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Departmental Comment

Congressional Affairs

The Second Session of the 93rd Congress: Activities Relating to International Law and Foreign Relations

The return of the 93rd Congress in January, 1974 found its members more occupied with Watergate and the impeachment of President Nixon than with international relations.

Of legislation left over from the first session, none of importance was of an international nature. The President's message of January 23 recommending new legislation to deal with the energy crisis recommended repeal of the 22 percent depletion allowance for oil produced abroad. "Borne by a tragic war in the middle east," the President stated, "the energy crisis may well turn out to be a fortunate turning point in our history. We must never again be caught in a situation where foreign rulers, even far short of military action, can plunge us into such a crisis."

Reporting on the accomplishments of the session, the majority Leader, Senator Mike Mansfield, said on December 19:

This year the Senate has passed over 800 measures, ratified (sic) 9 treaties, and confirmed over 64,000 nominations. 280 measures have become public law.¹

Some of the most internationally significant of these measures are mentioned below.

Oil Pollution on the High Seas

On January 22, Congress cleared for the President's signature S. 1070 to implement the International Convention on the High Seas in Cases of Oil Pollution Casualties of 1969. (Exec. G. 91st Cong., 2nd Sess.). In an emergency the Coast Guard would be authorized to destroy any ship or cargo endangering or damaging the coast line.

¹CONGRESSIONAL RECORD, p. S22284. As of the date of this writing no similar House report is available.

Genocide Convention

After some 25 years, the controversial United Nations treaty making "genocide" an international crime reached the Senate floor on January 28. The Foreign Relations Committee in March 1973 had recommended the inclusion of three "understandings" and one "declaration" in the resolution of ratification. On the fifth day of debate on the convention, the Senate on February 6 refused by a vote which fell seven short of two-thirds majority, to cut off a filibuster and impose cloture. The treaty (Exec. O, 81st Cong., 1st Sess.) was returned to the executive calendar and removed from the pending business before the Senate.

Panama Canal Treaty

The signing by Secretary of State Kissinger and Foreign Minister Juan Tack in Panama City on February 7 of an agreement on principle to govern the negotiation of a new Panama Canal treaty foreshadowed bitter opposition in the Congress.

The agreement would abrogate the 1903 treaty and its amendments, abolish the concept of perpetuity and terminate United States jurisdiction over Panamanian territory. The Republic of Panama would grant to the United States for the limited life of a new treaty the right to use the lands, waters, and air space necessary for the operation of the canal. Panama is to participate in the administration and defense of the canal.

Not only must any new treaty be approved by the Senate, but implementing legislation particularly in view of Article IV section 3 of the Constitution must pass the House. That section provides that "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Rep. Daniel J. Flood (D. Pa.) is the most dynamic and articulate opponent of ceding sovereignty and partial control over the Canal to Panama. Having in mind that the abolition of the Platt Amendment was followed many years later by the take over of Cuba by the Castro regime and that the relinquishment of foreign operation of the Suez Canal was followed by the closing of the canal in 1967, proponents of continued U.S. sovereignty over the Panama Canal Zone are marshalling some powerful arguments against a new treaty. Rep. John M. Murphy (D. N.Y.) former chairman of the Panama Canal subcommittee told the House that he was aware of two existing plots to overthrow the Torrijos dictatorship in Panama: "We simply do not wish to give this vital world waterway over to an unstable government that . . . might be overthrown tomorrow."

OPIC

On February 28, the Senate passed S. 2957 to terminate the direct insurance and financial operations of the Overseas Private Investment Corporation

(OPIC). Critics of OPIC argued that it was approaching insolvency, was providing subsidies for large corporations that were capable of insuring themselves and had not sufficiently met OPIC's original investment objective of aiding the development of underdeveloped countries. As passed, the bill would extend OPIC's program for two years and require the cessation of writing expropriation and inconvertibility insurance after December 31, 1979 and war risk insurance after 1980. The Corporation would be authorized to become a re-insurer of policies written by private corporations. On May 6, the House passed H.R. 13973, a bill similar to S. 2957. The House agreed to insert language of its bill in S. 2957 and then passed its revised version. House and Senate conferees reported on July 30, both houses then accepting the measure by a voice vote. S. 2957 was cleared for the President on August 13.

International Human Rights

The House Foreign Affairs Subcommittee on International Organizations and Movements issued a report on March 27 on International Human Rights charging that the United States had embraced "governments which practice torture and unabashedly violate almost every human rights guarantee pronounced by the world community." Named were South Vietnam, Spain, Portugal, the Soviet Union, Brazil, Indonesia, Greece, the Philippines, and Chile. Chaired by Rep. Donald M. Frazer (D. Minn.) the panel made 29 recommendations for upgrading human rights factors in United States foreign policy.

