

## § 10. Vietnam Era Restrictions on Military Activity

As debate over American involvement in Indochina intensified following the 1968 elections, Congress, exercising its constitutional authority to raise and support armies,<sup>(9)</sup> imposed restrictions on the obligation and expenditure of funds relating to military activity in Vietnam and neighboring areas. These restrictions, which were placed in authorization<sup>(10)</sup> as well as appropriation bills,<sup>(11)</sup> in some instances prohibited obligation or expenditure of funds in particular countries after a fixed date,<sup>(12)</sup> and in other instances did not specify such a date.<sup>(13)</sup>

The precedents in this section comprise a few examples of the many initiatives undertaken by Congress in response to the Vietnam crisis.

### Collateral References<sup>(14)</sup>

Bickel, Alexander M. *The Constitution and the War*. 54 *Commentary* 49 (July 1972).

9. U.S. Const. art. I, §8, clause 12.
10. §§ 10.2, 10.3, *infra*.
11. §§ 10.1, 10.4, *infra*.
12. §§ 10.4, 10.5, *infra*.
13. §§ 10.1–10.3, *infra*.
14. The articles in this section relate to military involvement during the Vietnam era. See collateral ref-

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erences in §3, *supra*, war powers generally, and §4, *supra*, War Powers Act, for other articles relating to those subjects.

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### ***Prohibition of American Forces in Laos or Thailand***

**§ 10.1 The Department of Defense appropriations bill for fiscal year 1970 was amended to prohibit use of funds to finance introduction of ground combat troops into Laos or Thailand.**

On Dec. 15, 1969,<sup>(15)</sup> the Senate by a vote of yeas 73, nays 17, agreed to an amendment offered by Senator Frank Church, of Idaho, to House bill 15090, making appropriations for the Department of Defense for the fiscal year

15. 115 CONG. REC. 39168, 39172, 91st Cong. 1st Sess.

ending June 30, 1970. The provision appeared in the bill approved by the President in the following form:<sup>(16)</sup>

Sec. 643. In line with the expressed intention of the President of the United States, none of the funds appropriated by this Act shall be used to finance the introduction of American ground combat troops into Laos or Thailand.

Because it was a substitute for an amendment offered by Senator John Sherman Cooper, of Kentucky, this provision came to be known as the Cooper-Church amendment.

### ***Prohibition of Military Support for Cambodia and Laos***

**§ 10.2 A bill authorizing appropriations for military procurement for fiscal year 1971 was amended to prohibit use of funds to support Vietnamese or other freeworld forces in actions designed to provide military support and assistance to the Government of Cambodia or Laos.**

On Aug. 21, 1970,<sup>(17)</sup> the Senate by voice vote agreed to amend-

16. 83 Stat. 469, 487, 91st Cong. 1st Sess. (Pub. L. No. 91–171).

17. 116 CONG. REC. 29686, 29688, 91st Cong. 2d Sess. See also 116 CONG. REC. 29572–83, 91st Cong. 2d Sess., Aug. 20, 1971, for debate on amend-

ment No. 812, ordered by Senator J. William Fulbright, of Arkansas, to H.R. 17123, to authorize appropriations for military procurement for the fiscal year 1971. The provision appeared in the form passed by the Senate<sup>(18)</sup> in the bill approved by the President on Oct. 7, 1970.<sup>(19)</sup>

ment No. 812; and 116 CONG. REC. 34580-602, 91st Cong. 2d Sess., Oct. 1, 1970, for debate on and approval of the conference report in the Senate.

- 18.** See 116 CONG. REC. 33924, 33925, 33933, 91st Cong. 2d Sess., Sept. 28, 1970, for the text of the House conference report, H. Rept. No. 91-1473, which states that the House conferees agreed to the Senate amendment and deleted the words "in Vietnam" after the words "and other free world forces" and before the words "and local"; and 116 CONG. REC. 34149, 34161, 34162, 91st Cong. 2d Sess., Sept. 29, 1970, for House approval of the conference report by a vote of yeas 341, nays 11, not voting 77.
- 19.** This excerpt is taken from 84 Stat. 905, 910, 91st Cong. 1st Sess. (Pub. L. No. 91-441). The italicized sentence is the Fulbright amendment. amended, is hereby amended to read as follows:

## AN ACT

To authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to authorize real estate acquisition and construction at certain installations in connection with the Safeguard anti-ballistic missile system, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled . . .*

Sec. 502. Subsection (a) of section 401 of Public Law 89-367, approved March 15, 1966 (80 Stat. 37), as

