, failing that, to overthrow it (though that latter objective has never been made explicit). The administration considers the contras a key element of a new political structure in Nicaragua.

Congress has been ambivalent. The Vietnam-born reluctance to be drawn into a conflict in Nicaragua has been matched by a hesitation to assume blame for a collapse of the Nicaraguan anti-Communist resistance. The result: a series of compromises, which is how Congress decides on legislation. This process in foreign policy tends to combine the disadvantages of all policy choices. Thus the impression created by the Iran-contra hearings—that the administration violated a clear congressional mandate—is misleading. The mandate was anything but clear.

There have been at least six versions of legislation affecting contra aid, each of them authorizing aid but encumbering it with restrictions that varied from year to year, and that largely contradicted congressional consent to the principle of support for the Nicaraguan resistance:

- From December 21, 1982 to December 7, 1983, there was a

prohibition against using funds to “overthrow” the Nicaraguan government; by implication other contra activities were permitted if not encouraged, and the term “overthrow” was never defined.

- From December 8, 1983 to October 3, 1984, there was a ceiling of \$24 million on intelligence support for military or paramilitary activity inside Nicaragua, thus blessing as well as financing these enterprises.

- From October 3, 1984 to December 19, 1985, Congress reversed course, barring military or paramilitary support. For nine months *no* new funds were provided, though existing ones could be used. After August 15, 1985, humanitarian aid (\$27 million) was reinstated.

- From December 19, 1985 to October 1986, intelligence support was again permitted, though it was limited to advice and communications equipment. At the same time, the State Department was authorized to solicit humanitarian assistance from third countries.

- On October 18, 1986, Congress appropriated \$100 million in humanitarian and military assistance after a 10-week hiatus, while a meeting to reconcile technical differences between the versions of the two houses was stalled by opponents of contra aid.

What message was Congress sending? What was the rationale for approving contra aid, but constantly changing the amounts and the conditions for its use? How was the administration to interpret a congressional intent that changed so often? Did Congress approve of aid to the contras, debating only the scale of support? Or was it seeking to destroy the Nicaraguan resistance while being unwilling to assume responsibility?

Clearly Congress provided neither continuity nor criteria to which even the most scrupulous administration could orient itself. And all the while the contras in the field were in danger of collapsing before a new appropriation could be passed. Of such stuff are institutional crises made.

This in no way seeks to justify the measures the Reagan administration took to deal with its very real problem of how to keep the contras alive from one congressional cycle to another. Neither self-financing nor lies to Congress can be excused. Nor were the administration requests to Congress free of disingenuousness. For example, were the sums requested by the executive branch based on an achievable strategy, or did they reflect a judgment of what the traffic would bear? Be that as it may, to focus exclusively on administration transgressions is one-sided; congressional incoherence and ambivalence require comparable attention.

The Reagan administration's basic error was to try to achieve by

Henry A. Kissinger, 64, a consultant and counselor at the Center for Strategic and International Studies in Washington, D.C., served as Assistant to the President for National Security Affairs (1969-75) and as Secretary of State (1973-77). He is a former trustee of the Wilson Center (1971-77). Born in Fuerth, Germany, he received a B.A. (1950), an M.A. (1952), and a Ph.D. (1954) from Harvard University. Among his many books are The Necessity for Choice: Prospects of American Foreign Policy (1961), and White House Years (1979). Copyright © 1987 Los Angeles Times Syndicate.

indirection what it should have faced head on. It should have bent every effort to bring about a national debate on the choices before the country with regard to Nicaragua, and to force a congressional vote on the minimum means required to achieve its view of U.S. objectives.

There were at least three choices:

- To coexist with the Sandinista regime unless it introduced high-performance Soviet military equipment into Nicaragua.
- To bring pressure on Nicaragua to return to the inter-American system by expelling foreign—especially Cuban—advisers and reducing its military forces to traditional Central American levels, in return for the United States' not challenging the Sandinista political structure.
- To overthrow the Sandinista regime or, at a minimum (and improbably), to change its character so that the Sandinistas became one party in a pluralistic process in which the contras also participated.

The only option achievable without military pressure—contra or United States—was acceptance of the Sandinistas with no conditions other than the exclusion of certain Soviet high-performance arms. The overthrow of the Sandinistas, the third option, would almost certainly require U.S. troops.

The irony of the American political process is that each of the two coequal branches of the government chose an option at the opposite end of the spectrum, but supplied means inconsistent with its choices. A large militant minority in Congress pursued the illusion that diplomacy was an alternative to pressure. But while one can debate the nature of the pressure, and of reasonable objectives, diplomatic success presupposes a balance of penalties and incentives. In the end, a hesitant majority recognized this reality and voted for some aid, though never enough for even minimum objectives. This institutionalized ambivalence.

On the other hand, the administration's real objective has been the overthrow of the Sandinista political structure. This is unachievable by the means it has requested, which at best are enough for the second option: the expulsion of foreign advisers and the reduction of Nicaraguan military forces. This institutionalized stalemate.

I make these criticisms with diffidence, for the administration in which I served reacted with similar ambivalence to comparable congressional challenges. In retrospect, the Nixon administration's crucial mistake in the Vietnam War (which it inherited) was not to insist on an up-or-down vote regarding its judgment on how to conclude it. This would have required Congress to assume responsibility for its actions, would have avoided prolonged national anguish, and would have brought a clear-cut resolution one way or the other.