Foreign Investment in the United States

Sparked by the increasingly large investments in United States industry, particularly by Japanese industrialists and Arab oil sheiks, sentiment began to develop to limit foreign ownership. Four bills for that purpose were introduced: (1) H.R. 8951 by Rep. John H. Dent (D. Pa.) and 13 others would prohibit foreigners from acquiring more than 5 percent of the voting or 35 percent of the non-voting stock of an American company; (2) H.R. 12040 by Rep. John E. Moss (D. Calif.) restricts foreign ownership in defense and energy related industries; (3) H.R. 11597 by Rep. Wright Patman, Chairman of the House Banking and Currency Committee, would regulate foreign banking operations; (4) S. 2840 by Sen. Daniel K. Inouye (D. Hawaii) directs the Commerce Department to make a two year study of foreign investment.

By voice vote on June 13 the Senate passed S. 2840 to authorize the Secretaries of Treasury and Commerce to make a study of foreign investment in the United States. The Committee noted that deficient information-gathering methods "may be seriously understating the magnitude of foreign investment in the United States." The aggregate total of foreign investment in the United

States was estimated at about \$58.5 billion in 1973. The bill directed the Commerce Department to study foreign direct investment, defined as ownership by aliens of 25 percent or more of a firm's voting stock, and the Treasury Department to study foreign portfolio investment defined as ownership of less than 25 percent. The departments are to consider such issues as the impact on American business and on United States policy, submit an interim report to Congress within 18 months and a final report in two and a half years.

After clarifying amendments by both the House and Senate, S. 2840 was cleared for the President on October 10. (P.L. 93-479)

Rhodesian Chrome

S. 1868 to restore United States compliance with the United Nations sanctions against Southern Rhodesia was due to come before the House Foreign Affairs Committee early in the session. A nearly identical bill was approved by a subcommittee in October 1973, but full committee action was postponed pending the Senate passage which came on December 18, 1973.

The controversial Byrd amendment of 1971 exempting Rhodesian chrome and other metals from the embargo supporting the sanctions is the target of civil rights and labor groups. Opposed are groups representing 90 per cent of the speciality steel industry.

The House Foreign Affairs committee on July 9 reported S. 1868 to forbid further imports of chrome ore, ferrochrome, and nickel from Southern Rhodesia. This brought the United States one step nearer to repeal of the Byrd amendment, a rider to the Strategic and Critical Materials Stockpiling Act of 1946. The members of the minority said that they supported the repeal with considerable misgivings, taking the position that United States policy should avoid interference with the internal politics of other nations, and that following the moralistic approach to trade policy embodied in the U.N. sanctions could lead to United States isolation in world trade. The minority viewed continued importation of Rhodesian chrome as important to the national interest particularly since catalytic converters on automobiles will be made of stainless steel with ferrochrome as an ingredient.

A 200 Mile Limit for Fisheries

On August 8, the Senate Commerce Committee reported S. 1988 to extend United States fisheries jurisdiction to 200 miles from the coast. The committee declared that foreign fishing, particularly the modern "fish factory" operations of the Soviet Union and Japan, were depleting the coastal waters of haddock, herring, mackerel, shrimp, halibut, and other valuable species; and that the United States share of the catch had dropped from 92.19 per cent in 1960 to

49.1 per cent in 1970 while United States consumption rose. Increased imports caused an adverse balance of payments in 1972 of \$1.3 billion.

The bill would establish federal fishery management jurisdiction up to 200 miles for coastal species and beyond for anadromous fish. A Fisheries Management Council would be established to submit to Congress within two years a national marine fisheries plan which would become effective if not disapproved by a resolution of both Houses of Congress. Enforcement powers would include the right to board foreign vessels, arrest crewmen and seize illegally harvested fish and equipment. Civil penalties of \$25,000 for each violation and criminal penalties of a \$50,000 fine or one year in prison or both are provided for willful violations. The committee listed 36 states that had unilaterally extended their fisheries jurisdiction from 15 to 200 miles from shore. The usual extent is 12 miles.

The bill was opposed by the Administration on the ground that it would (1) hamper efforts to negotiate a fishing treaty at the Law of the Sea Conference in Caracas, (2) encourage similar action by other nations, and (3) be difficult to enforce because other nations would not recognize unilateral action.

