

Chapter CLXXXII.¹

PREROGATIVES OF THE HOUSE AS TO FOREIGN RELATIONS.

1. House asserts right to a voice as to foreign relations. Section 326.
 2. Conflicts with the Executive as to diplomatic relations. Section 327.
 3. Expressions as to events abroad. Sections 328, 329.
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326. Instance wherein the House declared its attitude on a question of foreign policy and expressed its readiness to participate in the enactment of legislation relative thereto.

Discussion of the prerogatives of the House in relation to treaties, commercial and otherwise, and its obligation in the enactment of supplementary legislation.

While conceding that its prerogative relative to participation in foreign relations has not been definitely established, the House asserted its right to originate legislation relating to foreign affairs upon which the injunction of secrecy is not imposed and questions appertaining to an international judiciary in particular.

The participation by the United States in a World Court of International Justice is a subject within the jurisdiction of the Committee on Foreign Affairs.

On February 24, 1925,² Mr. Theodore E. Burton, of Ohio, from the Committee on Foreign Affairs, to which had been referred various resolutions relating to the World Court of International Justice, reported as a substitute for such resolutions the following:

Whereas a World Court, known as the Permanent Court of International Justice, has been established and is now functioning at The Hague; and

Whereas the traditional policy of the United States has earnestly favored the avoidance of war and the settlement of international controversies by arbitration or judicial processes; and

Whereas this court in its organization and probable development promises a new order in which controversies between nations will be settled in an orderly way according to principles of right and justice: Therefore be it

Resolved, That the House of Representatives desires to express its cordial approval of the said court and an earnest desire that the United States give early adherence to the protocol establishing the same, with the reservations recommended by President Harding and President Coolidge.

Resolved further, That the House expresses its readiness to participate in the enactment of such legislation as will necessarily follow such approval.

¹Supplementary to Chapter XLIX.

²Second session Sixty-eighth Congress, House Report No. 1569.

The committee, in addition to citing the resolutions upon which the substitute was predicated, thus affirm their further right to jurisdiction over the subject:

A recommendation of President Coolidge for membership in the court was contained in his messages to Congress of December 6, 1923, and December 3, 1924, and so much of that message as related to foreign affairs, including that recommendation, was referred to the House Committee on Foreign Affairs, thus giving to this committee a jurisdiction upon this subject.

After discussing at length various methods employed for the prevention of war, and the constitution and function of the Permanent Court of International Justice, with reasons for and against the participation of the United States therein, the report thus treats of the right of the House to participation in foreign relations:

The importance of the pending proposition renders it desirable to consider what action by the House of Representatives is right and proper in participation in foreign relations. This has been the subject of frequent discussion ever since the formation of the Government. It has been maintained on the one hand that a treaty presented by the President and duly ratified by the Senate is final and binding and that the House is under obligation to adopt the necessary legislation to carry it into effect. This view was maintained by President Washington; by Alexander Hamilton; by Mr. Ellsworth, a delegate to the Federal Convention of 1787, afterwards Chief Justice; by Chancellor Kent; by Mr. Caleb Cushing, Attorney General, in interpreting a treaty with Great Britain in 1854. In support of this view it is stated that, when it was proposed in the Federal Convention by Mr. James Wilson, that the words "and the House of Representatives" be added to the constitutional provision requiring the advice and consent of the Senate, the motion received only the support of one State, that of Pennsylvania. And on this subject Mr. Crandall, in his review of the discussions of the convention concluded: "From these debates it appears that the House was excluded from participation in the making of treaties by the framers of the Constitution with the understanding that treaties were to have the force of law." It is even conceded that a treaty, if valid and binding, supersedes a statute.

The opposite view to the effect that action by the House is necessary, at least whenever the agreements contained in the treaty are executory in their nature, was maintained by Mr. Jefferson; by Mr. Madison; by Mr. Calhoun when a member of the House of Representatives, though he expressed a different opinion when Secretary of State in 1844; by Mr. Clay; and Mr. Blaine.

This right, the report concedes, can not be regarded as having been as yet definitely settled, and classifies the controversies which have given rise to discussions of the issue as those (1) relating to the binding force of treaties involving expenditures from the Treasury; (2) affecting revenue legislation or the raising or lowering of duties; and (3) touching regulations of commerce with foreign nations.

As to treaties involving expenditures, the report says:

Among the disputed questions that have arisen throughout the controversy has been the one relating to the binding force of treaties which involve expenditures from the Treasury. Upon this it is contended that the House, claiming the initiative in the making of appropriations, and being one of the constituent branches of Congress, can by refusal nullify any treaty that has been made. In practically every instance in which a treaty has involved a payment of money, the President has sent a message to the House of Representatives in which the necessity for an appropriation is set forth. Special mention should be made of that for the Louisiana Purchase in 1803; for the purchase of Alaska in 1867, which required a payment of \$7,200,000 in gold; for the payment of \$20,000,000 for the Philippines under the treaty with Spain, ratified February 6, 1899; for the treaty of November 18, 1903, with Panama, providing a payment of \$10,000,000 and further payment of \$250,000 per annum, and very recently the treaty with Colombia involving payment of \$25,000,000. In several instances the appropriation has been voted before the presentation of the treaty.

