

45

34

~~CONFIDENTIAL~~

August 5, 1964

LEGAL QUESTIONS AND ANSWERS ON THE
GULF OF TONKIN

QUESTION: Have U.S. actions in South Viet-Nam been consistent with our obligation under international law and the UN Charter not to threaten or use force against other States?

ANSWER: (1) South Viet-Nam is entitled under international law to ask for aid to maintain its existence in the face of foreign-supported aggression.

(2) The Government of the Republic of South Viet-Nam has asked for United States assistance to preserve its territorial integrity and political independence.

(3) The United States is legally entitled to respond to such a call.

QUESTION: Are U.S. military vessels entitled to be in the Gulf of Tonkin?

ANSWER: (1) The Gulf of Tonkin is recognized to be a part of the high seas. Accordingly, our vessels are entitled under international law to cruise in these waters.

(2) Our vessels have remained beyond the three-mile limit of areas which border the Gulf of Tonkin. We have not in any way violated the territorial integrity of any State or regime in the area.

~~CONFIDENTIAL~~

DECLASSIFIED

Authority STATE letter APR 9 1979
By isg, NARS, Date 7-30-79

~~CONFIDENTIAL~~

- 2 -

QUESTION: Was the U.S. action in destroying North Vietnamese boats and harbor installations legal?

ANSWER: (1) The armed attack upon our vessels patrolling the high seas violated international law and the UN Charter. This attack violated Article 2(4) of the Charter since it was a use of force inconsistent with the primary purpose of the United Nations, which is to maintain international peace and security.

(2) We responded to these attacks with limited measures appropriate to the circumstances. We met the first attack on the Maddox by repelling the attacking boats. The second attack on August 4 against two of our vessels demonstrated a deliberate pattern of armed attack. To prevent a resumption of these attacks, we took measures to destroy the North Vietnamese vessels and eliminated the base facilities which made these attacks possible. (3) These measures were commensurate with the attack and were thus a proper exercise of the right of self-defense in conformity with Article 51 of the UN Charter.

(4) We also immediately carried out our obligation under Article 51 to bring this situation to the attention of the Security Council.

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

- 3 -

QUESTION: Would we comply with a Security Council call for cease-fire and withdrawal?

ANSWER: We would, of course, comply with any Security Council resolution. While we have not ourselves introduced a resolution, we are consulting with other members of the Security Council to determine what action the Council may best take. Of course, the Council cannot without our consent or acquiescence adopt a resolution calling for cease-fire or withdrawal.

QUESTION; What is the President's authority for sending American military personnel to South Viet-Nam to serve in an advisory, non-combatant capacity?

ANSWER: (1) The authority is contained in the Foreign Assistance Act of 1961 and in a Mutual Defense Assistance Agreement with Viet-Nam.

(2) Advisory and non-combatant activities of American forces in Viet-Nam are authorized by Sec. 503 of the Foreign Assistance Act of 1961, which authorizes the President to furnish military assistance abroad to any friendly country through, inter alia, "assigning or detailing members of the Armed Forces of the U.S. to perform duties in a non-combatant nature, including those relating to training or advice."

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

- 4 -

(3) The U.S. and Viet-Nam are parties to an Agreement for Mutual Defense Assistance in Indochina dated December 23, 1950. The Agreement provides for the furnishing by the U.S. to Viet-Nam of military assistance in the form of equipment, materiel and services.

QUESTION: What is the authority for using U.S. combat forces in the Tonkin Gulf action?

ANSWER: The constitutional authority of the President as Commander-in-Chief.

QUESTION: Does the President have authority to use the forces of the U.S. now in Viet-Nam for combat action?

ANSWER: (1) Yes. The use of U.S. forces for combat duty in Viet-Nam rests on the Constitutional powers of the President as Commander-in-Chief and as Chief Executive, and on his power to conduct foreign affairs.

(2) Presidents have ordered the armed forces to take combatant action abroad, without Congressional authorization and in the absence of a Declaration of War, on a large number of occasions.

QUESTION: How does the Joint Resolution affect the authority of the President to use force in Viet-Nam?

ANSWER: The Resolution does not detract from or enlarge the constitutional authority of the President as Commander-in-Chief and Chief Executive.

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

- 5 -

QUESTION: Then why seek a Congressional Resolution?

ANSWER: The Resolution would constitute a declaration of the common purpose of the U.S. in this situation. It would record the approval and support of the Congress for the actions of the President.

QUESTION: Does the Joint Resolution constitute an anticipatory declaration of war; that is, does it constitute a delegation of Congress' constitutional authority to declare war?

ANSWER: (1) No. The Joint Resolution in no way affects the constitutional prerogative of the Congress to declare war.

(2) A declaration of war, however, has always been thought of as implying a massive commitment of U.S. forces. That is not the case here.

QUESTION: Does this Resolution cover the use of U.S. forces for combat in North Viet-Nam?

ANSWER: (1) Sec. 2 declares that the U.S. is prepared "to take all necessary steps, including the use of ~~fx~~ armed force, to assist any Protocol or Member State of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom."

(2) Under Sec. 2, such steps would have to be "consonant with the Constitution and Charter of the United Nations and in accordance with [the] obligations [of the U.S.] under the Southeast Asia Collective Defense Treaty."

(3) If, in a particular situation, the use of U.S. combat troops in North Viet-Nam would meet all of the required conditions,

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

- 6 -

and if the President determined that it was necessary, such use would be within the Resolution.

QUESTION: Is our presence in South Viet-Nam and the surrounding waters consistent with the Southeast Asia Collective Defense Treaty?

ANSWER: (1) Our presence in South Viet-Nam is in response to an invitation of the Government of the Republic of South Viet-Nam. While the SEATO Treaty recognizes the danger to the area of Communist aggression and provides procedures for collective action, it is in no sense an inhibition on action by treaty members in response to requests of governments threatened by aggression.

(2) A number of other SEATO members -- such as the United Kingdom, Australia and the Philippines -- have also responded to South Viet-Nam's request for assistance.

QUESTION: Why haven't we consulted in SEATO with regard to our presence in South Viet-Nam?

ANSWER: The SEATO members have consulted regularly in accordance with their obligations in Article IV(2) on ways to deal with the threat to the peace in Viet-Nam. At the Ninth Council Meeting in Manila in April, 1964, the Council agreed that the members should be prepared to take steps in addition to the support presently provided to Viet-Nam in fulfillment of their obligations under the treaty.

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

- 7 -

QUESTION: Why has the United States not heretofore notified its actions in Southeast Asia to the United Nations Security Council under Article IV(1) of the SEATO Treaty?

ANSWER: The United States has not notified the United Nations Security Council of its assistance to South Viet-Nam pursuant to Article IV(1), since assistance has not to date been furnished pursuant to that article.

QUESTION: What is the territorial scope of the ^{SEATO} protective mantle?

ANSWER: (1) The treaty covers the security and peace of "Southeast Asia, including also the entire territories of the Asian parties and the general area of the Southwest Pacific ~~xxx~~ south of 21° 30' north latitude". Thus, all of Southeast Asia is included in the general security area.

(2) By the Protocol to the Treaty, Cambodia, Laos and the free territory of Viet-Nam are also covered.

QUESTION: Was not Laos removed from the SEATO umbrella by the 1962 Geneva Accords?

ANSWER: The Government of Laos declared ⁱⁿ its 1962 Declaration of Nationality, that it "would not recognize the protection of any alliance or military coalition (including SEATO)". The 13 other signatories of the Geneva Accords, including the United States,

~~CONFIDENTIAL~~

stated that they would respect this wish. The SEATO Treaty itself was not amended by the Geneva Accords. Thus, if the Government of Laos were to request United States assistance, there would be nothing in the SEATO Treaty to inhibit the furnishing of such assistance and such assistance could come within the present resolution. Moreover, external aggression against Laos would itself be contrary to the Geneva Accords, and in such circumstances the Laos Government would be free, in exercise of its rights of self-defense, to call for outside assistance.

QUESTION: The Resolution authorizes all necessary steps to assist any protocol or member state "requesting assistance". Is this an inhibition on United States action in the treaty area?

ANSWER: No. The Resolution does not supersede Article IV(1) of the SEATO Treaty. U.S. adherence to the Treaty constitutes authorization of any measures contemplated in the Treaty. Article IV(1) permits action even without a request, by a member state to meet the common danger from aggression by means of an armed attack in the treaty area against another member state. As regards protocol states, U.S. action is already limited by the SEATO Treaty to cases in which the protocol state requests assistance.

~~CONFIDENTIAL~~

- 9 -

QUESTION: Would action under this Resolution violate the 1954 or 1962 Geneva Accords?

ANSWER: (1) Since 1961 we have considered that the Republic of Viet-Nam was justified, because of Communist aggression directed by North Viet-Nam, in seeking military assistance at levels in excess of those provided in the 1954 Agreement. Any additional assistance furnished in accordance with this Resolution would be similarly justified, if necessary to meet the level of Communist aggression then prevailing.

(2) As for the 1962 Geneva Accords which related only to Laos, the United States agreed to respect the Declaration of Neutrality made by that country's government. If a situation should develop in Laos where that Government requested United States assistance in exercise of its right to self-defense, the Geneva Accords would not inhibit a response to such a request.

46a
August 5, 1964

DISCUSSIONS IN BOTH HOUSES OF CONGRESS
RELATING TO THE PRESIDENT'S CONSTITUTIONAL POWER
TO DEPLOY THE ARMED FORCES OF THE UNITED STATES ABROAD

A. Formosa Resolution of 1955

In the President's original presentation to Congress on January 24, 1955, after discussing the serious threat to Formosa, he stated that the authority for some of the actions which might be required would be inherent in the authority of the Commander-in-Chief. Until Congress acted, he would have no hesitation, so far as the constitutional powers extended in taking whatever emergency action might be forced upon the United States in order to protect its security. He stated that a suitable congressional resolution would clearly and publicly establish the President's authority to employ the United States armed forces promptly and effectively if in his judgment it became necessary.

As was the case in the Committee discussions, the question of the relative power of the President and Congress was discussed at length on the floor of the House. It was generally recognized that the President, as Commander-in-Chief had the constitutional authority to deploy United States armed forces if the security of the United States was endangered. (It was stated on the floor that the Foreign Affairs Committee had admitted this to the Rules Committee.) The resolution itself, reasoned Majority Leader McCormack, was simply a display of unity. Representative Green of Oregon thought it strange, however, that the President was asking for already existing authority and expressed the hope that it was not a political maneuver.