Foreign Aid

Congress handed the administration and its foreign aid program a double defeat on January 23. The House rejected a \$1.5 billion request for the International Development Association (H.R. 11354) and the Senate approved legislation calling for a ban on military aid to Greece. (S. 2754).

The Senate Foreign Relations Committee on September 3 reported S. 3394, the foreign aid authorization bill. The amount approved, \$2,527,626,000, was only \$724,600 below the budget request but indicated the Committee's continuing desire to phase out military grant assistance to foreign countries and United States military missions abroad. It also reflected the intent to assure a complete pull-out from Indochina and lessen the President's discretionary foreign aid powers. On December 18, the bill was cleared for the President.

The C.I.A.

Reports early in September that C.I.A. Director William E. Colby had testified in a secret session of the House Armed Services Subcommittee on Intelligence on April 22 that the C.I.A. had been authorized to spend over \$8 million in 1970-73 to create conditions making it impossible for Marxist President Allende of Chile to govern, led the Senate Foreign Relations Committee on September 17 to vote unanimously to investigate. The action was the culmination of a long series of reports of C.I.A. unsupervised involvements in the internal affairs of foreign countries and its assumption of military roles unauthorized by the Congress. "We haven't done a damn thing . . . to prevent

the President from waging secret wars," said Sen. Philip A. Hart (D. Mich.) Chairman J. W. Fulbright of the Senate Foreign Relations Committee, the Majority Leader, Mike Mansfield (D. Mont.) and others called for the creation of a special Congressional committee to oversee the C.I.A. At present, oversight responsibility is split among several House and Senate Appropriations and Armed Services subcommittees.

The reports of the C.I.A. actions prompted charges that State Department officials, testifying in the spring of 1973, may have misled the Foreign Relations Subcommittee on Multinational Corporations about the extent and nature of United States activities in Chile. Chaired by Senator Frank Church (D. Idaho) the subcommittee had been investigating the involvement of ITT in the 1970 Chilean election when Allende was chosen. Senator Church on September 11 authorized his staff to review the 1973 testimony and said: "Apart from the question of whether perjury was committed in a legal sense, there is no question but what the Committee was given to believe that our policy was one of non-intervention." He called for a review by the full Committee of covert activities directed against constitutionally elected foreign leaders.

As a result of criticism of the Congress for failing to oversee the operations of the C.I.A., the two Armed Services committees have recently made some changes which have fallen far short of reforms proposed by such critics of Rep. Michael J. Harrington (D. Mass.). Chairman John C. Stennis (D. Miss.) of the Senate Committee has invited the Senate's majority and minority leaders to sit with the Committee's Central Intelligence Subcommittee. House and Senate Committees, their critics charge, are too military-minded to dig into the covert operations of the C.I.A. and their knowledge is after-the-fact, anyway. The retiring chairman of the Foreign Relations Committee, J. W. Fulbright (D. Ark.) commented: "They get very little done. The director of the C.I.A. spends most of the time talking about the Soviet missile threat and so on . . . it really is of little help in trying to find out what is going on . . . he actually tells them only what he wants them to know. It seems to me that the men on the committee are more interested in shielding the C.I.A. from its critics than in anything else."

On September 19, Senators Howard H. Baker (R. Tenn.) and Lowell P. Weicker, Jr. (R. Conn.) introduced S. 4019 to establish a 14 member Joint Committee on Intelligence. By mid-November it had received 33 co-sponsors. Noted for his performance on the Watergate Committee, Sen. Baker said: "I do not think there is a man in the legislative part of government who really knows what is going on in the intelligence community, and I am terribly upset about it." On October 8, the House approved H.R. 988 giving the Foreign Affairs Committee jurisdiction over "intelligence operations relating to foreign policy."

Foreign Military Assistance

For the first time, using the usually routine emergency funding resolution, the Senate confronted the Ford administration with a cut-off of United States military aid to both Turkey and Chile. On September 19, the Senate approved a sense of the Senate policy resolution asking the President to end all military assistance to Ankara because of Turkey's invasion of Cyprus with United States arms. On September 30, the Senate adopted an amendment by Sen. Thomas F. Eagleton (D. Mo.) to require the President to terminate the aid. President Ford then threatened to veto the bill, warning: "if the Eagleton amendment . . . is adopted . . . the United States will have lost its negotiating flexibility and influence." On the same day, the Senate added an amendment by Sen. Edward M. Kennedy (D. Mass.) to cut off all arms aid to the military junta in Chile.

On October 17, after a bewildering succession of joint resolutions and vetoes, the Congress and the White House at last reached a compromise.

