

STATEMENT OF U.S. SENATOR BOB DOLE
ON THE SENATE FLOOR
JUNE 19, 1970

~~SECRET~~ ~~CONFIDENTIAL~~
474

FOR RELEASE UPON DELIVERY

Mr. President:

For several weeks the Senate has debated the meaning of the Cooper-Church Amendment to the Foreign Military Sales Act. There have been many attempts to further alter the proposal to assure that its meaning is in congruence with the spirit and letter of the Constitution. Now, after listening to hours of debate on the measure, it seems reasonable to conclude that the differences between proponents and opponents are at most, minimal, and perhaps nonexistent.

Since the debate commenced on May 13 those who opposed this legislation in part, as an unwarranted challenge to Presidential authority have sought a full explanation of the true intent of the sponsors of the proposal. After reviewing the legislative history of the amended Cooper-Church Amendment, I have concluded that many of the original implications in the language of the amendment have been resolved in favor of preserving the Constitutional powers of the Commander-in-Chief.

As debate proceeded the proponents and opponents have recognized the Constitutional powers of the Chief Executive. They have recognized the necessity of upholding the President's power to protect American forces in Southeast Asia. In accordance with this determination, the distinguished Senator from Montana (Mr. Mansfield) stated on June 9 that: "The President has unilateral Constitutional powers as Commander-in-Chief to take measures to protect the lives of U.S. Servicemen, not only in Vietnam, but also U.S. citizens, including servicemen, anywhere in the world. He does not need Congressional sanction for that purpose because he already has the power, authority and responsibility." The Senator from Idaho (Mr. Church) affirmed on June 10 that

(1) "The Cooper-Church amendment does NOT prevent the U.S. airpower from attacking the sanctuary areas"; (2) "retaliation or protection reaction...in response to enemy attacks originating from across the border, is NOT prohibited"; (3) "Hot pursuit of enemy forces, which cross into Cambodia, is not barred."

Mr. President, the proponents have gone further. On June 11 the Senator from Idaho, when questioned about an intrusion into Cambodia for the protection of American forces, answered that "Whatever authority the President has" in that regard "would be unaffected" by the Cooper-Church amendment. This would include, the Senator from Idaho affirmed, "Air strikes and other military or tactical maneuvers, not simply those limited to the use of ground troops."

During the same exchange between the Senator from Idaho and the junior Senator from Kansas, the Senator from Idaho said: "The legislative history of the amendment makes it clear that the Amendment does not attempt to reach the use of American airpower for the protection of our own forces, the interdiction of supplies, OR FOR ANY PURPOSE OTHER THAN A PURPOSE RELATED TO THE SUPPORT OF CAMBODIAN FORCES." And on June 2, the Senator from Kentucky (Mr. Cooper) agreed that the amendment "provides that air power can be used -- as well as artillery across the border" -- again referring to the protection of American forces.

The Senator from Idaho had stated earlier, on May 26, that "Nothing in the amendment prevents the transfer of weapons to the Cambodian Government if the President should see fit to do so." In fact, the Senator and other proponents of Cooper-Church have said, as does the language of the Mansfield Amendment as adopted, that the measure does not deny the President ANY of his powers to protect American forces. Further, the Senator from Idaho has said that the Cooper-Church Amendment is prospective in nature. It does not, the Senator has admitted, question the Constitutionality of President Nixon's limited operation in Cambodia.

Indeed, the original proponents of the Cooper-Church Amendment have gradually admitted the Constitutionality of the President's action. They have realized, after weeks of discussion, the futility of attempting an itemized list of the President's powers under the Constitution. Furthermore, they have agreed that the President's powers to protect Americans cannot be impaired in the future -- whether he order air support, artillery, or ground pursuit.

On June 11 an amendment to the Cooper-Church Amendment offered by the distinguished Senator from West Virginia (Mr. Byrd) was defeated by a vote of 47-52. It addressed itself to the power of the President to retain United States forces if necessary to protect American forces in South Vietnam. The Senate did not accept this provision. Both the Senator from Kentucky and the Senator from Idaho -- the principal co-sponsors of the Cooper-Church Amendment -- voted against the Byrd Amendment.

Now, many who helped defeat the original Byrd Amendment are apparently having second thoughts. The people of America are saying: "Support the determination and right of the President to protect American lives. Don't tie the President's hands." Many Senators, who voted against the more limited Byrd Amendment on June 11, are now showing a favorable inclination toward the new broader Byrd Amendment (Number 703). Unlike the original amendment proposed by the Senator from West Virginia, which applied to South Vietnam alone, the pending amendment reaffirms the President's Constitutional power to safeguard American forces, wherever in the world they may be deployed.

Mr. President, this is an important affirmation of the President's Constitutional powers. And the American people strongly support such an affirmation. Americans are encouraging the Senate's support of the President's determination to protect American forces in whatever manner he, as Commander-in-Chief, deems appropriate.

I hope a majority of this body supports the pending amendment.
For its adoption will bring us one step closer to final agreement
on the Foreign Military Sales Act.