"(a) (1) Not to exceed \$2,800,000,000 of the funds authorized for appropriation for the use of the Armed Forces of the United States under this or any other Act are authorized to be made available for their stated purposes to support: (A) Vietnamese and other free world forces in support of Vietnamese forces, (B) local forces in Laos and Thailand; and for related costs, during the fiscal year 1971 on such terms and conditions as the Secretary of Defense may determine. None of the funds appropriated to or for the use of the Armed Forces of the United States may be used for the purpose of paying any overseas allowance, per diem allowance, or any other addition to the regular base pay of any person serving with the free world forces in South Vietnam if the amount of such pay-

ment would be greater than the amount of special pay authorized to be paid, for an equivalent period of service, to members of the Armed Forces of the United States (under section 310 of title 37, United States Code) serving in Vietnam or in any other hostile fire area, except for continuation of payments of such additions to regular base pay provided in agreements executed prior to July 1, 1970. *Nothing in clause (A) of the first sentence of this paragraph shall be construed as authorizing the use of any such funds to support Vietnamese or other free world forces in actions designed to provide military support and assistance to the Governments of Cambodia or Laos.*"

***Prohibition of American Ground Forces From Cambodia***

**§ 10.3 The Special Foreign Assistance Act of 1971 was amended to prohibit use of funds to finance introduction of United States ground combat troops into Cambodia, or to provide United States advisers to or for Cambodian military forces in Cambodia, and to assert that American military and economic assistance should not be construed as a commitment by the United States to Cambodia.**

On Dec. 16, 1970,<sup>(20)</sup> the Senate by a vote of yeas 72, nays 22,

**20.** 116 CONG. REC. 41788, 91st Cong. 2d Sess. See also 116 CONG. REC 41616,

agreed to strike out all after the enacting clause of the Special Foreign Assistance Act of 1971, H.R. 19911, which had been approved by the House, and insert an amendment, described above, reported from the Committee on Foreign Relations. The provisions<sup>(1)</sup> became law when approved by the President on Jan. 5, 1971, in the same form as the Senate amendment:<sup>(2)</sup>

AN ACT

To provide additional foreign assistance authorizations, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Special Foreign Assistance Act of 1971". . . .

Sec. 7. (a) In line with the expressed intention of the President of the

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91st Cong. 2d Sess., Dec. 15, 1970, for the text of the amendment from the Committee on Foreign Relations; and 116 CONG. REC. 43221-23, 91st Cong. 2d Sess., Dec. 22, 1970, for Senate approval of the conference report by a vote of yeas 41, nays 20.

1. See 116 CONG. REC. 43133, 43134, 91st Cong. 2d Sess., Dec. 21, 1970; and 116 CONG. REC. 43342, 43343, 91st Cong. 2d Sess., Dec. 22, 1970, for the text of and House approval of the conference report in the House, respectively.
2. This excerpt is taken from 84 Stat. 1942, 1943, 91st Cong. 2d Sess. (Pub. L. No. 91-652).

United States, none of the funds authorized or appropriated pursuant to this or any other Act may be used to finance the introduction of the United States ground combat troops into Cambodia, or to provide United States advisers to or for Cambodian military forces in Cambodia.

(b) Military and economic assistance provided by the United States to Cambodia and authorized or appropriated pursuant to this or any other Act shall not be construed as a commitment by the United States to Cambodia for its defense.

***Prohibition of Military Funds After Fixed Date***

**§ 10.4 A House joint resolution continuing appropriations for the fiscal year 1974 was amended to prohibit after a fixed date obligation or expenditure of funds to finance combat activities by United States military forces in, over, or off the shores of North Vietnam, South Vietnam, Laos, or Cambodia.**

On June 29, 1973,<sup>(3)</sup> during consideration of House Joint Resolu-

3. 119 CONG. REC. 22305, 22325, 22326, 93d Cong. 1st Sess. See also 119 CONG. REC. 22603, 22604, 93d Cong. 1st Sess., June 30, 1973, for Senate agreement to the conference report. Senate and House conferees agreed to modify the language of this amendment from “. . . no funds herein, heretofore or hereafter appro-

tion 636, the Senate agreed to an amendment, described above, offered by Senator J. William Fulbright, of Arkansas, on behalf of the Committee on Foreign Relations. The joint resolution as amended<sup>(4)</sup> was approved by the President on July 1, 1973.<sup>(5)</sup>

Joint Resolution making continuing appropriations for the fiscal year 1974, and for other purposes.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

The following sums are appropriated out of any money in the Treasury not otherwise appropriated and, out of applicable corporate or other revenues, receipts, and funds, for the several de-

priated . . .” in the version which originally passed the Senate to “. . . no funds herein or heretofore appropriated . . .” in the version approved by the President.

4. See 119 CONG. REC. 21306, 21309, 21315, 21319, 21320, 93d Cong. 1st Sess., June 26, 1973, for House approval of a substitute amendment offered by Mr. George H. Mahon (Tex.), as amended by an amendment offered by Mr. Clarence D. Long (Md.), prohibiting expenditure of funds under H.J. Res. 636 to support combat activities in, over, or off the shores of Cambodia or Laos. See also 119 CONG. REC. 22632-37, 93d Cong. 1st Sess., June 30, 1973, for House approval of the conference report, H. Rept. No. 93-364.
5. This excerpt is taken from 87 Stat. 130, 93d Cong. 1st Sess. (Pub. L. No. 93-52).

partments, agencies, corporations, and other organizational units of the Government for the fiscal year 1974, namely:

Sec. 108. Notwithstanding any other provision of law, on or after August 15, 1973, no funds herein or heretofore appropriated may be obligated or expended to finance directly or indirectly combat activities by United States military forces in or over or from off the shores of North Vietnam, South Vietnam, Laos or Cambodia.

