

The Senate Restates Its War Powers

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The Senate adopted an amendment yesterday reaffirming the exclusive powers of Congress to declare war and regulate the armed forces.

The amendment was approved, 73 to 0.

The provision stated that nothing in the proposed Cooper-Church amendment "shall be deemed to impugn the constitutional powers of the Congress including the power to declare war and make rules for the government and regulation of the armed forces of the United States."

The amendment was submitted by Senator Jacob K. Javits (Rep.-N.Y.) and is designed to clarify the Cooper-Church amendment which would limit the President's power to undertake future military activities in Cambodia.

As a general statement of the war making powers of the Congress, no member of the Senate was prepared to oppose the Javits amendment, adopted after only half an hour of debate.

Senator Robert P. Griffin of Michigan, who as assistant Republican leader has led the prolonged fight against the Cooper-Church amendment, commented: "To vote against the Javits amendment is to vote against the Constitution of the United States."

PURPOSE

But the real purpose of the Javits amendment was to neutralize an earlier amendment supported by the Republican opponents of the Cooper-Church proposal and approved by the Senate.

That amendment, offered by Senator Robert C. Byrd (Dem.-W. Va.), stated that nothing in the Cooper-Church amendment shall be deemed to impugn the constitutional power of the President as Commander-in-Chief, "including the exercise of that constitutional power which may be necessary to protect the lives of U.S. forces wherever deployed."

As one senator supporting the Javits parliamentary ploy put it: "We are using one meaningless amendment to make meaningless another meaningless amendment."

When the Byrd amendment was adopted earlier this

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week, it was subject to conflicting interpretations as to whether it weakened the effectiveness of the Cooper-Church amendment.

The Cooper-Church amendment to a foreign military sales bill would preclude the President after July 1 from spending any funds for "retaining" American Forces in Cambodia, for providing financial assistance to third-country forces, such as Thailand, for going to the military aid of Cambodia, or for providing U.S. combat air support to Cambodian forces without the approval of Congress. The amendment is co-sponsored by Senators John Sherman Cooper (Rep.-Ky.) and Frank Church (Dem.-Idaho).

The Cooper-Church forces interpreted the Byrd provision as merely a statement of the acknowledged powers of the President as Commander-in-Chief and thus not as interfering with the prohibitions laid down in their amendment.

But some Republicans interpreted the Byrd amendment as granting the President a waiver from the amendment if he thought certain actions were necessary in Cambodia in the protection of American Forces.

To the consternation of his dovish colleagues, this interpretation was seconded at one point by Senator J. W. Fulbright, the chairman of the Senate Foreign Relations committee, who contended that the Byrd Amendment, coupled with repeal of the Tonkin Gulf resolution, would have the effect of giving the President a "blank check" to do whatever he wanted to do in Southeast Asia under his powers as commander-in-chief.

In introducing his provision, Javits explained that his purpose was to "balance off the potentially prejudicial nature" of the Byrd provision.

As a result of the Javits move, the Cooper-Church forces felt they were riding high again, with their amendment intact and heading for adoption by the Senate next Tuesday.

The Administration, however, will make one last attempt to modify the amendment by seeking to eliminate the prohibition against providing financial assistance to foreign troops or advisers going to the aid of Cambodia.