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June 20, 1970

STATEMENT OF SENATOR MIKE MANSFIELD (D., MONTANA) FOR DELIVERY IN THE SENATE

COPY

ON MONDAY, JUNE 22, 1970

The issue which confronts the Senate is not one to be resolved by
lawyers' arguments. What we face is the question of the war in Indochina.
Cooper-Church is an attempt to make a congressional contribution to curbing
the U. S. involvement in that war. No additives will alter that intent.

The prolonged debate has had its uses. It would be my hope, however,
that the Senate will not spend the next several weeks in trying to determine
how many angels can stand on the head of a pin. The Senate ought not to
waste daylight hours in pursuing Constitutional apparitions in this legislation.
Indeed, if there were any such ghosts, they should have long since been driven
away by the Mansfield amendment which was adopted unanimously several days ago.
At that time, the Senate made clear that Cooper-Church did not in any way impugn
the Constitutional powers of the President.

The proposed Byrd-Griffin amendment now seeks to specify this disavowal
with reference to one of the Constitutional powers of the President, that of
Commander-in-Chief of the Armed Forces. I do not know that it hurts to make
this specification but I do not know that it adds very much. It may, of course,
serve to reassure, if reassurance is necessary, that the Senate meant what it
said when it asserted that Cooper-Church does not impugn the Constitutional
powers of the Presidency.

It would be possible, I suppose, to go on in that fashion and specify
all of the President's Constitutional powers. We could say, for example, that
not only are the President's powers as Commander-in-Chief not impugned by
Cooper-Church but neither are his powers to make treaties, to grant pardons or
to nominate ambassadors and other officers of the government.
We could do so although the necessity for any such reference is obviously debatable. Indeed, how could the President’s Constitutional powers be superceded by any act of the Congress? How can any act of the Congress supersede the Constitution?

The separate powers of each branch stand as a Constitutional barricade against the arbitrary, unilateral acts of the other—the Constitutional powers of the Presidency against the Congress and the Constitutional powers of the Congress against the Presidency. No act of the Congress can change or alter that Constitutional bedrock.

Cooper-Church is not concerned with the Constitutional powers of the Presidency. Cooper-Church is an assertion of the Constitutional responsibility of the Senate and the Congress with regard to the war in Indo-China and its evolving course. Cooper-Church seeks to reinforce the President’s own expressed desire to avoid the spread of the Vietnamese war or a prolongation or repetition of the Cambodian adventure.

Cooper-Church does not and, I reiterate, cannot intrude on the Constitutional powers of the President, as Commander-in-Chief to direct U. S. forces wherever they are situated. Before Cooper-Church was even suggested, American forces had air-bombed Cambodian border areas under that Presidential authority. Under the same authority, Commanders of U. S. forces along the Vietnamese border had been given permission to cross the Cambodian border in hot pursuit and for similar purposes of self-protection. These orders were followed under the previous Administration as well as under the present Administration.
I have questioned policies which have placed American forces in such an exposed position in Viet Nam as to necessitate U. S. bombing or hot pursuit across an international border in order to try to protect them. However, I have not nor has the Senate questioned the President's Constitutional authority as Commander-in-Chief, to give those orders.

By contrast, there are grave doubts as to the Constitutional authority of the Executive Branch, unilaterally, to establish a course of action which produces a prolonged, vague and indefinite military commitment—direct or indirect—in any other country without the concurrence of the Congress. That is what the Senate, in effect, has already declared by overwhelming vote in the National Commitments Resolution. That is what Cooper-Church makes clear with regard to Cambodia. The Mansfield amendment which has already been adopted, does not negate that purpose. The Byrd-Griffin amendment to the Mansfield amendment would not affect that fundamental assertion. Nor, in my judgment, should any amendment be permitted to nullify that intent.