As passed and cleared for the President, H.J. Res. 1167 provides that no military assistance be given to Turkey until the President certifies that Turkey is in compliance with the Foreign Assistance Act of 1961 and the Foreign Military Sales Act, and that substantial progress has been made toward agreement on military forces in Cyprus; that the President could suspend the ban on military aid until December 10, 1975 if he determined that delay would assist negotiations, but only if Turkey observes the cease fire and does not increase its forces in or ship United States arms to Cyprus.

Chemical and Biological Warfare

For fifty years the Geneva Protocol of 1925 (Ex.J., 91st Cong. 2d Sess.) banning chemical and biological warfare failed ratification by the United States, although the United States led the negotiations which resulted in its adoption. The question of whether the Protocol covers tear gas and herbicides was removed as a bar to ratification when the director of the United States Arms Control and Disarmament Agency, Dr. Fred C. Ikle announced that the administration intended to "renounce as a matter of national policy" the use of tear gas and herbicides in war except under limited circumstances. Members of the Foreign Relations Committee found that the proposal eliminated the Committee's objections to the Administration's previous position. "Now let's get this protocol ratified," said Senator Hubert H. Humphrey (D. Minn.).

Consent to ratification was given by the Senate on December 16, thus clearing the way for approval of a second treaty, the Convention on the Prohibition of Bacteriological and Toxin Weapons (Exec. Q, 92d Cong., 2d Sess.).

Thus, the Geneva Protocol, which has been ratified by more than 100 states, finally takes effect for the United States, the last major power to accept it. Japan, the only other major hold-out, had previously ratified the protocol with a reservation exempting tear gas from its prohibition. The Convention, on the

other hand, will take effect when ratified by 22 signatory states, including the United States, the United Kingdom and the Soviet Union.

Trade Reform

Even before the start of the second session, lobbies and interest groups were planning their strategy with respect to the President's foreign and economic policies. As the House-passed trade bill (H.R. 10710) reached the Senate the AFL-CIO attempted to have the bill given more of a protectionist cast, while humanitarian and Jewish groups aimed to have provisions included which would put pressure on the Soviet government to allow free emigration of Soviet Jews to Israel. This non-germane issue produced a dispute which held the measure up in the Senate Finance Committee. As reported to the Senate and as passed by the House the bill would refuse most favored nation (MFN) trade status and credits to non-market (Communist) countries that did not permit free emigration. The Ford administration considered MFN for the Soviet Union essential to detente and the implementation of trade agreements already signed.

The most significant of many amendments offered on the Senate floor was one by Senator Henry M. Jackson (D. Wash.) embodying a compromise: The President would be authorized for 18 months to waive the provision regarding restrictions on Jewish immigration after he received assurance from a non-market country that it would permit free emigration. At the end of 18 months the waiver could be renewed at one year intervals under certain conditions.

The Jackson amendment resulted from the compromise between the White House and the Senator which he announced at the White House on October 18, with an exchange of letters with Secretary of State Kissinger. Jackson said the agreement was based on assurances of Soviet leaders that the rate of emigration from the Soviet Union would rise from the 1973 level of 35,000 to a figure high enough to include all applicants—approximately 130,000.

On December 13, as the House-Senate conferees reached agreement, the Soviets issued a statement denying that they had given any such specific assurances. Foreign Minister Gromyko characterized the question of Jewish immigration as a wholly domestic one and said the Soviet Union anticipated a decrease, not an increase, in the number of persons expecting to emigrate.

The bill also contained broad authority for the President to act on trade matters. Passage of the bill was necessary for the United States to participate in the round of trade negotiations scheduled for February 1975. On the final day of the session, the Congress cleared for the President H.R. 10710.

The International Court of Justice

This survey of the activities of the second session would not be complete

without reference to a series of five Senate Resolutions which concern the International Court of Justice. All were adopted on May 20.

S. Res. 74 calls on the Secretary of State to submit to the court any outstanding territorial disputes involving the United States which cannot be resolved by negotiations, and specifically to consider submitting 28 such disputes over desolate and largely uninhabited islands in the Caribbean Sea and the Pacific Ocean.

S. Res. 75 recommends the inclusion in all future treaties and other international agreements of clauses providing that any dispute arising from the interpretation or application of their provisions, not otherwise settled by agreement between the parties, shall be subject to the jurisdiction of the Court or other appropriate body.