Congressman Zablocki of Wisconsin agreed that the President had the power, but thought it incumbent on Congress to comply with his request for a resolution. The opinion was also expressed by several parties that even though the President was not required to seek such a resolution, he was to be commended for getting Congress to approve the resolution rather than acting without Congressional approval as in the case of Korea. This sentiment was expressed by Representative Scott of Pennsylvania when the President's message was first received on the floor on the 24th. Speaker of the House Rayburn suggested that the President's action should not be considered a precedent, and that the President should not always feel it his duty to come to Congress and ask for a resolution authorizing him to exercise his constitutional functions.

In the Senate, Senator Morse was the leading critic and opposed the Resolution primarily on the basis of the fact that it was a "blank check" giving the President unlimited "predated" authority. He did not take issue with the President's authority to assist in the defense of Formosa, but commented that such a resolution was really unnecessary. He noted, however, that Congress had the right to check the President on the use of his emergency powers.

Senator George spoke in favor of the resolution on January 27. He characterized the resolution as a limitation on the President's constitutional power and stressed the non-delegability of his discretion to use forces other than in the immediate defense of Formosa, which points were stressed in a January 26 White House statement. On the question of discretion, Senator George stressed the prudence of the President.

B. Cuban Resolution

During the appearance of Secretary Rusk on Monday, September 17, 1962 before the House Foreign Relations and Armed Services Committee, questions were raised about the President's constitutional authority as it related to operative language of the resolution.

Chairman Russell considered that it would be preferable to use the Formosa Resolution language authorizing the President to employ the armed forces he deemed necessary rather than the proposed language of the Cuban Resolution, which stated that the President possesses all necessary authority to prevent by whatever means may be necessary, including the use of arms, the extension of Communist aggression in the hemisphere. He felt that the latter language simply stated that the President had authority to declare war.

Senator Morse felt that the present situation presented an opportunity to educate the American people as to what the power of the Commander-in-Chief is when the United States is threatened by a Cuba-type situation. He wanted to spell out what the inherent power of the President is. He expressed opposition to a predated declaration of war which would be an unlawful delegation to the President of the power to commit an act of war.

~~SECRET~~

QUESTION: Why does the United States send military personnel into Laos in violation of the 1962 Geneva Agreements?

ANSWER: The United States has a military attache staff in our Embassy in Laos. The assignment of these personnel is not in violation of the 1962 agreements. At the conclusion of the 1962 Agreements, the United States removed the 666 members of its military advisory group under supervision by the I.C.C., as provided in the Agreements. According to our military intelligence estimates, several thousand North Vietnamese military personnel were in Laos at the time, and to our knowledge only a token number has been permanently removed. We believe that the Viet Minh never even began to honor the agreements in this instance. The Pathet Lao military offensive on the Plain of Jars in May and the continued use of the Ho Chi Minh Trail by which to infiltrate men and materiel through Laos into South Viet-Nam to mount the Communist insurgency there are further dramatic examples of Pathet Lao and North Vietnamese flagrant contempt for their obligations under the Agreements.

NOTE: The augmented United States military attache group pursues non-attache functions in travelling about the countryside and supplying assistance and advice to the troops under the command of Prime Minister Souvanna Phouma, and a small USAF contingent in civilian clothes is present in Vientiane to help load the Laotian T-28's for their highly effective air attacks on enemy positions.

DECLASSIFIED

Authority STATE letter APR 9 1979By inf, NAME, Date 7-30-79~~SECRET~~

46c

LIMITED OFFICIAL USE

QUESTION: Hasn't the United States violated the declaration by Under Secretary Smith that we would refrain from the threat or use of force to disturb the Geneva Agreement?

ANSWER: Our actions in Viet-Nam have been fully in accord with the declaration made by Under Secretary Smith at the conclusion of the 1954 Geneva Conference. The Under Secretary declared that the United States would refrain from the threat or use of force to disturb the Geneva Accords and that "it would view any renewal of the aggression in violation of the aforesaid agreements with grave concern and as seriously threatening international peace and security." The United States has not used force to disturb the Geneva Accords. It does, on the other hand, view the renewal of North Vietnamese aggression in violation of those agreements with grave concern and has acted accordingly in providing assistance to the Government of the Republic of Viet-Nam to meet that threat.

Limited Official Use

QUESTION: Does the United States have a legal obligation to refer this matter to the United Nations and are our actions in violation of Article 2(4) of the United Nations Charter?

ANSWER: Article 2(4) of the United Nations Charter provides: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purpose of the United Nations."

The United States presence in Viet-Nam is at the request of the Government of the Republic of Viet-Nam, for the purpose of assisting that Government to defend itself against externally supported and directed Communist aggression. Thus, there is no threat or use of force by the United States or by the Government of Viet-Nam against the territorial integrity or political independence of any state. On the contrary, our presence in Viet-Nam has always been for the purpose of helping Viet-Nam to preserve its territorial integrity and political independence.

It is plain that the United States, in responding to the request of the Government of the Republic of Viet-Nam to assist it, is acting within its legal rights. It is also plain that the United States is under no legal obligation to refer to a dispute between North Viet-Nam and the Government of the Republic of Viet-Nam to the United Nations. Should the parties to that dispute, or another state, wish to refer the question to the United Nations, they are free to do so.

As to whether the Viet-Nam question should be referred to the United Nations, the appraisal of Secretary General U Thant is instructive. In a press appearance on March 3, 1964 he said:

"There are certain cases, which I am sure will occur to you immediately, in which the United Nations cannot be expected to discharge its obligations effectively, as it has done in the Congo and in the Middle East and in several other areas in the past. One instance which comes to my mind immediately is South Viet-Nam."

He went on to say that he doubted very much whether the United Nations, if it were invited to perform certain peace-keeping functions in Viet-Nam, would be able effectively to discharge such an assignment.

QUESTION: Doesn't the Resolution constitute a predated declaration of war?

ANSWER:

A declaration of war by the Congress means a national mobilization of our resources for a sustained military effort and brings into effect all the international legal ramifications attaching to a "state of war."

Our response to the attacks on the Tonkin Gulf and any future measures we are required to take to preserve the peace in Southeast Asia do not necessitate our instituting the state of war. The purpose of the Resolution is to demonstrate that the Congress and the people of the United States stand behind the determination of the President to repel this kind of attack and to prevent further dangers to the peace in Southeast Asia.

QUESTION: How can the United States rely on the 1954 Geneva Accords to justify our actions in Viet-Nam, since we are not a party to the Accords and, therefore, have no rights under them?

ANSWER: Of course, we have never attempted to say that the Geneva Accords provided a legal basis for United States actions in South Viet-Nam. Our policy has been to help the Government of the Republic of Viet-Nam defend itself against attacks being made against it in violation of the Geneva Accords. Our position simply is that the Geneva Accords are not a legal bar to our providing such assistance.

International law recognizes the principle that a material breach of a treaty by one party entitles the other at least to withhold compliance with an equivalent, corresponding or related provision until the other party is prepared to observe its obligations. The actions of the Government of the Republic of Viet-Nam in requesting and receiving assistance from the United States are fully consistent with this principle.

QUESTION: How can the United States send troops and military equipment into Viet-Nam without a Congressional declaration of war?

ANSWER: Article II of the Constitution makes the President Commander-in-Chief of the Army and Navy of the United States, and vests in him the executive power. Article II has also been interpreted as making the President the "sole organ of the nation" in the field of foreign affairs (United States v. Curtiss-Wright, 299 U.S. 304, 318 ff. (1936)). These constitutional powers give the President authority to deploy United States military personnel abroad.

In addition to the President's constitutional powers, the Congress has enacted Section 503 of the Foreign Assistance Act of 1961 which authorizes the President to furnish military assistance abroad, inter alia, by "...assigning or detailing members of the armed forces of the United States...to perform duties of a noncombatant nature, including those related to training or advice."

Furthermore, the United States and Viet-Nam are parties to the agreement for Mutual Defense Assistance in Indochina of December 23, 1950 (TIAS 2447; 3 U.S.T. 2756) which was concluded pursuant to P.L. 329, 81st Congress (63 Stat. 714, 22 U.S.C. 1571-1604). This agreement provides for the furnishing by the United States to Viet-Nam, inter alia, of military assistance in the form of equipment, material and services. Article IV, paragraph 2, of the agreement states that "To facilitate operations under this agreement, each Government agrees...To receive within its territory such personnel of the United States of America as may be required for the purposes of this agreement..."

Prior to our stepped-up assistance to South Viet-Nam in 1961 in response to increasing aggressive actions by the Communists against the South, our Military aid program to South Viet-Nam was fully in accord with the 1954 Geneva Agreements.

QUESTION: Why aren't the SEATO nations assisting us in South Viet-Nam?

ANSWER: The SEATO members have consulted regularly, in accordance with their obligations under Article IV, paragraph 2, of the SEATO Treaty, on ways to deal with the threat to the peace in Viet-Nam. In the Final Communique of the Ninth Council Meeting of SEATO, the Council agreed that the members of SEATO should be prepared to take steps in addition to the support presently being provided to Viet-Nam in fulfillment of their obligations under the Treaty. A number of SEATO members are presently extending aid to the Government of the Republic of Viet-Nam.

47
—

48

DEPARTMENT OF STATE
EXECUTIVE SECRETARIAT

f

August 17, 1967

TO: Mr. Bromley Smith
The White House

As a comparison piece to the
Len Meeker comparative memorandum
we sent you earlier this evening,
I attach a detailed discussion
of the four resolutions referred
to therein.



John P. Walsh
Acting Executive Secretary

Attachment:

Discussion of four
resolutions.

Toulmin Gulf Resolution

48a 6 Aug 64
A. Form a Resolution of 1955

1. Historical Background

The increasing belligerence of the Chinese Communists beginning approximately six months prior to the Joint Resolution set the stage for the United States determination to assist the Government of the Republic of China. In July 1954 Peiping launched a massive propaganda attack aimed at "the liberation of Taiwan", and in September Chinese Communist batteries began a heavy bombardment of Quemoy. Communist activity was stepped up to include aerial attacks against Chinese Nationalist planes, ships and other island outposts, and despite the signature of the US-GRC Mutual Defense Treaty on December 2, 1954, the Chinese Communists successfully invaded a small island near the important Tachen group on January 16, 1954. This challenge from Peiping, coming on the heels of the Korean cease fire of 1954 and the Geneva Conference on Indochina in 1954, was culminated by Chou En-lai's public demand that "the United States withdraw from Taiwan."

