

Departmental Comment

Congressional Affairs

Activities of the First Session of the 92nd Congress Relating to International Law and Foreign Relations

Issues of foreign policy arising in a context of disagreement as to the relative rights and responsibilities of the Executive and Legislative branches dominated the first session of the 92nd Congress. President Nixon's domestic "New American Revolution" announced in January 1971 was all but forgotten, as the debate on the Vietnamese war went on and on. A reorganization of foreign aid and an extension of the draft also loomed prominently.

According to the Senate Foreign Relations Committee's report, made December 21 by its Sub-Committee on Security Agreements and Commitments Abroad, the United States has assumed "creeping commitments" that threaten to trap the nation in global responsibilities. The sub-committee chairman, Senator Stuart Symington (D.Mo.) stated: "The basic thrust of the report is the people's right to know what are the facts."

The report summarized two years of investigation and 2,500 pages of hearings on the Philippines, Laos, Thailand, Taiwan, Japan, Okinawa, Korea, Greece, Turkey, Ethiopia, Morocco, Libya, NATO, and Spain. "Spain is a good example," the Subcommittee asserted, "of a commitment which has not only crept but which has also, in the process, generated new justifications as old ones became obsolete."

Accusing the Executive Branch of using security classification "to prevent legitimate inquiry" by proper committees of the Senate, the report recommends that Congress undertake, on regular schedule, inquiries on foreign policy, including the political aspects of military activities: "Congress should take a realistic look at the authority of the President to station troops abroad and establish bases in foreign countries." Specific prior authority of the Congress should be required in both cases.

The multi-million dollar support by the CIA of a 30,000-man army in

Laos can in no way be considered an intelligence operation, the report pointed out. The lack of proper oversight by Congress has resulted in overlapping intelligence operations abroad. The Foreign Relations Committee was totally unaware of many intelligence operations which have profound foreign policy implications. Senator Symington's subcommittee had to send two staff members to Laos to find out what the CIA was doing.

Since the CIA was given authority in 1949 to operate without normal legislative oversight, uneasy tension has existed between an "uninformed" Congress and an "uninformative" CIA. From the beginning, CIA's appropriated funds have been submerged in the general accounts of other government agencies, hidden from public scrutiny and from all but a small select group in Congress. Nearly two hundred bills to make CIA more accountable have been introduced, but none has so far passed. Now the heat is on again as the costly clandestine military operations of the agency come to light.

In their frustration at being unable to obtain information to which the Congress is legitimately entitled, some Senators lashed out at the President's National Security Adviser, Henry A. Kissinger. In a speech on March 2, Senator Stuart Symington stated that William P. Rogers was becoming known as "Secretary of State in name only," with his powers usurped by Dr. Kissinger, "clearly the most powerful man in the Nixon Administration next to the President. Yet he has never appeared before the proper Committee of the Congress to justify any of his decisions." At the same time, Senator J. William Fulbright (D. Ark.), in a speech in Florida, said that he would introduce a bill to compel Kissinger and other White House aides to appear before Congressional committees even if they intended to invoke what they call Executive Privilege. "As if the war in Indo-China were the President's personal secret."

In his second annual report on foreign policy on February 25, President Nixon forecast an increasing role for the People's Republic of China in the world community, and stated that he was prepared to establish a dialog with Peking. The President designated the Middle East as then the most dangerous area in the world.

The Senate Foreign Relations Committee began hearings in March on S.731, S.J. Res. 18 and S.J. Res. 59 to define the war-making powers of the President. In the House, the Foreign Affairs Committee held hearings during the same period on some forty resolutions regarding treatment of prisoners of war.

On March 30, the Senate Foreign Relations Committee voted 10 to 4 to report the 1948 Genocide Convention. Before approving, the Committee

had rejected by a vote of 7 to 6, a reservation by Senator John Sherman Cooper (R. Ky.) that would have prevented the extradition of persons to another country to stand trial on genocide charges. According to the Congressional Quarterly, opposition could prevent the Convention from reaching the floor.

Several events demonstrated the growing anti-war sentiments of the Congress. On March 31 the Democrats of the House voted 130-62 to adopt a compromise resolution stating that the House "should work to end the military involvement in Indo-China and to bring about the release of all prisoners by the end of the 92nd Congress."

