Bill Would Reverse High Court Ruling On Cuban Seizures

By Morton Mintz
Staff Reporter

In an action that escaped general attention, the Senate Foreign Relations Committee has moved to nullify a decision made by the Supreme Court in the most inportant case in international law that it has decided in years.

Last March, the Court held 8 to 1 that it will not examine the legality under international law of actions through which the Cuban government seized assets owned by American citizens.

Exactly three months later, on June 23, Sen. Bourke B. Hickenlooper (R-Iowa) submitted to the Committee an amendment to the House-passed foreign aid bill that would reverse the ruling.

Fulbright Dissents

On July 3 the amendment was approved 13 to 3—but with Committee Chairman J. W. Fulbright (D-Ark.) among the opponents.

Last Friday, the opposition of the Administration was forcefully set out in a volume of hearings released by the Committee.

The Administration is deeply concerned about the amendment's implications for U. S. foreign policy. In addition, important economic stakes are involved. At the time of the Court's ruling, for example, about 50 similar cases, involving millions of dollars, were pending in the Nation's courts.

In effect, the amendment would repeal the "act of state doctrine." In the doctrine's "classic" expression, upon which the Court relied, Chief Justice Melville W. Fuller said in part, in 1897, that "the courts of one country will not sit on the acts of the government of another done within its own territory."

Works Both Ways

National sovereignty, Justice Fuller was saying, must cut both ways. If we would have our courts judge the acts of a foreign government, we cannot consistently protest if the courts of that nation judge acts of the Government of the United States.

Under the Hickenlooper proposal, no court in the United States could invoke this doctrine to refuse to decide on the merits, or on the principles of international law, a suit alleging that an act of a foreign power occurring after Jan. 1, 1959, is contrary to international law. The date coincides with the accession to power of Fidel Castro.

The amendment also provides that no effect be given to acts of a foreign power found to be in violation of international law. The amendment would be inoperative only when the President certifies to a court that American foreign policy interests would be endangered.

In the case that gave rise to the Hickenlooper proposal, Justice John M. Harlan, speaking for the Court, rebuffed a contention that a different decision would strengthen international law. He pointed out that nations disagree sharply on such issues as how expropriation decrees should be executed, and on what constitutes adequate compensation.

Calls Issue Sensitive

"It is difficult to imagine," Justice Harlan said, "the courts of this country embarking on adjudication in an area which touches more sensitively the practical and ideological goals" of other countries.

For citizens seeking redress for seizures of their property, he said, the Executive Branch has "ample powers" of diplomacy and, ultimately, political and economic sanctions.

In an explanation of the amendment, Hickenlooper told the Foreign Relations Committee that the Court's decision "seriously weakens" the leverage of the United States in promoting fair treatment of its investments abroad.

He contended in a memorandum that the decision "creates the possibility that the United States might become an international thieves' market in which the fruits of looted foreign investment could be marketed with impunity."

Government Defends Ruling

The Administration position, stated in a paper prepared for the Committee by the Agency for International Development, concurred fully with the Court decision.

Principal points in the statement included these:

- The Court's ruling "was not a victory for Castro," all of whose assets in this country are frozen, and it was "not a setback for international law. It was merely an exercise of judicial restraint in a highly complex and volatile area."
- If the President were to invoke the "act of state doctrine" in one case but not in another, "he would only invite charges of discrimination by the country involved in the latter case."
- The amendment would force the President to decide if a court ruling on the act of a foreign power was prejudicial to the foreign policy of the United States, not at a time and in a manner of his choosing, but at the choice of private parties to a court case.

If the amendment, which is pending in the Senate, is adopted, it then will be considered in a Senate-House conference on the foreign aid bill. The House version contains no such language.