2. The Resolution

On January 24, 1955, the President Eisenhower sent a message to Congress requesting passage of a Congressional resolution establishing the authority of the President to employ U. S. Armed Forces to assure the security of Formosa and the Pescadores.

~~Congressional committees were convened the same day to hear testi-~~
mony in executive session of the Secretary of State Dulles, the Chairman of the Joint Chiefs of Staff, Admiral Radford, and other members of the Joint Chiefs and to consider the proposed

resolution prepared by the Administration. The following is the resolution which was introduced in both the House (H.J. Resolution 159) and the Senate (S. J. Resolution 28) and referred respectively to the House Committee on Foreign Affairs and the Senate Committees on Foreign Relations and Armed Services, meeting jointly:

Whereas the primary purpose of the United States, in its relations with all other nations, is to develop and sustain a just and enduring peace for all; and

Whereas certain territories in the West Pacific under the jurisdiction of the Republic of China are now under armed attack, and threats and declarations have been and are being made by the Chinese Communists that such armed attack is in aid of and in preparation for armed attack on Formosa and the Pescadores,

Whereas such armed attack if continued would gravely endanger the peace and security of the West Pacific Area and particularly of Formosa and the Pescadores; and

Whereas the secure possession by friendly governments of the Western Pacific Island chain, of which Formosa is a part, is essential to the vital interests of the United States and all friendly nations in or bordering upon the Pacific Ocean; and

Whereas the President of the United States on January 6, 1955, submitted to the Senate for its advice and consent to ratification a Mutual Defense Treaty between the United States of America and the Republic of China, which recognizes that an armed attack in the West Pacific area directed against territories, therein described, in the region of Formosa and the Pescadores, would be dangerous to the peace and safety of the parties to the treaty: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the ~~President of the United States be and he hereby is authorized~~ to employ the Armed Forces of the United States as he deems necessary for the specific purpose of securing and protecting Formosa and the Pescadores against armed attack, this authority to include the securing the protection of such related position and territories of that area now in friendly hands and the taking of such other measures as he judges to be required or appropriate in assuring the defense of Formosa and the Pescadores.

This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, and shall so report to the Congress.

The Joint Senate Committee voted 27-2 to report the resolution without amendment. The Committee stated in its report that the purpose of the resolution was to make clear that it is essential to the vital interests of the United States that Formosa and the Pescadores remain in friendly hands and that the President is authorized to employ armed forces for that purpose. The report made reference to the mutual defense treaty between the United States and the Republic of China, signed but not yet ratified at that time, which stated that the U. S. would act to meet an armed attack on Formosa or the Pescadores in accordance with its constitutional processes, and that any said armed attack and measures taken as a result thereof would be reported to the Security Council of the United Nations. It was the judgment of the Joint Committee that the resolution was necessary to remove doubt about U. S. resoluteness in the face of Chinese Communist stated intentions to use force to capture Formosa. The resolution was designed to stabilize the crisis, and the Committee apparently agreed with the judgment of the executive that the risks of starting a major war with Communist China or of triggering the Sino-Soviet defense pact were not great enough to obviate the necessity for a strong U. S. position. The Committee agreed with the President in welcoming United Nations involvement, and the report indicates that Secretary Dulles was questioned closely as to whether a solution

might be forthcoming in the near future in the U. N. The Secretary indicated the U. S. Government would do its utmost to encourage the U. N. in bringing a cease-fire into effect.

Constitutional There was a difference of opinion in the Committee on the necessity of seeking such a resolution, but the Committee indicated that this question was a matter of domestic concern and should not affect the principal purpose which was to make clear that Congress supports the President's action to save Formosa.

The resolution was reported in its original form although Senator Humphrey of Minnesota offered an amendment to further limit the geographic scope of the U. S. commitment. This amendment was defeated 8-20. Secretary Dulles and Admiral Radford had both advised against such limitation and the Committee agreed that it might handicap the President by depriving him of the flexibility needed to meet unforeseen situations. This was ^{an} apparent ~~an~~ reference to the defense of Quemoy and Matsu which were the subject of much of the floor debates.

The house Committee on Foreign Affairs met on January 24 and reported the resolution without amendment by a ~~by~~ vote of 28-0. The Committee report reflects the same basic considerations that were discussed in the Senate Committee hearings. The House Committee ~~hearings were also conducted in executive session~~

3. The House Debate

The debates on the floor of the House of Representatives began on January 25, the day after the President's report to the Congress. The first parliamentary move was the introduction of a closed rule by Representative Smith of Virginia from the Rules Committee which

precluded floor amendments. Rep. Smith explained that neither the Administration nor the leadership had asked for a closed rule, but in view of the importance of giving firm notice to the world of U. S. resoluteness, the resolution should not be cluttered up with amendments that might reach beyond ^{its} ~~the~~ purposes. ~~the~~

a. Constitutional questions

As was the case in the Committee discussions, the question of the relative power of the President and Congress was discussed at length on the floor of the House. It was generally recognized that the President, as Commander-in-Chief has the constitutional authority to deploy United States armed forces if the security of the United States is endangered. (It was stated on the floor that ~~the Foreign~~ Foreign Affairs Committee had admitted this to the Rules Committee.) The resolution itself, reasoned Majority Leader McCormick, was simply a display of unity. Representative Green of Oregon thought it strange, however, that the President was asking for already existing authority and expressed the hope that it was not a political maneuver. Congressman Zablocki of Wisconsin agreed that the President had the power, but thought it incumbent on Congress to comply with his request for a resolution. The opinion was also expressed by several parties that even though the ~~President was not required to seek such a resolution, he was to be~~ commended for getting Congress to approve the resolution rather than act without Congressional approval as in the case of Korea. This sentiment was expressed by Representative Scott of Pennsylvania when the President's message was first received on the floor on the 2

Speaker of the House Rayburn suggested that the President's action should not be considered a precedent, and that the President should not always feel it his duty to come to Congress and ask for a resolution authorizing him to exercise his constitutional functions.

The sentiment was not all favorable. Representative ~~Walter~~ Holifield (Cal.), for instance, resented the fact that he felt compelled to vote for the resolution, since the alternative was presenting a divided front. A vote for the resolution, however, was tantamount to a contingent declaration of war. ~~Another~~ Another Congressman expressed the view that in effect the resolution asked Congress to concur in advance in any move which the President directed which might later require an outright declaration of war. Others expressed their confidence that there was no desire on the part of the executive or Congress to abrogate to the executive the legislative power and duty to declare war, and that there should be no necessity to commit U. S. ground forces in any action which might ~~grow~~ grow out of the resolution. In answer to inquiries along this line, Chairman of the House Foreign Affairs Committee Richards denied that the resolution was a declaration of war, although he admitted that action taken pursuant to the resolution ~~may lead to war.~~

b. Timing.

Congressman Yates from Illinois expressed his regret at the ~~present~~ pressure of time to pass the resolution. Congressman Madden of Indiana also complained about the time pressure.

The President and the State Department, he said, should have kept Congress informed and not request¹ action on 24 hours notice. He was concerned about making a decision without full knowledge of the facts. He observed that if the U.S. ~~was~~^{were} successful, the executive ^{would} take the credit. If not, Congress would be blamed for action taken without sufficient facts on the military risks.

It was noted, however, that the risks of inaction would be greater if we allowed the aggression to continue.

c. Limitations

The operative paragraph of the resolution contained some rather broad language: "... and the taking of such other measures as he judges to be required or appropriate in assuring the defense of Formosa and the Pescadores/" That paragraph also stated that the President's authority included securing protection of "such related positions and territories...now in friendly hands." Several Congressmen expressed their opposition to the implication that this meant a defense of the offshore islands, and one Congressman went so far as to say that a vast majority of Congress would not vote for a resolution which would call for sending American boys to the offshore islands, or, of course, the mainland. On the other hand, it was pointed out that a specific geographic limitation would encourage the Chinese Communists by telling them how far they can go. Congressman Yates asked Chairman Richards if the phrase "other measures" gave the President the authority to invade the mainland as he deemed appropriate in defense

of Formosa. He replied that it did not authorize him to take possession but only to attack the mainland if such action became necessary. The question of use of nuclear weapons was also raised, and Chairman Richards responded that the resolution neither restricted nor authorized such use.

d. United Nations Action.

Most discussion of U. N. involvement was favorable although several Congressmen disagreed with the reference to the United Nations in the last paragraph, expressing a lack of faith in the effectiveness of that organization. Regrets were expressed by some that the U. N. had not assumed its obligation in this crisis; others were glad that the United States was acting without waiting for the U. N. to function. ^{One} ~~The~~ Congressman characterized the crisis as one which was appropriate for a "uniting for peace resolution."

4. Senate Debate

Senator George, the Chairman of the Foreign Relations Committee introduced the joint resolution to the Senate on January 26. Although he moved that the resolution be considered the following day, Senator Morse of Oregon delivered a major address on the afternoon of the 26th entitled "In Opposition to Preventative War". The major thrust of Morse's initial attack on ~~the resolution was directed at the "blank check" nature of the~~ resolution giving the President unlimited "pre-dated" authority. The resolution should be limited to the defense of Formosa and the Pescadores, observed Senator Morse, since the ~~legal~~ legal status of the offshore islands were quite different. He did not take issue

with the President's authority to assist in the defense of Formosa, but commented that such a resolution was really unnecessary. He noted, however, that Congress had the right to check the President on the use of his emergency powers. For the first time in its history, said Senator Morse, the United States is moving toward an act of aggression, an illegal "preventive war" before an act of war has been committed. Thus the resolution would step up the probabilities of war with China.

Senator George spoke in favor of the resolution on January 27. He characterized the resolution as a limitation on the President's constitutional power and stressed the non-delegation of his discretion to use forces other than in the immediate defense of Formosa, which points were stressed in a January 26 White House statement. On the question of discretion, Senator George stressed the prudence of the President.

Most of the arguments that were made in the course of the House debate were alluded to in the Senate discussions. However, primary attention in the Senate was paid to the difficult question of the defense of Quemoy and Matsu. Senators Lehman and Humphrey took the lead in criticizing the broad authority contained in the resolution which appeared to authorize the defense of the offshore islands. Senator Humphrey introduced an amendment which deleted any reference to the protection of "related positions and territories" and to "other" measures. Then the resolution, as amended, would have been limited specifically to a defense of Formosa and the Pescadores. Although the amendment received some favorable

comment, it was defeated 13-74. Among those voting for the amendment were Senators Byrd, Fulbright, Humphrey, Kefauver, Long (La.) Mansfield, Morse and Neuberger.