The author of that durable "amendment," Senator Mike Mansfield (D. Mont.), said: "The time is long overdue that Congress restore to itself the power which it voluntarily gave to the Chief Executive over the past four decades." He called for drastic action and said that he would introduce a resolution to reduce troop strength in Europe.

During the debate on the conviction of Lieutenant William L. Calley of murder in the My Lai massacre, some of the most consistent supporters of the military made dramatic reversals of position by voting against extension of the draft. Rep. John J. Flynt (D. Ga.) said: "Heretofore I have supported the Selective Service Act and every extension . . . but I will not today or hereafter vote for a draft bill to start or to continue an undeclared war." After his speech, half of the members of the House gave him a standing ovation.

The Subcommittee on National Security Policy and Scientific Developments of the House Foreign Affairs Committee began hearings, in June, on twelve bills and resolutions defining the war powers of the President. On July 11, the Congressional Research Service of the Library of Congress, at the request of the Senate Foreign Relations Committee, made a report on the measurable costs of the war in Vietnam. Some highlights: From 1965 to 1971, the budget cost: about \$120 billion; casualties: 350,000 more than in World War I, twice as many as for the Korean War and one-third as great as for World War II; 5.8 million acres sprayed by herbicides, 3.5 million acres of South Vietnam forests defoliated, with timber destroyed sufficient to supply the country's needs for the next thirty-one years; civilian casualties estimated at 1.05 million with 3.25 thousand dead, of whom 30 percent were children under thirteen years of age; $\frac{1}{6}$ to $\frac{1}{3}$ of South Vietnam's population of 18 million are refugees.

The expulsion of Nationalist China from the U.N. on October 25 produced an immediate and angry response in Congress. During debate, which began on a \$3.2 billion foreign aid authorization bill on October 26, Sena-

tor Fulbright said that "many of those who voted against us have been given large sums." Senator Barry Goldwater (R. Ariz.) called for U.S. withdrawal from the U.N. Senator James L. Buckley (R. N.Y.) wanted major reductions in contributions for U.N. activities, Rep. Philip N. Crane (R. Ill.) proposed to base contributions to the U.N. on population, which would reduce the share of the United States from \$318 million to approximately \$80 million.

On October 29, by a 27 to 47 vote, the Senate rejected H.R. 9910 authorizing appropriations of \$2.9 billion for foreign assistance in fiscal 1972. This is the first time either House has rejected a foreign aid bill since the program started after World War II. Voting on 27 amendments revealed the conflicting positions which finally united to defeat the bill: (1) opposition to the Vietnam war and the desire to assert Congressional authority over foreign policy; (2) concern over increasing military aid, especially aid to Cambodia; (3) the oft-repeated view during times of domestic economic troubles that foreign aid is a giveaway producing few results and making few friends; (4) doubts about bi-lateral aid coupled with U.S. foreign policy interests.

Two separate bills (S.2819 and S.2820) authorizing appropriations of \$2.3 billion for fiscal 1972 for economic, humanitarian and military assistance were reported on November 4. Chairman Fulbright wanted three separate bills to provide "sharper delineation of the purposes and objectives of each aid category and to give guidance on how the Senate wants the new foreign aid program to be shaped for the future." His proposals would have authorized \$1 billion for military aid, \$620 million for bilateral economic assistance and \$445.9 million for multilateral and humanitarian assistance. The Committee voted 8 to 7 to combine economic and humanitarian aid in a single bill. The two bills passed the Senate on November 10 and 11.

The House, on November 5, passed H.R. 8293, extending through September 30, 1973 the authority of the President to carry out the provisions of the International Coffee Agreement under P.L. 90-634.

On November 24, the Senate passed H.R. 9727, the Marine Protection and Research Act, to regulate the dumping of waste into the oceans, the Great Lakes and the St. Lawrence River, establishing a program of research on ocean dumping. The bill was in conference at the close of the session.

Upon adjournment in mid-December, many items of important legislation remained over for completion by the second session. In the Senate a war powers resolution had been reported and was ready for the calendar.

H.J. Res I, a similar measure, had passed the House in August. The two Senate foreign aid authorization bills were combined in conference into a single bill, which passed by the Senate. House action was postponed until the second session.