S. Res. 76 declares that the Secretary of State should give favorable consideration to making use of the various chambers of the Court; calls on the President to take all appropriate measures to attempt to expand the range of international bodies eligible to request advisory opinions of the Court; urges the President to seek to improve the process by which judges are nominated and elected; and advises the President to encourage the Court to exercise its functions outside of the Hague from time to time.

S. Res. 77 urges the President to direct the Secretary of State to encourage the maximum use of the procedures for the specific settlement of international disputes as outlined in Chapter VI of the Charter of the United Nations, particularly those procedures providing for the reference of legal disputes to the Court.

S. Res. 78 calls on the Secretary of State to undertake a study examining the various ways of granting direct and indirect access to the Court and other international tribunals, to individuals, corporations, non-governmental organizations, intergovernmental organizations, regional organizations, and other natural or legal persons, including the feasibility of establishing a special committee of the United Nations General Assembly with authority to request from the Court advisory opinions on behalf of these groups.

Treaties

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

Customs Convention on the International Transit of Goods.—Provides simplified customs control mechanisms and uniform documentation procedures for transport by bonded trailers, railway cars, vessels, and large containers, such carriers to have the option to use the International Transit of Goods procedures or another system if more advantageous. Ex. P, 93d-1st. Resolution of ratification agreed to Jan. 21, 1974.

Czechoslovak Consular Convention.—Establishes consular relations between

the United States and Czechoslovakia, including the issuance of passports and visas, performance of notarial services, and representation of the interests of the sending state in estate matters; assures that consuls, whose nations have been detained will be notified within 3 days and will have the right to visit them and provide legal assistance; and contains other provisions. Ex. A, 93d-2d. Resolution of ratification agreed to Sept. 30, 1974.

Extradition Treaty with Denmark.—Provides for the extradition of fugitives charged with any of 28 specific offenses, including offenses relating to narcotics and aircraft hijacking, as well as conspiracy to commit any of the specified offenses; defines territorial application to include territorial waters and airspace as well as registered aircraft in flight; provides for extradition for offenses committed outside the territory of either party if the offense is punishable under the laws of both parties; provides discretionary power to either party to extradite its own nationals, with the requested state to try the individual when the offense is punishable under its own laws; and permits refusal of extradition unless assurances are received that the death penalty will not be imposed for an offense not punishable by death in the country from which extradition is requested. Ex. U, 93d-1st. Resolution of ratification agreed to Mar. 29, 1974.

Protocol to the Convention for the International Council for Exploration of the Sea.—Amends the Convention for the International Council for the Exploration of the Sea to require a 2/3rds majority vote of members of the Council to approve its annual budget rather than a simple majority vote as now required. Ex. V, 93d-1st. Resolution of ratification agreed to Sept. 4, 1974.

Protocols for the Extension of the International Wheat Agreement, 1971.—Extends to June 30, 1975, the provisions of the International Wheat Agreement, 1971 constituting (1) the Wheat Trade Convention which provides for the continued operation of the International Wheat Council, an administrative body established for the purpose of providing a mechanism for international cooperation in matters relating to the production and sale of wheat, and (2) the Food Aid Convention which commits its parties to provide minimum annual quantities of food to developing countries. Ex. C, 93d-2d. Resolution of ratification agreed to June 21, 1974.

Consular convention with Bulgaria.—Establishes firm obligations on such important matters as free communications between a citizen and his consul, notification of consular officers of the arrest and detention of their citizens, and permission for visits by consuls on those so detained and authorizes the consuls of both countries to perform the customary wide variety of other consular services which contribute to the improvement of both governmental and commercial interaction between countries. Ex. H, 93d-2d. Resolution of ratification agreed to Dec. 16, 1974.

Convention prohibiting bacteriological and toxin weapons.—Seeks to prohibit the development, production, stockpiling, acquisition or retention of

biological agents or toxins, of types and in quantities that have no justification for peaceful purposes, as well as weapons, equipment and means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict. Ex. Q, 92d-2d. Resolution of ratification agreed to Dec. 16, 1974.

Geneva Protocol.—Seeks to prohibit (1) the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials, or devices and, (2) the use of bacteriological methods of warfare. Ex. J, 91st-2d. Resolution of ratification agreed to Dec. 16, 1974.

International Maritime Traffic Convention amendment.—Provides a “tacit amendment” procedure for approving changes in the Annex to the Convention which sets forth the implementing standards and recommended practices for simplifying and making as uniform as possible the documentary and other formalities required of ships on arriving at or clearing ports relating to customs, immigration, public health and other requirements. Ex. D, 93d-2d. Resolution of ratification agreed to Dec. 16, 1974.