An amendment in the form of a substitute resolution was introduced by Senator Kefauver. The substitute incorporated Senator Humphrey's geographic limitation to Formosa and the Pescadores, and, in addition, the following: "Such authority would include taking of such other measures consistent with international law and our obligations under the U. N. Charter as he judges necessary or appropriate militarily in the defense of Formosa and the Pescadores." The Kefauver substitute deleted the last sentence of the administration's resolution. It was defeated 11-75.

In discussing the merits of this amendment and substitute resolution, it was noted that it would be unfortunate at this stage to restrict the authority that the President asked for, but, as one Senator noted, he never should have left this broad, controversial authority in the resolution!

Senator Mansfield noted his objection ~~[to the objection]~~ to the resolution as expressed in the Humphrey amendment. He viewed the resolution as a fait accompli and said that whatever its faults, it would not be rejected. The alternative to acceptance would be an indication of division, which would have adversely affected the morale of friendly nations in the Far East. Further, the Chinese Communists may view such division as a license to pursue their aggressive policy. He would have preferred that Congress issue a simple affirmation of its support for the President in the crisis

and reaffirm the long-standing U. S. policy of supporting the defense of Formosa. This would have accomplished all the good that a resolution fraught with constitutional difficulties would accomplish and would have avoided all such evils.

The resolution came to a final vote on January 28 and passed by a majority of 85-3, with only Senators Morse, Lehman and Langer^E ~~dis~~ dissenting.

B. The Middle East Resolution

1. Background

The factors which precipitated the critical situation, developing in the Middle East in the Winter 1956-57, and highlighted the threat and increasing menace to that area from International Communism were multiple and long-standing. The ingredients of the crisis included: (1) the aftermath of the Arab-Israeli War of 1948; (2) the Anglo-French-Israeli action in Egypt in 1956; (3) the instability caused by the evolution towards self-government in the area; (4) the power vacuum created by the Anglo-French withdrawal from the area; (5) the weaknesses and passions generated by Arab nationalism; and (6) the resultant heightened Soviet ambitions in the area.

On January 5, 1957, two days after the First Session of the Eighty-fifth Congress assembled, President Eisenhower addressed the Congress in a special Saturday session. In his special message to the joint session, President Eisenhower declared that, although the general international situation would be reviewed in the forthcoming State of the Union Message, the gravity of the situation in the Middle East caused a greater and immediate responsibility to devolve upon the United States. Emphasizing that the Middle East, because of its economic, geographic, strategic and political importance, was directly related to our own national security, President Eisenhower urged that the executive and the Congress jointly manifest the determination to assist those nations in the Middle East which desire such assistance to maintain their national

integrity. The President requested a "joint resolve" (1) authorizing the President to assist any country in the general area of the Middle East economically; (2) authorizing the President to undertake military assistance to such countries; (3) authorizing the President to employ the armed forces of the United States to secure and protect any such nation, requesting such aid, against overt armed aggression by any country controlled by International Communism; (4) authorizing the President to employ sums available under the Mutual Security Act of 1954, as amended, without regard to existing limitations.

In concluding his address, the President added the following assurances:

"Let me refer again to the requested authority to employ the armed forces of the United States to assist to defend the territorial integrity and the political independence of any nation in the area against Communist armed aggression. Such authority would not be exercised except at the desire of the nation attacked. Beyond this it is my profound hope that this authority would never have to be exercised at all.

"Nothing is more necessary to assure this than that our policy with respect to the defense of the area be promptly and clearly determined and declared. Thus the United Nations and all friendly governments, and indeed governments which are not friendly, will know where we stand.

If, contrary to my hope and expectation, a situation arise which called for the military application of the policy which I ask the Congress to join me in proclaiming, I would of course maintain hour-by-hour contact with the Congress if it were in session. And if the Congress were not in session, and if the situation had grave implications, I would, of course, at once call the Congress into special session."
(Emphasis supplied)

Pursuant to the message of the President, Congressman Gordon introduced on that same day, January 5, 1957, into the House of Representatives, House Joint Resolution 117 (H.J.Res. 117). The

text of the resolution as introduced was:

"To authorize the President to undertake economic and military cooperation with nations in the general area of the Middle East in order to assist in the strengthening and defense of their independence.

"Whereas a primary purpose of the United States in its relations with all other nations is to develop and sustain a just and enduring peace for all, in accordance with the Charter of the United Nations; and

"Whereas the peace of the world and the security of the United States are endangered as long as international communism and the nations it controls seek, by threat of military action, use of economic pressure, internal subversion, or other means, to attempt to bring under their domination peoples now free and independent; and

"Whereas such danger now exists in the general area of the Middle East: Therefore be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be and hereby is authorized to cooperate with and assist any nation or group of nations in the general area of the Middle East in the development of economic strength dedicated to the maintenance of national independence.

"Sec. 2. The President is authorized to undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance. Furthermore, he is authorized to employ the Armed Forces of the United States as he deems necessary to secure and protect the territorial integrity and political independence of any such nation or group of nations requesting such aid against overt armed aggression from any nation controlled by international communism: Provided, That such employment shall be consonant with the treaty obligations of the United States and with the Charter of the United Nations and actions and recommendations of the United Nations; and, as specified in Article 51 of the United Nations Charter, measures pursuant thereto shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

"Sec. 3. The President is hereby authorized, when he determines that such use is important to the security of the United States, to use for the purposes of this joint resolution, without regard to the provisions of any other law or regulation, not to exceed \$200,000,000 from any appropriations now available for carrying out the provisions of the Mutual Security Act of 1954, as amended. This authorization is in addition to other existing authorizations with respect to the use of such appropriations.

"Sec. 4. The President shall within the month of January of each year report to the Congress his action hereunder.

"Sec. 5. This joint resolution shall expire when the President shall determine that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions created by action of the United Nations or otherwise."

The text of the Middle East Resolution, as finally adopted to become on March 9, 1957, Public Law 85-7, and which in certain important aspects was substantially different from that originally submitted is as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that The President be and hereby is authorized to cooperate with and assist any nation or group of nations in the general area of the Middle East desiring such assistance in the development of economic strength dedicated to the maintenance of national independence.

"Sec. 2. The President is authorized to undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance. Furthermore, the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any such nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism: Provided, That such employment shall be consonant with the treaty obligations of the United States and with the Constitution of the United States.

"Sec. 3. The President is hereby authorized to use during the balance of fiscal year 1957 for economic and military

assistance under this joint resolution not to exceed \$200,000,000 from any appropriation now available for carrying out the provisions of the Mutual Security Act of 1954, as amended, in accord with the provisions of such Act: Provided, That, whenever the President determines it to be important to the security of the United States, such use may be under the authority of section 401(a) of the Mutual Security Act of 1954, as amended (except that the provisions of section 105(a) thereof shall not be waived), and without regard to the provisions of section 105 of the Mutual Security Appropriation Act, 1957.: Provided further, That obligations incurred in carrying out the purposes of the first sentence of section 2 of this joint resolution shall be paid only out of appropriations for military assistance, and obligations incurred in carrying out the purposes of the first section of this joint resolution shall be paid only out of appropriations other than those for military assistance. This authorization is in addition to other existing authorizations with respect to the use of such appropriations. None of the additional authorization contained in this section shall be used until fifteen days after the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, the Committees on Appropriations of the Senate and the House of Representatives and, when military assistance is involved, the Committees on Armed Services of the Senate and the House of Representatives have been furnished a report showing the object of the proposed use, the country for the benefit of which such use is intended, and the particular appropriation or appropriations for carrying out the provisions of the Mutual Security Act of 1954, as amended, from which the funds are proposed to be derived: Provided, That funds available under this section during the balance of fiscal year 1957, shall in the case of any such report submitted during the last fifteen days of the fiscal year, remain available for use under this section for the purposes stated in such report for a period of twenty days following the date of submission of such report. Nothing contained in this joint resolution shall be construed as itself authorizing the appropriation of additional funds for the purpose of carrying out the provisions of the first section or of the first sentence of section 2 of this joint resolution.

~~"Sec. 4. The President should continue to furnish~~
facilities and military assistance, within the provisions of applicable law and established policies, to the United Nations Emergency Force in the Middle East, with a view to maintaining the truce in that region.

"Sec. 5. The President shall within the months of January and July of each year report to the Congress his action hereunder.

"Sec. 6. This joint resolution shall expire when the President shall determine that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions created by action of the United Nations or otherwise except that it may be terminated earlier by a concurrent resolution of the two Houses of Congress."

As revealed by the legislative history, the focal inquiry raised by the Eisenhower Doctrine and the resolution, submitted in accordance therewith, centered around two issues: (1) the necessity for the resolution; and (2) the scope of the Presidential grant of authority sought thereunder. In regard to the first issue, in the end as the then Senator Kennedy's remarks showed (103 Cong. Rec. 2877), the general consensus seemed to be that the emergent nature of the situation had been overly dramatized. With respect to the second point, the crucial question implicit throughout the entire consideration of the resolution was the constitutional issue raised by the language in section two, sentence two of the resolution whereunder the President was authorized to employ the armed forces of the United States. This matter was not as critical an issue in the House as in the Senate because of the procedural mechanisms employed in the House debate. The House Committee on Foreign Affairs, however, had wrestled with this problem.

The legislative history of this resolution (particularly in the Senate) is instructive in regard to (1) the difficulty in securing a Congressional authorization for the President to employ the armed forces of the United States; (2) the delicate nature of the relationship between the Congress and the Executive in this twilight zone of constitutional power concerning the emergency

employment of our armed forces; and (3) as President Johnson declared in the Senate debate, the need for the recognition that responsible cooperation of both branches of government is required in this area.

2. The Action by the House.

H. J. Res. 117 was referred to the House Committee on Foreign Affairs, which began hearings on the measure on the following Monday, January 7, before the Committee was formally constituted. Fifteen sessions, including executive sessions, were devoted to hearings on the measure. On January 23, by a vote of 24 to 2, the measure was reported with five amendments out of Committee. On January 29 the Committee of the Whole House on the State of the Union debated the measure under a closed rule whereunder no amendments were in order except those amendments offered by direction of the Committee on Foreign Affairs. On January 30, the resolution passed as amended by the Committee.

The first amendment of the House merely made clear that such assistance would be offered only to those countries desiring such assistance.

The second amendment offered by the Committee and agreed to by the House provided that the authorization to the President in ~~section 2, to employ the armed forces of the United States for~~ the defense of nations in the Middle East "shall be carried out to the greatest extent deemed practicable by the President through the United Nations." This amendment was in addition to the original proviso in section two "that such employment be consonant

with the treaty obligations of the United States and with the Charter of the United Nations and actions and recommendations of the United Nations;..."