The plan for sponsoring the most persistent and controversial legislation must go to Senator Mike Mansfield, the majority leader. Early in the session, he offered an amendment to the extension of the draft bill to reduce the number of American troops in Europe from 300,000 to 150,000. The amendment was rejected. Better known is his amendment aimed to force a pullout of troops from Vietnam. Passed three times by the Senate, it was watered down twice in conference, and reappeared for a third time as a rider to the foreign aid bill. The amendment deadlocked the conference for a month until the House voted against instructing its conferees to agree to it.

The Senate gave its advice and consent to the ratification of the following treaties:

Additional protocol II to the treaty for the prohibition of nuclear weapons in Latin America: Designed for signature of States possessing nuclear weapons, the protocol commits the United States, subject to its clarifying interpretations, to respect the aims and provisions of the treaty, not to contribute in any way to the violation of the treaty, and not to use or threaten to use nuclear weapons against the Latin American States for which the treaty is in force. Ex.H (92-2). Resolution of ratification agreed to 4/19/71.

Aircraft Hijacking Convention: This convention for the suppression of unlawful seizure of aircraft deals with the extradition of prosecution of hijackers, with each State obliged to make hijacking punishable by severe penalties, and applies to hijacking of all civil aircraft, whether engaged in an international or domestic flight. Ex.A (92-1). Resolution of ratification agreed to 9/8/71.

Amendments to the 1954 Oil Pollution Convention: Changes substantially existing rules and regulations governing the intentional discharge of oil at sea and requires such discharge to conform to a specific rate-of-discharge formula. Ex.G (91-2). Resolution of ratification agreed to 9/20/71.

Bryan-Chamorro Treaty of 1914—Termination: Ex. L (91-2). Resolution of ratification agreed to 2/17/71.

Convention relating to intervention on the high seas in cases of oil pollution casualties: Establishes, with appropriate safeguards, the right of a coastal nation to take whatever action it deems necessary "to prevent,

mitigate or eliminate" the threat of oil pollution arising from a maritime accident. Ex. G. (91-2). Resolution of ratification agreed to 9/20/71.

Extradition treaty with Spain: Covers 23 extraditable offenses, including aircraft hijacking and offenses relating to narcotic drugs. Ex. N. (91-2). Resolution of ratification agreed to 2/17/71.

International wheat agreement, 1971: Replaces the International Grains Arrangements of 1967, which expired on June 30, 1971, with a new Wheat Trade Convention to continue international cooperation in wheat trade and a new Food Aid Convention to continue the commitment whereby parties contribute food aid to developing countries. Ex. F (92-1). Resolution of ratification agreed to 7/12/71.

Locarno agreement establishing an international classification for industrial designs: Ex. I (92-1). Resolution of ratification agreed to 12/11/71.

Nice agreement, as revised, concerning the international classification of goods and services to which trademarks are applied: Sets up an organization which will establish an international classification of goods and services to which trademarks are applied. Ex. M (91-2). Resolution of ratification agreed to 12/11/71. .

Okinawa reversion treaty: Provides for the reversion of Okinawa to Japan. Ex.J. (92-1). Resolution of ratification agreed to 11/10/71.

Protocol to amend International Civil Aviation Convention

Increases the membership on the Council of the International Civil Aviation Organization from 27 to 30 representatives. Ex. K (92-1). Resolution of ratification agreed to 12/11/71.

Tax convention with Japan

Replaces an income tax convention with Japan dated April 16, 1954, as modified and supplemented by protocols of May 7, 1960, and August 14, 1962. Ex. E (92-1). Resolution of ratification agreed to 11/29/71.

Tax protocol with France

Extends to certain United States residents the benefits of a tax credit available under French law to residents of France who receive a dividend from a French corporation. Ex. O(91-2). Resolution of ratification agreed to 11/29/71.

Treaty with Mexico providing for the recovery and return of stolen archaeological, historical and cultural properties

Ex. K (91-2). Resolution of ratification agreed to 2/11/71.

Treaty with Mexico resolving boundary differences

Settles three specific boundary problems relating to (1) the Presidio-Ojinaga Tracts, (2) the Horcon and Beaver Island Tracts, and (3) the boundary between the United States and Mexico; provides a procedure for minimizing problems brought about by future changes in the channels of the Rio Grande and Colorado Rivers; and contains other provisions. Ex. B (92-1). Resolutions of ratification agreed to 11/29/71.