

Senate, 79 to 5, Reaffirms War Powers of President

By JOHN W. FINNEY JUN 23 1970
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WASHINGTON, June 22—The Senate, modifying its pending Cooper-Church amendment, overwhelmingly acknowledged today that the President, as Commander in Chief, had the power to take certain military actions in Cambodia.

It also moved toward repeal of another document the Tonkin Gulf Resolution, which has been the basic Congressional authority for the American military involvement in Southeast Asia.

The related moves came as the prolonged Cambodian debate in the Senate appeared to be approaching a climax with supporters of the Nixon Administration, until now largely on the defensive, seeking to seize the political initiative.

The Administration forces seemed reconciled to the likelihood that they could not block or substantially modify the proposed Cooper-Church amendment to the foreign military sales bill; the amendment would impose Congressional restrictions on future military activities in Cambodia.

Political Credit Sought

In response, the pro-Nixon forces were seeking to gain political credit for moving to repeal the 1964 Tonkin Gulf Resolution, which was used by President Johnson as authority for stepping up the war effort in Vietnam.

The move to modify the Cooper-Church amendment—perhaps the last such modification before expected passage—was offered by Senator Robert C. Byrd, Democrat of West Virginia and adopted by a vote of 79 to 5. The Senate added to the amendment his provision recognizing that the President, as Commander in Chief, has the constitutional power to take steps to protect the lives of American forces "wherever deployed."

The original amendment—co-

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Senate, in 79-5 Vote, Reaffirms Wartime Powers of the President

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sponsored by Senators John Sherman Cooper, Republican of Kentucky, and Frank Church, Democrat of Idaho—specifies that after July 1 the President cannot spend funds for retaining American forces in Cambodia, for sending American military advisers into Cambodia, for providing financial assistance to "third countries" going to the military assistance of Cambodia or for providing United States air support to Cambodian forces.

The deadline date is the one set by the President for withdrawal from Cambodia.

What substantive effect the change adopted today would have was a matter of interpretation. The opinion expressed most often in the debate was that it was a symbolic statement of principle that would not invalidate the attempt in the Cooper-Church amendment to place Congressional obstacles to a new American military involvement in Cambodia.

Central Issue in Debate

Throughout the six-week debate the central issue—and one raised repeatedly by supporters of the Administration has been whether the Cooper-Church amendment would infringe on the President's powers as Commander in Chief. To meet such objections, the Senate last week added a provision, offered by Senator Mike Mansfield, the majority leader, specifying that nothing in the amendment "shall be deemed to impugn the constitutional power of the President as Commander in Chief."

To this Senator Byrd's text added the language: "including the exercise of that constitutional power which may be necessary to protect the lives of United States armed forces wherever deployed."

Last week also, in what was generally regarded as a rebuff to the Administration, the Senate, by a vote of 52 to 47, rejected a somewhat similar amendment offered by Senator Byrd. To the Cooper-Church forces there was an important distinction between the two.

The first proposal, which would have been attached to an operative provision in the amendment, specified that the prohibition against retaining forces in Cambodia would not prevent such Presidential action as might be necessary to protect the lives and withdrawal of American forces in Vietnam. To the supporters of the Cooper-Church amendment that was an

escape clause that could have given the President a blank check.

The second proposal was interpreted as a statement of principle, making more explicit the general powers referred to in the Mansfield provision. On this interpretation, the second text was accepted by Senators Cooper and Church.

In a news release issued after the vote, Senator Strom Thurmond, Republican of South Carolina, asserted that the addition of the Byrd provision "will substantially invalidate the restrictive effects of the Cooper-Church amendment."

It was clear that the political effect was to make the amendment more acceptable to both sides, including supporters who have been running into allegations by constituents that they were undermining the safety of the American forces.

To Senator J. W. Fulbright, Democrat of Arkansas, and some of the other more outspoken doves, the Byrd proposal represented a politicalize Congress when it votes on Administration requests for funds for Southeast Asian operations.

Senator Fulbright voted against the proposal, as did Senators Charles E. Goodell and Jacob K. Javits, Republicans of New York, and two Democrats, Harold E. Hughes of Iowa and George McGovern of South Dakota. Senator Abraham A. Ribicoff, Democrat of Connecticut, was paired against.

Nixon 'Encouraged'

The Presidential press secretary Ronald L. Ziegler, commenting on the vote, said "The President is encouraged because it seems to recognize the Commander in Chief function of the President."

No sooner was the proposal adopted than Senator Robert J. Dole, a conservative Republican from Kansas who has opposed the Cooper-Church amendment, took his colleagues by surprise by making a move to repeal the Tonkin Gulf Resolution.

Adopted by a near-unanimous vote six years ago after the United States said its warships had been attacked by North Vietnamese patrol boats, the resolution gives Congressional approval and support to "the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression" in Southeast Asia.