The third amendment imposed limitations on the amount to be spent under section three in any one country. Further it made clear that the authority granted the President thereunder was only for the balance of the fiscal year.

Under the fourth amendment, the President was required to submit semi-annual reports rather than the annual report contemplated in the original resolution.

The fifth amendment stated that the resolution might be terminated by a concurrent resolution of the two Houses of Congress as well as by the Presidential determination envisaged in the original measure.

Notwithstanding the concern of the members of the Committee and of the other members of the House as to the authorization in section two of the resolution for the Presidential employment of the armed forces, the House Committee on Foreign Affairs determined to leave in this authorization. But, to allay the concern as to the "serious implications" of this section, the Committee Report contained the following interpretation as a reservation to this grant:

"This resolution does not detract from or enlarge the constitutional power and authority of the President of the United States as Commander-in-Chief, and the language used in the resolution does not do so.

"Likewise, the resolution does not delegate or diminish in any way the power and authority of the Congress of the United States to declare war, and the language used in the resolution does not do so.

The committee does not in any way seek to interpret the Constitution of the United States with regard to the power of the executive and legislative branches of our Government.

"We emphasize that the resolution is a declaration of the solidarity of the people of the United States expressed through their President and the Congress on our policy of cooperation with the nations of the Middle East. * * *

"In reply to the question whether it will be necessary to station overseas additional components of our Armed Forces if this resolution is adopted, Admiral Radford told the committee that 'it would have little effect upon our deployments. * * *

"Finally, the committee was assured that should it be necessary to actually use the Armed Forces of the United States, the President would maintain close liaison with the Congress." (Emphasis added)

3. The Resolution Before the Senate Committee

On the 9th of January, Senator Green introduced on behalf of himself and Senator Wiley the Presidential proposals as Senate Joint Resolution 19 (S.J.Res. 19). It was immediately considered by the Committee on Foreign Relations and hearings were set to begin on January 14. Open public testimony was held from that time until February 11. On February 12 and February 13, the Senate Committees on Foreign Relations and Armed Services met jointly. On February 13, by a vote of twenty to eight the joint resolution was reported favorably with an amendment in the nature of a substitute to the Senate. The Senate debate began on February 19, and in less than two weeks the voting on amendments offered on the floor was begun.

Secretary Dulles was the principal witness before the Joint Committee. He was examined in both open and executive sessions. Admiral Radford, Chairman, Joint Chiefs of Staff, was also

examined at length in public and executive sessions:

The Committee considered the submitted resolution and H. J. Res. 117 as well as the several alternative resolutions which were referred to it, namely: S. J. Res. 42, by Senator Morse, to promote peace and stability in the Middle East; S. J. Res. 45, by Senator Mansfield, relative to the use of armed forces by the President to preserve the independence and territorial integrity of the nations of the Middle East, and for other purposes; and Sen. Res. 80, by Senator Fulbright, to express the attitude of the Senate as to the policy of the United States in the achievement of international peace and security in the Middle East. These alternative proposals, which were offered late on the floor in debate will be discussed in the section on amendments.

In regard to section two, the issue of the relation of the Congress and the Executive with respect to the use of the armed forces resulted in an important Committee amendment. Although the Joint Committee was unanimously in favor of the President's request in regard to the substantive policy involved, there was a sharp division as to the proper constitutional procedures to be followed. The Committee finally adopted language which had "the virtue of remaining silent on the question". (Sen. Rep. No. 70, 85th Cong., 1st Sess.) The crucial second sentence of section two was changed so as to read:

"Furthermore, the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East.

To the end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any nation or group of nations requesting assistance against armed aggression from any country controlled by international communism: Provided, That such employment shall be consonant with the treaty obligations of the United States and with the Charter of the United Nations."

The Joint Committee thus converted this critical part of the resolution into a policy statement with the comment that in its opinion such a statement was preferable to a blanket authorization to the President to use the armed forces. Senator Humphrey was active in securing adoption of this amendment which in his view placed the responsibility for the use of the armed forces in an emergency situation upon the President ("if the President determines the necessity thereof, the United States is prepared to use...")

Another Committee amendment which was offered by Senator Byrd provided that the \$200 million authorization should not have the limitation of the Mutual Security Act of 1954, as amended, imposed on it and that the \$200 million was authorized to be used until the end of the fiscal year, June 30, 1957. The original authorization had been indefinite.

At the initiative of the then Senator Johnson of Texas, there was written into section three of the resolution the condition that none of the additional appropriation should be used until 15 days after the appropriate Congressional committees had been informed as to the purposes and objectives of the purported use and had had an opportunity to examine the projects.

As reported to the Senate, the Joint Resolution was amended so as to strike out all after the enacting clause and to insert

a complete substitute. The resolution in its amended form, generally followed the measure as adopted by the House, except for the changes noted above. The Senate as a technical matter considered H. J. Res. 117, as amended, in lieu of S. J. Res. 19.

The resolution as submitted to the Senate on the motion of Senator Johnson was as follows:

"That the President be and hereby is authorized to cooperate with and assist any nation or group of nations in the general area of the Middle East desiring such assistance in the development of economic strength dedicated to the maintenance of national independence.

"Sec. 2. The President is authorized to undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance. Furthermore, the United States regards as vital to the national interest and world peace and preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any nation or group of nations requesting assistance against armed aggression from any country controlled by international communism: Provided, That such employment shall be consonant with the treaty obligations of the United States and with the charter of the United Nations.

"Sec. 3. The President is hereby authorized to use during the balance of fiscal year 1957 for economic and military assistance under this joint resolution not to exceed \$200 million from any appropriation now available for carrying out the provisions of the Mutual Security Act of 1954, as amended, in accord with the provisions of such act: Provided, That, whenever the President determines it to be important to the security of the United States, such use may be under the authority of section 401(a) of the Mutual Security Act of 1954, as amended, and without regard to the provisions of section 105 of the Mutual Security Appropriation Act, 1957: Provided further, That obligations incurred in carrying out the purposes of the first sentence of section 2 of this joint resolution shall be paid only out of appropriations for military assistance, and obligations incurred in carrying out the purposes of the first section of this joint resolution

shall be paid only out of appropriations other than those for military assistance. This authorization is in addition to other existing authorizations with respect to the use of such appropriations. None of the additional authorization contained in this section shall be used until 15 days after the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, the Committees on Appropriations of the Senate and the House of Representatives and, when military assistance is involved, the Committees on Armed Services of the Senate and the House of Representatives have been furnished a report showing the object of the proposed use, the country for the benefit of which such use is intended, and the particular appropriation or appropriations for carrying out the provisions of the Mutual Security Act of 1954, as amended, from which the funds are proposed to be derived: Provided, That funds available under this section during the balance of fiscal year 1957 shall, in the case of any such report submitted during the last 15 days of the fiscal year, remain available for use under this section for the purposes stated in such report for a period of 20 days following the date of submission of such report. Nothing contained in this joint resolution shall be construed as itself authorizing the appropriation of additional funds for the purpose of carrying out the provisions of the first section or of the first sentence of section 2 of this joint resolution.

"Sec. 4. The President shall, within the months of January and July of each year, report to the Congress his action hereunder.

"Sec. 5. This joint resolution shall expire when the President shall determine that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions created by action of the United Nations or otherwise except that it may be terminated earlier by a concurrent resolution of the two Houses of Congress."

The President and the Secretary of State had accepted the proposed working of the resolution as submitted by the Senate Joint Committee.

4. The Issues Raised by the Resolution

The issues raised by the resolution and the criticisms thereof fell into several categories:

a. The necessity for the resolution -- The lack of supporting evidence of an imminent threat to the Middle East

caused much criticism. This was intensified by the testimony of the Secretary and of Admiral Radford that there was nothing to indicate that the Soviet Union was preparing to make an armed attack on the nations of the Middle East. Senators Kennedy, Humphrey, Morse, Saltonstall were outspoken on this.

b. The crisis-presentation of the resolution -- Senator Johnson, in reviewing the precipitate nature of the way in which the resolution had been advanced by the President and the careful deliberation of the Senate Committees working on the resolution commented:

(B) "... (A)n American foreign policy is best made through responsible cooperation. * * * Sometimes there is a tendency to define cooperation as 'do it my way or else.' * * * But Congress also has a special responsibility. It is our task to examine the actions of the Executive; to obtain the facts; and to approve, reject, or make the changes which are dictated by the standards of wisdom and prudence."
(103 Cong. Rec. 2230-2231)

In a similar comment on the lessons to be learned from the way in which the executive branch had submitted the proposal, Senator Green, who had introduced the resolution in the Senate on behalf of the Administration, spoke of the earlier cursory treatment and rejection of suggested Congressional amendments by the Department of State.

Senator Neuberger and others protested the failure of the resolution to meet any of the real problems of the Middle East.

Senator Kennedy commented:

"I believe the resolution to have been unsatisfactorily presented to Congress and the world--through worldwide revelation before Congressional consultation, a dramatic Saturday session, urgent pleas for speed and unanimity,

exaggerated justifications and naive testimony without any demonstration of critical need." (103 Cong. Rec. 2877)

Concluding that the resolution offered no solution to the real problem in the Middle East, Senator Kennedy declared that, although "the entire undertaking was an unnecessary error, he would vote for it because of the belief that the evil flowing from the defeat would be preponderantly greater than the good." Id. at 2878. It was his view, "... now that it has been publicized and submitted, however ill-advised that original submission may have been", that Congress would be ill-advised to defeat the resolution.

c. The constitutional scope of the Congressional war-making power and the Presidential power as Commander-in-Chief.-- The most serious criticism of the resolution was implicit throughout its entire consideration. Many of the Congressmen considered the resolution as originally submitted to be a Congressional pre-authorization for the President to employ the armed forces. Of the Committee amendment to section two, Senator Mansfield declared that with the amendments the Congress joins in the expression of the joint policy requested by the President, but "without doing violence to the constitutional principle of separation of powers.

d. The broad spending authority requested.-- The resolution was frequently characterized as a "blank checkbook." This matter was extensively argued. The original resolution sought total flexibility. As reported by the Committee, greater but not total flexibility was granted.

e. Unilateral action -- Many Congressmen were concerned at the wisdom of unilateral action by the United States without either the United Nations or its Free World Allies. Senator Morse argued that the problem should be resolved by the United Nations. Others, such as Senator Mansfield felt that UN solutions should at least be explored. It was pointed out in rebuttal that Article 51 of the Charter recognizes individual and collective security.

f. Other problems -- Further problems centered around such matters as the influence of the oil companies on foreign policy; the need for foreign aid of the "oil-rich" countries of the Middle East; the concern that the arms would be used by rulers to subjugate their own people; the problem of our protecting fascist or totalitarian type governments. Another issue centered around the question whether the authority sought extended to preventive as well as aggressive war. Frequent references were made to the differences between the Formosan situation and the Middle East situation where the area was undefined, the enemy not clearly designated, and where it was not even clear that any act of aggression was being contemplated.

