

For Release: P. M. Newspapers, Tuesday, September 26, 1967

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PARTIAL TEXT OF REMARKS BY SENATOR CLIFFORD P. CASE ON THE
TONKIN GULF RESOLUTION, PREPARED FOR DELIVERY ON THE SENATE
FLOOR, TUESDAY, SEPTEMBER 26, 1967

For those observers of the passing scene to whom politics is little more than a cheap game in which one man or one group tries to advantage itself at the expense of another, the distress of Congress over the Administration's continuing misuse of the Tonkin Gulf Resolution means only that a crafty President has again put it over on the stupid members of Congress.

How stupid you members are and were, they say, not to have known that Lyndon Johnson would extract the last ounce of advantage from the situation he so cleverly put you in!

What this glib view so conveniently ignores, however, is that the American political system requires mutual confidence and trust between the President and the Congress, just as it requires confidence on the part of the people in the President and the Congress.

This is important in tranquil times. It is essential in times of stress like the present. Yet, in somber fact, the Johnson Administration's handling of the war in Vietnam since 1964 has produced a crisis of confidence.

The basic anxiety of Americans, in and out of Congress, by no means rests solely on the rising casualty lists or the increased money cost of the war or its diversion of resources and energy from urgent domestic needs--critical as these are.

The people's anxiety, and that of Congress too, springs perhaps in greatest part from a growing conviction that the Administration is not telling them the truth.

I have pointed out before that the Administration's continuing assurances of progress in Vietnam simply do not square with the cold fact that toward our basic objective--that of creating an independent self-governing society supported by its citizens--there has been no significant progress at all.

(MORE)

Recently the clash between Administration words and deeds has enveloped the bombing issue. On August 25 Secretary McNamara, in stating the case for a policy of limited bombing of North Vietnam, argued persuasively that attacks on the ports of North Vietnam "would not be an effective means of stopping the infiltration of supplies into South Vietnam."

We were assured, moreover, that the Secretary was speaking for the President in this regard--both by the White House and the majority leader of the Senate. Shortly thereafter, however, heavy attacks were launched against targets in two of North Vietnam's three major ports.

Has Secretary McNamara been overruled by the President? It may not be so, but it looks that way. An alternative assumption is even more ominous--that the President, whatever his own attitude toward the need for restraint, is indulging the proponents of a "military solution" in Vietnam for political reasons.

Today I wish to call attention to another example of what one prominent correspondent has called the Johnson Administration's "operation behind a false front." This concerns the interpretation given by the President and his advisers to the joint resolution passed by the Congress on August 7, 1964--the so-called Tonkin Gulf Resolution.

That resolution, it will be recalled, was presented to the Congress by the President in an atmosphere of emergency. American naval vessels, we were told, had been attacked off North Vietnam, and the President had ordered a retaliatory raid against "gunboats and supporting facilities used in these hostile operations."

Therefore, said the President, "I have concluded that I should now ask the Congress, on its part, to join in affirming the national determination that all such attacks will be met, and that the United States will continue in its basic policy of assisting the free nations of the area to defend their freedom."

The resolution that we then adopted, with only two dissenting votes in the Senate and none in the House, stated that "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."

It further stated that the United States is "prepared, as the President determines, 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 Members of Congress knew the wording of the resolution. They knew that the naked words could be construed to give the President almost complete sanction to involve the United States militarily in anything he considered necessary to the national interest in Southeast Asia.

That, however, was not the Nation's understanding of Administration intentions in the summer of 1964. To the contrary, it was the understanding of Congress and of the public that it was our basic policy to "assist" South Vietnam and that, as the President put it in September, he was not about to send American boys to fight a war that Asian boys should fight for themselves.

The Members of Congress were, in fact, given specific assurance that the Tonkin Gulf Resolution was not intended to grant the unlimited sanction which, stretched to their ultimate, the words could be taken to convey. They had specific assurance on this point from Senator Fulbright, Chairman of the Foreign Relations Committee, who persuaded Senator Nelson not to offer an amendment to bar "extension of the present conflict."