***Prohibition of Military Involvement After Fixed Date***

**§ 10.5 The Senate and House agreed to a conference report (on the Department of State Appropriations Authorization Act of 1973) which included a provision prohibiting, after a fixed date, obligation or expenditure of funds to finance involvement of United States military forces in hostilities in, over, or off the shores of North Vietnam, South Vietnam, Laos, or Cambodia, or to provide assistance to North Vietnam, unless specifically authorized by Congress.**

On Oct. 10, 1973, the Senate<sup>(6)</sup> and House<sup>(7)</sup> by voice vote agreed

- 6. See 119. 33577, 33578, 93d Cong. 1st Sess., for Senate approval of the conference report.
- 7. See 119 CONG. REC. 33609, 93d Cong. 1st Sess., for House approval;

to the conference report (H. Rept. No. 93-563) to H. R. 7645, the Department of State Appropriations Act of 1973. The report included a provision prohibiting, after Aug. 15, 1973, obligation or expenditure of funds as described above. This provision, which originated in the Senate as an amendment by the Committee on Foreign Relations to S. 1248,<sup>(8)</sup> was approved by the President on Oct. 18, 1973, in the following form:<sup>(9)</sup>

DEPARTMENT OF STATE APPROPRIATIONS AUTHORIZATION ACT OF 1973

\* \* \* \* \*

An Act to authorize appropriations for the Department of State, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

and 119 CONG. REC. 33413-15, 93d Cong. 1st Sess., Oct. 9, 1973, for text of the conference report.

- 8. See 119 CONG. REC. 18901-03, 93d Cong. 1st Sess., June 8, 1973, for the text of this amendment, which did not set a date certain but instead made the prohibition effective ". . . upon enactment of this Act. . . ." The date was established in conference. On June 14, 1973, the Senate struck all after the enacting clause of H.R. 7645, and substituted the provisions of S. 1248 (119 CONG. REC. 19648, 93d Cong. 1st Sess.).
- 9. This excerpt is taken from 87 Stat. 451, 93d Cong. 1st Sess. (Pub. L. No. 93-126).

This Act may be cited as the “Department of State Appropriations Authorization Act of 1973” . . .

REQUIREMENTS FOR CONGRESSIONAL AUTHORIZATION FOR THE INVOLVEMENT OF AMERICAN FORCES IN FURTHER HOSTILITIES IN INDOCHINA, AND FOR EXTENDING ASSISTANCE TO NORTH VIETNAM

Sec. 13. Notwithstanding any other provision of law, on or after August 15, 1973, no funds heretofore or hereafter appropriated may: be obligated or expended to finance the involvement of United States military forces in hostilities in or over or from off the shores of North Vietnam, South Vietnam, Laos, or Cambodia, unless specifically authorized hereafter by the Congress. Notwithstanding any other provision of law, upon enactment of this Act, no funds heretofore or hereafter appropriated may be obligated or expended for the purpose of providing assistance of any kind, directly or indirectly, to or on behalf of North Vietnam, unless specifically authorized hereafter by the Congress.

## § 11. Receipt of Presidential Messages

The precedents in this section are limited exclusively to written or oral statements officially received by Congress. Presidential statements made to the public at large through the media are not included.

### *Request for Declaration of War on Japan*

#### **§ 11.1 The President addressed a joint session of Congress to announce the Japanese attack on Pearl Harbor and request a declaration of war.**

On Dec. 8, 1941,<sup>(10)</sup> President Franklin D. Roosevelt addressed a joint session of Congress to announce the Japanese attack on Pearl Harbor and request a declaration of war.<sup>(11)</sup>

ADDRESS BY THE PRESIDENT (H. DOC. NO. 453)

The address delivered by the President of the United States to the joint meeting of the two Houses of Congress held this day is as follows:

*To the Congress of the United States:*

Yesterday, December 7, 1941—a date which will live in infamy—the United States of America was suddenly and deliberately attacked by naval and air forces of the Empire of Japan. . . .

I believe I interpret the will of the Congress and of the people when I assert that we will not only defend ourselves to the uttermost but will make very certain that this form of treachery shall never endanger us again.

Hostilities exist. There is no blinking at the fact that our people, our

10. 87 CONG. REC. 9519, 9520, 77th Cong. 1st Sess. The message was referred to the Committee on Foreign Affairs.

11. See §6.1, *supra* (House declaration), and §7.1, *supra* (Senate declaration).