It should be noted that Senator Fulbright abstained from voting on the amendments to the Joint Resolution and on the Joint Resolution itself. It was his position that the procedure for enacting the measure was fundamentally in error. His objections were to the constitutionality of the procedure, that is,

undertaking, to delegate by joint resolution an authority inherent in Congress and one which should not be delegated. Further he felt that such delegation would cause confusion with respect to the emergency powers of the President. He also opposed the authorization of large sums of money without any restriction or regulation. In the Committee, he had unsuccessfully sought to have the form of the resolution changed from a joint resolution to a concurrent resolution. His reasoning was along these lines. As originally proposed the joint resolution had delegated specific powers in the field of war-making power. As amended, it embodied a change which converted it into a mere expression of a policy. And a policy should more appropriately be expressed by "a Senate resolution expressing our advice and consent under the Constitution," than by a "joint resolution undertaking to legislate." (103 Cong. Rec. 2317)

5. The Amendments Offered in the Senate.

Voting on the amendments to the resolution did not begin until after intensive debate on the resolution. The first amendment to be voted on was the O'Mahoney motion to have the proviso of section two require that the employment of the armed forces be consonant with the "Constitution of the United States" rather than with the "Charter of the United Nations. This amendment was agreed to. (The State Department had sent a letter in opposition to this change. It characterized the amendment as unnecessary and undesirable; unnecessary because presumably the legislation authorized only constitutional action; undesirable because of a possible implication that the United

States intended to ignore the obligations of the Charter.

But in a telephone call to the Department, the Department stated that it had no objections to the amendment).

The amendment suggested by Senator Russell of Georgia presented the biggest hurdle for the proponents of the resolution. Senator Russell proposed the following amendment in the nature of a substitute:

"That the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any nation or group of nations requesting assistance against armed aggression from any country controlled by international communism: Provided, That such employment shall be consonant with the treaty obligations of the United States and with the Charter of the United Nations.

"Sec. 2. This joint resolution shall expire when the President shall determine that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions created by action of the United Nations or otherwise except that it may be terminated earlier by a concurrent resolution of the two Houses of Congress."

Under this amendment the provisions for military and economic assistance were deleted. The reasons propelling the Senator to submit this substitute were several. In his view, (1) neither the objective nor the area of expenditure was defined; (2) there was no showing of the necessity for emergency aid; (3) specific propositions should be submitted by the Richards mission; and (4) there should be an over-all examination of economic aid in terms of the objectives of our foreign policy. Senator Goldwater supported the Russell Amendment. It was vigorously opposed by

Senators Dirksen, Young, Knowland, Flanders, Aiken; Kennedy, Lausche and Case. A letter from the State Department thereon quoted the President's speech to the effect that economic and military assistance were vital. A letter from President Eisenhower opposed the Russell amendment because the joint resolution was directed against armed aggression and indirect subversion. Senator Dirksen in speaking against the amendment declared that it would provide the President with the basis to kill, but not to heal. Senator Case observed that the "gold fish bowl operations" envisaged by the amendment would not serve in this area to contribute to good results. Senator Kennedy commented that the rejection of such a vital part of the President's proposals would have a grave psychological effect. Further, he observed that inasmuch as the money involved had already been appropriated, the amendment would not save the taxpayers.

After a heated and lengthy debate the Russell amendment was rejected by a vote of 23 to 53.

Senator Mansfield offered three amendments. The first amendment would re-instate the preamble (which was not included in the resolution as reported by the Joint Committees to the Senate), and would change the first and second ~~whereas~~ clauses so as to refer specifically to the Suez Canal dispute and the Arab-Israeli conflict. The amendment was rejected.

The second amendment offered by Senator Mansfield, however, was agreed to. Thereunder a new section, which became section five, was inserted. It read:

"Sec. 5. The President should continue to furnish facilities and military assistance on such terms and conditions as he may find appropriate, to the United Nations emergency force in the Middle East, with a view to maintaining the truce in that region."

The State Department had advised that it had not objected to this proposition as an expression of the sense of the Congress.

Senator Mansfield withdrew his third amendment which would have required the President, if he deemed it desirable, to recommend specific programs to facilitate the settlement of the Suez dispute and the Arab-Israeli conflict.

The Senate then considered the amendment of Senator Douglas. As modified, it was agreed to. Thereby the parenthetical expression "except that the provisions of section 105(2) thereof shall not be waived" was inserted in the first proviso of section three. The Senate thus wrote into the resolution an assurance by the Department that the President would not waive the application of section 105(a) requiring that the equipment and materiel furnished should not be used to undertake any act of aggression against any nation.

~~The Morse amendment, which was considered next, raised the~~
critical issue of the scope of the President's emergency powers to employ the armed forces. It was Senator Morse's position that the President undoubtedly possessed such power, but that his use thereof must be submitted to congress for approval or disapproval.

The amendment to section two read:

"Prior to the employment of armed forces the President shall give notice to Congress. If, in the judgment of the President, an emergency arises in which such notice to Congress is not possible, he shall, upon the employment of armed forces, forthwith inform Congress and submit his action for its approval or disapproval."

Senator Morse had spoken several times at length on the scope of the Presidential power to use the armed forces. A primary point of emphasis was that the resolution itself contained no provision even requiring the President to report to Congress if such emergency use of the armed forces should be necessary. The declaration by President Eisenhower in his speech of January 5 that he would maintain hourly contact with Congress was reiterated throughout the debate by the proponents of the measure to counter Senator Morse's arguments. Further, this Presidential assurance was emphasized in a letter from the Department of State opposing the proposed Morse Amendment. The letter also recalled Secretary Dulles' testimony that there was no objection to a provision in the resolution that such a use of force should be accompanied by a message or report to Congress. The Morse Amendment was rejected by a vote of 28 to 64.

Several other amendments were offered and rejected. The Curtis Amendment would have set February 1, 1961 as a fixed termination date. Under the Barrett Amendment, \$100 million dollars of the appropriation would have been on a loan rather than grant basis. Two amendments offered by Senator McCarthy, the first striking the first proviso of section three, and the

second striking the reference to the United Nations in section 5, were rejected.

6. Final Congressional Action.

On March 5, 1957, the Senate by a vote of 72 to 19 with five Senators not voting, passed the joint resolution. The House concurred in the Senate Amendments.

The resulting measure was a resolution (1) declaring a joint Congressional and executive policy to resist Soviet aggression in the Middle East; and (2) a grant to the President of greater flexibility with regard to certain funds already appropriated by the Congress.

In recommending its passage, Senator Johnson termed the resolution "a clear and unequivocal warning to the Communist aggressors that they must reckon with the United States if they move in the Middle East." (103 Cong. Rec. 3129)

V-N 50
Congressional
Recs.

C. Cuban Resolution

1. Background

Since 1958, Soviet military and technical personnel and supplies had steadily been moved into Cuba. After the Bay of Pigs invasion, this movement was stepped up. On September 1, 1962, Premier Khrushchev for the first time officially announced that Soviet military and technical aid was being given to Cuba.

On September 13, 1963 President Kennedy gave a major address on Cuba. He declared that Soviet movements into Cuba had been increasing, but at this time did not constitute a threat to the hemisphere. All such movements were under rigid scrutiny. He emphasized his belief that the Cuban situation at the time did not justify or require unilateral military intervention by the United States and chastised those who advocated such intervention.

But the President wished to make it clear that:

"If at any time the Communist buildup in Cuba were to endanger or interfere with our security in any way, including our base at Guantanamo, our passage to the Panama Canal, our missile and space activities in Cape Canaveral or the lives of American citizens in this country, or if Cuba should ever attempt to export its aggressive purposes by force or the threat of force against any nation in this hemisphere or become an offensive military base of significant capacity for the Soviet Union, then this country will do whatever must be done to protect its own security and that of its Allies."

The President stated that, as Commander-in-Chief, he had the power to take such action and that he had requested Congress

to give him the power to call up Reserve Forces in crisis situations. He then outlined other aspects of our policy toward Cuba. He called for close contact with Latin American nations on the problem of Cuba. He stated that it was important for us to dissuade our NATO Allies from engaging in the Cuban trade.

2. The Resolutions Introduced in the Senate

The Executive Branch did not formally submit a resolution to Congress on Cuba. The combined Senate Committees on Foreign Relations and Armed Services met on September 17, 1962 to consider six resolutions submitted by Senators Mansfield (2), Miller, Prouty, Javits, and Bush-Keating which dealt with the Cuban situation. The wording of the Mansfield resolutions was very similar to that portion of the President's speech quoted above. Senator Mansfield proposed a concurrent resolution as follows:

"Whereas President James Monroe, announcing the Monroe Doctrine in 1823, declared to the Congress that we should consider any attempt on the part of European powers "to extend their system to any portion of this hemisphere as dangerous to our peace and safety."

"Whereas in the Rio Treaty of 1947, the parties agreed that "an armed attack by any state against an American state shall be considered as an attack against all the American states, and, consequently, each one of the said contracting parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by article 51 of the Charter of the United Nations."

"Whereas the Foreign Ministers of the Organization of American States at Punta del Este in January 1962 unanimously

declared: "The present Government of Cuba has identified itself with the principles of Marxist-Leninist ideology, has established a political, economic, and social system based on that doctrine, and accepts military assistance from extracontinental Communist powers, including even the threat of military intervention in America on the part of the Soviet Union."

"Whereas since 1958 the international Communist movement has increasingly extended into Cuba its political, economic, and military sphere of influence: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President of the United States is supported in his determination and possesses all necessary authority--

(a) to prevent by whatever means may be necessary, including the use of arms, the Castro regime from exporting its aggressive purposes to any part of this hemisphere by force or the threat of force;

(b) to prevent in Cuba the creation or use of an externally supported offensive military base capable of endangering the United States Naval Base at Guantanamo, free passage to the Panama Canal, United States missile and space preparations or the security of this Nation and its citizens; and

(c) to work with other free citizens of this hemisphere and with freedom-loving Cuban refugees to support the legitimate aspirations of the people of Cuba for a return of self-determination."