As to treaties affecting revenue:

A more serious controversy has arisen over another class of treaties affecting revenue legislation or the raising or lowering of duties. In these treaties a condition has often been inserted to the effect that the changes provided in the proposed treaty should not become effective without the concurrence of Congress. This has especially been true, beginning in 1854, with the treaty with Great Britain for reciprocity with Canada, followed by that with Hawaii in 1875 and then by the treaty with Cuba in 1902, in all of which there were regulations as to duties, and a provision was inserted that the treaty must be approved by Congress. In section 3, of the tariff act of 1897, there is a general authority given to the President to enter into reciprocal commercial conventions with other countries under specified conditions. The proposed reciprocity treaty with Canada in 1911, which failed because of the non-concurrence of Canada, was submitted to Congress for approval. The necessity of the concurrence by the House in such cases has been very generally asserted by that body and acquiesced in by the Senate. Among numerous other questions there has been much discussion as to whether territory can be acquired or ceded by treaty without action of Congress. There seems to have been no agreement on this point in any debate which has occurred in Congress.

As to treaties regulating commerce:

Questions as to limitations upon treaty-making power may be raised also on regulations of commerce with foreign nations—Article I, clause 3, of the Constitution, the naturalization of aliens, and agreements to engage in war or refrain from it, and in regard to limitations on the size of the Navy. The Constitution contains clauses in regard to all these subjects giving authority to Congress. The uniform course of the House, however, has been to pass the necessary legislation to carry treaties into effect.

While it is not argued that the House should act upon all treaties or upon slight occasion, yet, because it may be deemed to express the preferences of the people represented more adequately than any other body, there is not only a right but a duty to express itself upon certain important international policies. It will be observed that the question of the right of the House to take action is in this instance affected by the fact that two successive Presidents have, in communications to the Senate, or by messages to the Congress, urged adherence to the court.

The report then enumerates chronologically precedents since the establishment of the Government for action by the House upon the resolution reported, and concludes:

It seems clear that, by a resolution originating in the House, adherence to the World Court could be secured by legislation, though such a method is subject to the palpable objection that negotiations with numerous powers for acceptance of reservations would be necessary and thus the ordinary methods by treaty are altogether preferable.

Policies of the Nation, both foreign and domestic, are supposed to be expressive of the opinions of the people. Treaties and foreign relations are no exception to this rule.

The constitutional provision for the advice and consent of one of the two Houses of Congress is largely based upon the necessity for secrecy and dispatch. No injunction of secrecy has been imposed upon the recommendation for a World Court and as regards dispatch, only one day less than two years has elapsed since it was presented to the Senate by President Harding.

It is not assumed that all the statements and expressions of opinion contained in this report are approved by all the members of the Committee on Foreign Affairs, but the committee, after extended hearings and most careful consideration, recommend the passage of the resolution.

On March 3,¹ on motion of Mr. Burton, after debate, the rules were suspended and the resolution was agreed to, yeas 303, nays 28.

¹Record, p. 5404. Journal, p. 383.

327. In 1920 the Senate requested the concurrence of the House in a resolution proposing to restrict the power of the President in the negotiation of foreign affairs.

On June 1, 1920,¹ after extended debate, the Senate passed and transmitted to the House for concurrence the concurrent resolution of the Senate (S. Con. Res. 27) providing:

Resolved by the Senate (the House of Representatives concurring), That the Congress hereby respectfully declines to grant to the Executive the power to accept a mandate over Armenia as requested in the message of the President dated May 24, 1920.

In the House the resolution was by the Committee on Foreign Affairs reported² without amendment, and referred to the Committee of the Whole. No further action was taken by the House.

328. Instance wherein a committee of the House reported a resolution declaring the attitude of the United States on a question of foreign policy.

On February 3, 1911,³ Mr. John N. Garner, of Texas, from the Committee on Foreign Affairs, reported the following resolution:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following resolution adopted by a unanimous vote of the Trans-Mississippi Commercial Congress, at San Antonio, Texas, November twenty-fourth, nineteen hundred and ten, be, and hereby is, commended to the President of the United States, and his action in accordance with the sentiment of the resolution is earnestly requested:

Whereas in the opinion of the Trans-Mississippi Commercial Congress, now in convention, the peace and the commercial development of the American Continent would be more certainly and speedily secured if the various South, Central, and North American Governments were reasonably assured against the forced permanent loss of territory as a consequence of war or otherwise: Therefore be it

Resolved, That the President and the Secretary of State of the United States be requested to enter into negotiations for the making of a treaty that will forever quiet the territorial titles of the various American States; and be it further

Resolved, That this Congress heartily indorses the idea of the arbitration of all international disputes and their settlement, if necessary, in the great peace court of the world at The Hague."

This resolution was referred⁴ to the Committee of the Whole House.

329. In 1916 the House originated and the Senate agreed to a measure authorizing the President to invite a conference of Governments of the world to consider the establishment of a Court of Arbitration.

On May 24, 1916,⁵ the Committee on Naval Affairs reported as a part of the naval appropriation bill the following:

Upon the conclusion of the war in Europe, or as soon thereafter as it may be done, the President of the United States is authorized to invite all the great Governments of the world to send

¹Second session, Sixty-sixth Congress, Record, p. 8073.

²House Report No. 1101.

³Third session Sixty-first Congress, House Report No. 2057.

⁴Record, p. 1930; Journal, p. 252.

⁵First session Sixty-fourth Congress, Record, p. 9143.

representatives to a conference which shall be charged with the duty of suggesting an organization, court of arbitration, or other body, to which disputed questions between nations shall be referred for adjudication and peaceful settlement, and to consider the question of disarmament and submit their recommendation to their respective Governments for approval. The President is hereby authorized to appoint nine citizens of the United States, who shall be qualified for the mission by eminence in the law and by devotion to the cause of peace, to be representatives of the United States in such a conference.

This provision remained unchanged in the passage of the bill by the House. The Senate added an amendment declaring it the policy of the United States to adjust international disputes through arbitration that war might be honorably avoided.

The House having concurred in the amendment, the bill carrying the provision as amended was approved¹ by the President.

¹39 Stat. L., p. 618.