Senator Keating was the first witness before the Committee. He criticized the Mansfield resolution on several grounds. First, he objected to the operative portion of the resolution being worded in terms of support for the President, feeling that it should be an expression "of the sense of Congress in this matter." He then criticized the Mansfield resolution's support of President Kennedy's distinction between "offensive" and "defensive

buildups in Cuba. He declared that the history of Communist expansion shows the effectiveness of infiltration and subversion and that it is a mistake to limit our actions to those cases of obvious aggression. Senator Morse was critical of any broad delegation of authority to the President to instigate unilateral action. He felt that a unilateral action such as a blockade might very well be interpreted as an act of war and that a delegation of this power without any standards was inadvisable and dangerous.

Senator Prouty's resolution was not limited to Cuba but seemed to have world-wide application. It authorized the President to use the Armed Forces whenever and wherever he deemed it necessary to protect the peace and security of the free world.

In his testimony before the Senate Committees, Secretary of State Rusk called for a simple proposal which would gain the most widespread approval in Congress. He stated that the executive branch felt it would be valuable for Congress to pass a resolution which would reaffirm United States policies in the Cuban situation. He stressed the importance of such a resolution as a signal to Moscow of United States determination and a signal to other Caribbean countries of what our reaction would be to any Cuban aggression in the hemisphere.

Secretary Rusk assured the Committee that a resolution would not be a usurpation of Congressional power. He reasoned that, if a situation where we would use our troops against Cuba

evolved, the issue would be so great that the executive would be in close touch with the legislative leadership.

On the issue of unilateral (as opposed to collective) action, the Secretary emphasized (1) that we always have the right as a sovereign nation to resort to unilateral action; (2) the issue in this case is theoretical only, since any military action against Cuba would be so important as to closely involve our Allies.

Chairman Russell was bothered by the Mansfield resolution's statement, "The President of the United States is supported in his determination and possesses all necessary authority to prevent it by whatever means may be necessary including the use of arms." He felt that a clear constitutional question was presented here as to whether the power to declare war could be delegated. He reasoned that this was not the proper situation to debate the constitutional issues. Chairman Russell initially suggested that the wording be changed from "possesses" to "is authorized." He later advocated the use of a joint resolution signed by the President which would eliminate the constitutional issues and would be a statement by the entire United States. An additional advantage of skirting the constitutional issue would be to increase the chances for unanimity in the passage of the resolution.

Senator Miller would have given the President broad power to act when necessary to prevent any violation of the Monroe Doctrine.

His resolution was not limited to Cuba and was apparently an answer to a statement by Khrushchev that the Monroe Doctrine was dead.

In its report of September 19, 1962 the Committee submitted an entirely new resolution which was the one subsequently passed by both Houses.

The text of the resolution follows:

"WHEREAS President James Monroe, announcing the Monroe Doctrine in 1923, declared that the United States would consider any attempt on the part of European powers "to extend their system to any portion of this hemisphere as dangerous to our peace and safety"; and

"WHEREAS in the Rio Treaty of 1947 the parties agreed that "an armed attack by any State against an American State shall be considered as an attack against all the American States, and, consequently, each one of the said contracting parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by article 51 of the Charter of the United Nations"; and

"WHEREAS the Foreign Ministers of the Organization of American States at Punta del Este in January 1962 declared: "The present Government of Cuba has identified itself with the principles of Marxist-Leninist ideology, has established a political, economic, and social system based on that doctrine, and accepts military assistance from extracontinental Communist powers, including even the threat of military intervention in America on the part of the Soviet Union";

"WHEREAS the international Communist movement has increasingly extended into Cuba its political, economic, and military sphere of influence; Now, therefore, be it

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

The United States is determined--

(a) to prevent by whatever means may be necessary, including the use of arms, the Marxist-Leninist regime in Cuba

from our extending, by force or the threat of force, its aggressive or subversive activities to any part of this hemisphere;

(b) to prevent in Cuba the creation or use of an externally supported military capability endangering the security of the United States; and

(c) to work with the Organization of American States and with freedom-loving Cubans to support the aspirations of the Cuban people for self-determination."

The resolution was written in executive session and was recommended unanimously, 34-0, by the Joint Committee. The report quoted extensively from the President's speech of September 11. The resolution was considered consistent with the speech and as a re-enforcement of fundamental United States policies in Cuba. The resolution was felt to be "firm but not threatening."

3. House Committee Report

The House Committee on Foreign Affairs approved H.J.Res. 886 unanimously on September 20, 1962. This was the same resolution as that approved by the Senate Committee. The resolution, according to the report, was presented as an expression of the consensus of Congress on United States policy in Cuba, "in which the Executive concurs."

4. Senate Debate and Passage

The Senate considered the resolution on September 20. Debate was limited to three hours by unanimous consent of the Senate on a motion by Senator Humphrey supported by the Minority Leader. Support for the proposal was virtually unanimous although many

Senators would have preferred somewhat stronger wording. Senator Sparkman was the chief spokesman for the resolution. He urged that Senators support the resolution's broad policy statement and not attempt to clutter it with amendments which would express their own opinions, but might lose votes for the resolution.

He explained that the resolution had been limited to Cuba but emphasized that this did not mean we were not concerned with other Latin American countries. He emphasized that the Monroe Doctrine, the Rio Treaty, and the resolution of Punta Del Este were still very much applicable.

The only strong condemnation of the resolution was by Senator Prouty. He felt that the resolution laid down "no principle to light our way" and gave no real power to the President to do anything.

Prouty's was the only dissenting vote. The resolution was passed 86-1 with the thirteen absent Senators indicating they would have voted "aye."

5. The House Debate and Passage

The resolution was debated and passed by the House on September 27. The resolution was introduced by Representative Madden under a closed rule limiting amendments to those offered by direction of the Committee on Foreign Affairs. The rule also limited debate to three hours. Again, there was very little debate on the resolution itself although some individual members

felt that more forceful action was necessary and others felt that minor changes in the wording might be desirable.

Representative Frelinghuysen urged unanimous support of the resolution despite his belief that it should have gone further in defining the meaning of the Monroe Doctrine today. He pointed out that there was not time for amendment since Congress was set to adjourn and the resolution was necessary before adjournment. These views seemed to be those of a vast majority of the Representatives.

Both Congressmen MacGregor and Adair felt the resolution was dangerously weak, but both finally voted for the resolution.

At the conclusion of debate, Representative Morgan of the Committee of Foreign Affairs, indicated that the Committee had no amendments. Representative Broomfield then moved to recommit the resolution to the Committee with instructions to include certain amendments. These amendments indicated that the threat in Cuba was posed by the Soviet Union and gave the President broad power to take action against this threat under the Monroe Doctrine. The motion to recommit was defeated, 140-251.

The unamended resolution was then passed, 384-7.

51

VIET-NAM

INFORMATION NOTES

OFFICE OF MEDIA SERVICES, BUREAU OF PUBLIC AFFAIRS, DEPARTMENT OF STATE
NUMBER 10, AUGUST 1967



LEGAL BASIS FOR U.S. MILITARY AID TO SOUTH VIET-NAM

The U.S. military commitment in Viet-Nam is based on a solid foundation of international law, including the following well-established points of law and fact:

- The people of South Viet-Nam have the inherent right of individual and collective self-defense against armed attack, which includes the right to seek aid from other friendly states.

- The United States has the right to participate in the collective defense of South Viet-Nam at the request of its government.

- South Viet-Nam is the victim of an armed attack instigated, directed, and sustained by North Viet-Nam in violation of international law and in violation of the Geneva accords.

- The United States is obligated, under the SEATO treaty, to respond to a Communist armed attack against South Viet-Nam.

- With Vietnamese, U.S., and other allied troops fighting in South Viet-Nam against troops infiltrated from, and supplied from, North Viet-Nam, U.S. airstrikes against military targets in North Viet-Nam are an appropriate exercise of the right of self-defense.

- Actions by the United States and South Viet-Nam are justified under the Geneva accords of 1954.

- The President of the United States has the authority to commit U.S. forces in the collective defense of South Viet-Nam.

I. The United States and South Viet-Nam are exercising the inherent right of individual and collective self-defense.

A. The United States is acting at the request of the Government of South Viet-Nam, which is the victim of an armed attack.

B. Every country has the right to take measures of self-defense against armed attack and to have the assistance of others in that defense.

For a more detailed treatment of this subject, see THE LEGALITY OF U.S. PARTICIPATION IN THE DEFENSE OF VIET-NAM, State Department publication 8062. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, 15¢.

C. The right of self-defense against armed attack is an inherent right and is recognized as such in article 51 of the U.N. Charter which provides that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense . . ."

II. South Viet-Nam is the victim of an armed attack instigated, directed, and sustained by North Viet-Nam in violation of international law and in violation of the 1954 Geneva accords.

A. The Geneva accords of 1954 established a demarcation line between North Viet-Nam and South Viet-Nam. They provided for withdrawal of military forces into the respective zones north and south of this line. The accords prohibited the use of either zone for the resumption of hostilities or to "further an aggressive policy."

B. North Viet-Nam violated the accords from the outset by ordering thousands of armed cadre to remain in South Viet-Nam to form a clandestine political-military organization. The activities of this covert organization were directed toward the kidnaping and assassination of civilian officials.

In 1959 Hanoi decided to open a large-scale military campaign against South Viet-Nam. Since that decision North Viet-Nam has infiltrated more than 100,000 fighting men and many tons of war material into South Viet-Nam. Beginning in the fall of 1964 whole units of the regular army of North Viet-Nam have been sent across the demarcation line to enlarge the attack on South Viet-Nam.

C. As early as June 1962 the Legal Committee of the International Control Commission (ICC) determined that North Viet-Nam was carrying out "armed attacks" against South Viet-Nam in violation of the Geneva accords. The Legal Committee's report made the following points:

- Article 10 of the Geneva agreement called for "the complete cessation of all hostilities in Viet-Nam."

●Article 19 required both sides to insure their zones "are not used for the resumption of hostilities or to further aggressive policy."

●Article 24 required each side to respect the territory of the other and "to commit no act and undertake no operation against the other Party."

●Article 27 specified that the agreement applied to all elements of the military command. This included regular, irregular, and guerrilla forces.

The report then made the following finding: "Having examined the complaints and the supporting material sent by the South Vietnamese Mission, the Committee has come to the conclusion that in specific instances there is evidence to show that armed and unarmed personnel, arms, munitions and other supplies have been sent from the Zone in the North to the Zone in the South with the object of supporting, organizing and carrying out hostile activities, including armed attacks, directed against the Armed Forces and Administration of the Zone in the South. These acts are in violation of Articles 10, 19, 24, and 27 of the Agreement on the Cessation of Hostilities in Viet-Nam."

D. The right of individual and collective self-defense applies whether or not South Viet-Nam is regarded as an independent sovereign state. The Republic of Viet-Nam in the South has been recognized as a separate international entity by approximately 60 governments. The Geneva accords of 1954 provided for a temporary division of Viet-Nam into two zones at the 17th parallel. The action of the United Nations in the Korean conflict of 1950 clearly established the principle that there is no greater license for one zone of a temporarily divided state to attack the other zone than there is for one state to attack another state.

III. The United States is obligated by the SEATO treaty to respond to an armed attack against South Viet-Nam.

A. Article IV (1) of the Southeast Asia Collective Defense Treaty provides that "Each Party recognizes that aggression by means of armed attack in the Treaty area against any of the Parties or against any state or territory which the Parties by unanimous agreement may hereafter designate, would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes."

B. By protocol to the treaty the parties unanimously extended the protection of the treaty to "the states of Cambodia and Laos and the free territory under the jurisdiction of the state of Viet-Nam."

C. The obligation of each party under article IV (1) is individual as well as collective. "Each Party" recognizes that aggression by armed attack would endanger "its own peace and safety" and agrees that it will act to meet the common danger.

IV. U.S. airstrikes against North Viet-Nam are an appropriate exercise of the right of self-defense.

A. U.S. airstrikes are aimed at carefully selected military targets—not at civilian population centers. Every effort is made to keep civilian casualties at a minimum.

B. Airstrikes against lines of communication and other military targets in North Viet-Nam are necessary to impede the infiltration of men and supplies into South Viet-Nam and do not represent a disproportionate response to the force being used against South Viet-Nam by North Viet-Nam.

C. There is no rule of international law that permits an aggressor to strike at a neighbor with immunity from retaliation against its own territory.

V. Actions by the United States and South Viet-Nam are justified under the Geneva accords of 1954.

A. Description of the accords. The Geneva accords of 1954 established the date and hour for a cease-fire in Viet-Nam, drew a "provisional military demarcation line" with a demilitarized zone on both sides, and required an exchange of prisoners and the phased regroupment of Viet Minh forces from the South to the North and of French Union forces from the North to the South. The introduction into Viet-Nam of troop reinforcements and new military equipment (except for replacement and repair) was prohibited. The armed forces of each party were required to respect the demilitarized zone and the territory of the other zone. The adherence of either zone to any military alliance, and the use of either zone for the resumption of hostilities or to "further an aggressive policy," were prohibited. The International Control Commission was established, composed of India, Canada, and Poland, with India as chairman. The task of the Commission was to supervise the proper execution of the provisions of the cease-fire agreement. The people of Viet-Nam were to enjoy "the fundamental freedoms, guaranteed by democratic institutions established as a result of free general elections by secret ballot." In this climate, general elections for reunification were to be held in July 1956 under the supervision of the ICC.

B. North Viet-Nam violated the accords from the beginning. From the very beginning, the North Vietnamese violated the 1954 Geneva accords. Communist military forces and supplies were left in the South in violation of the accords. Other Communist guerrillas were moved north for further training and then were infiltrated into the South in violation of the accords. North Viet-Nam greatly enlarged its armed forces with Chinese Communist help while South Viet-Nam reduced its own.

C. The introduction of U.S. military personnel and equipment was justified. The accords prohibited the reinforcement of foreign

military forces in Viet-Nam and the introduction of new military equipment, but they allowed replacement of existing military personnel and equipment. Prior to late 1961 South Viet-Nam had received considerable military equipment and supplies from the United States (an estimated \$200 million in material had been withdrawn by the French), and the United States had established a gradually enlarged Military Assistance Advisory Group (MAAG) of fewer than 900 men, to replace the French training and advisory personnel. These actions were reported to the ICC and were permissible under the agreements.

As the Communist aggression intensified between 1959 and 1961, with increased infiltration and a marked stepping-up of Communist terrorism in the South, the United States found it necessary in late 1961 to increase substantially the numbers of our military personnel and the amounts and types of equipment introduced by this country into South Viet-Nam. These increases were justified by the principle of international law that a material breach of agreement by one party entitles the other at least to withhold compliance with an equivalent, corresponding, or related provision until the defaulting party is prepared to honor its obligations.

In accordance with this principle, the systematic violation of the Geneva accords by North Viet-Nam justified South Viet-Nam in suspending compliance with the provision controlling entry of foreign military personnel and military equipment.

D. South Viet-Nam was justified in refusing to implement the election provisions of the Geneva accords.

The 1954 Geneva accords contemplated the reunification of the country by general elections in July 1956, which were intended to obtain the "free expression of the national will."

Throughout the 1954 Geneva conference the United States adhered to its well-established position, expressed by Under Secretary of State Walter Bedell Smith as follows:

"In the case of nations now divided against their will, we shall continue to seek to achieve unity through free elections supervised by the United Nations to insure that they are conducted fairly."

Throughout the conference both the United States and the State of Viet-Nam (South) rejected the effort to bind the people of South Viet-Nam to any election which would not permit that "free expression of the national will."

E. South Viet-Nam did not agree to the election provision of the accords because it failed to provide for supervision by the United Nations, but South Viet-Nam did not reject the concept of free elections. President Diem refused to participate in elections in 1956 because the conditions of repression prevailing in North Viet-Nam at that time made free elections impossible.

F. The Viet Minh was a popular movement during the war with France, but after the cease-fire there was considerable resistance to the Communist program in North Viet-Nam. Nine hundred thousand refugees fled to South Viet-Nam, and all opposition that remained was harshly repressed. General Giap, currently Minister of Defense of North Viet-Nam, in addressing the Tenth Congress of the North Vietnamese Communist Party in October 1956 publicly acknowledged that executions, terror, and torture had become commonplace.

A nationwide election in these circumstances would have been meaningless. Few people in the North would have dared to vote against the Communist regime. With a substantial majority of the Vietnamese people living north of the 17th parallel, such an election would have meant turning the country over to the Communists without regard to the will of the people.

G. The election issue can furnish no justification for North Viet-Nam's armed aggression against South Viet-Nam. International law requires that political disputes be settled by peaceful means. Recourse to armed force is prohibited. This doctrine is of great importance in the temporarily divided states, be it Germany, Korea, or Viet-Nam, where peace depends upon respect for established demarcation lines. The action of the United Nations in the Korean conflict of 1950 clearly established the principle that there is no greater license for one zone of a temporarily divided state to attack the other zone than there is for one state to attack another state. South Viet-Nam has the same right that South Korea had to defend itself and to organize collective defense against an armed attack from the North. A resolution of the Security Council dated June 25, 1950, noted "with grave concern the armed attack upon the Republic of Korea by forces from North Korea" and determined "that this action constitutes a breach of the peace."

VI. The President has full authority to commit U.S. forces in the collective defense of South Viet-Nam.

The United States is acting in Viet-Nam with the full authority of the executive and the legislative branches of the Government.

A. The President's power under article II of the U.S. Constitution extends to the actions currently undertaken in Viet-Nam. Under the Constitution, the President is Commander in Chief of the Army and Navy. He holds the prime responsibility for the conduct of U.S. foreign relations. These duties carry very broad powers, including the power to deploy American forces abroad and commit them to military operations when the President deems such action necessary to maintain the security and defense of the United States.

Since the Constitution was adopted there have been at least 125 instances in which the President has ordered the Armed Forces to take action or maintain positions abroad without

obtaining prior congressional authorization. For example, President Truman ordered 250,000 troops to Korea during the Korean war and President Eisenhower dispatched 14,000 troops to Lebanon in 1958.

The Constitution leaves it to the President to determine whether the circumstances of a particular armed attack are urgent and the potential consequences so threatening to the security of the United States that he should act without formally consulting the Congress.

B. The Southeast Asia Collective Defense Treaty authorizes the President's actions. Under article VI of the U.S. Constitution, "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land." Article IV, paragraph 1, of the SEATO treaty establishes as a matter of law that a Communist armed attack against South Viet-Nam endangers the peace and safety of the United States. In this event the United States undertakes to "act to meet the common danger in accordance with its constitutional processes."

C. The Joint Resolution of Congress of August 10, 1964, authorizes U.S. participation in the collective defense of South Viet-Nam.

Congress has acted in unmistakable fashion to approve and authorize U.S. actions in Viet-Nam. Following the North Vietnamese attacks in the Gulf of Tonkin against United States destroyers, Congress adopted, by a Senate vote of 88-2 and a House vote of 416-0, a joint resolution containing a series of important declarations and provisions of law.

Section 1 resolved that "the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression."

Section 2 provides that the United States is prepared to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom. The identification of South Viet-Nam through the reference to "protocol state" in this section is unmistakable, and the grant of authority "as the

President determines" is unequivocal.

The following illuminating exchange occurred during the hearings:

"Mr. Cooper. [John Sherman Cooper] Does the Senator consider that in enacting this resolution we are satisfying that requirement of article IV of the Southeast Asia Collective Defense Treaty? In other words, are we now giving the President advance authority to take whatever action he may deem necessary respecting South Vietnam and its defense, or with respect to the defense of any other country included in the treaty?"

"Mr. Fulbright. [J. William Fulbright] I think that is correct.

"Mr. Cooper. Then looking ahead, if the President decided that it was necessary to use such force as could lead into war, we will give that authority by this resolution?"

"Mr. Fulbright. That is the way I would interpret it. If a situation later developed in which we thought the approval should be withdrawn it could be withdrawn by concurrent resolution."

The August 1964 joint resolution continues in force today. Section 2 of the resolution provides that it shall expire "when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress."

D. No declaration of war by the Congress is required to authorize U.S. participation in the collective defense of South Viet-Nam.

Over a very long period in our history, practice and precedent have confirmed the constitutional authority to engage U.S. forces in hostilities without a declaration of war. This history extends from the undeclared war with France in 1798 and the war against the Barbary pirates at the end of the 18th century to the Korean war of 1950-53.

In the case of Viet-Nam the Congress has supported the determination of the President by the Senate's approval of the SEATO treaty, the adoption of the joint resolution of August 10, 1964, and the enactment of the necessary authorizations and appropriations.

DEPARTMENT OF STATE PUBLICATION 8285
East Asian and Pacific Series 165

U.S. GOVERNMENT PRINTING OFFICE : 1967 O-269-240

For Sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price 5 Cents