Such a proviso was unnecessary, Senator Fulbright told us, because the objective sought was an "accurate reflection of what I believe is the President's policy." Senator Fulbright was then known to be a confidant of the President and the authority of his words was unchallenged. And if Senator Fulbright had asserted, to the contrary, that Congress was being asked to approve a fundamental change in our role in Vietnam, the Administration "would have repudiated him out of hand," as Senator Nelson stated the other day.

There was, moreover, the President's own suggestion that the expression of support he sought from Congress was limited in time, no less than in scope. For this is how he concluded his message of August 5, 1964.

"The events of this week would in any event have made the passage of a Congressional resolution essential. But there is an additional reason for doing so at a time when we are entering on three months of political campaigning. Hostile nations must understand that in such a period the United States will continue to protect its national interests, and that in these matters there is no division among us."

Those three months have stretched into three years, yet we still find the President relying upon the literal words of the Tonkin Gulf Resolution to justify every action he has taken in Vietnam--actions that have raised the number of Americans engaged from a few thousand to more than one-half million, have initiated and expanded the bombing of North Vietnam, and have turned this into a largely American war with no end in sight.

Only recently, on August 18, the President told his news conference: "I believe that every Congressman and most of the Senators knew what that resolution said. That resolution authorized the President--and expressed the Congress's willingness to go along with the President--to do whatever was necessary to deter aggression."

This is a complete distortion of what Congress understood and intended by its action three years ago. It amounts to a claim that we gave Mr. Johnson a perpetual letter of credit, which no Congress can or would do.

We knew quite well what we were doing when we adopted the Tonkin Gulf Resolution. We were not wrong, nor were we stupid, in acting in reliance on the essential element in all relations between the President and the Congress--mutual trust and confidence.

When we relied on the assurance given us by Senator Fulbright for the Administration, we were acting in the only way in which we could act, consistent with the need to make the American political system work in times of emergency.

For the President to take advantage of the restraint and responsibility of Congress in this situation has been highly irresponsible. It amounts to reckless tampering with the most fragile of all the essential ingredients of a democratic society, the trust of one man for another.

And the President compounds his error when he deliberately taunts the Congress with a dare to repeal the resolution. Such a step would amount to a vote of "no confidence," which in a parliamentary system would produce a change of government, but would only produce chaos under our system of fixed terms of office. Congress will not indulge in such recklessness, and Mr. Johnson knows it.

If the potential consequences of his misrepresentations were no more than the undoing of one political leader, the damage to our system might not be so serious. But the President has done more than to squander his credibility; he has dealt a grievous blow at the process by which we have arrived at the expression of national unity in the face of international crises since the second World War.

The "sense of Congress" resolution has served an invaluable purpose in this respect under President Truman, President Eisenhower, and President Kennedy. But President Johnson's perversion of the Tonkin Gulf Resolution has so undermined the mutual confidence and trust upon which this technique was built that its future utility may have been irreparably compromised.

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DEPARTMENT OF STATE

Washington, D.C. 20520

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Aug. 17, 1967

MEMORANDUM FOR MR. WALT W. ROSTOW
THE WHITE HOUSE

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Enclosed, in response to Mr. Bromley Smith's request of this morning, are pertinent documents concerning the proceedings resulting from the Tonkin Gulf incident, August 2-7, 1964.

A Chronology of Events

Agenda for Meeting with Congressional Leaders

Statement by the President following Congressional Consultation

Record of Joint Hearings before Foreign Relations and Armed Services Committees

Statement of Secretary Rusk before House Foreign Affairs Committee

Summary of Congressional Debate on Tonkin Gulf Resolution

House and Senate Floor Debates

If you need anything further, please let me know.

John P. Walsh

John P. Walsh

Acting Executive Secretary

Enclosures:

As stated.

11a

CHRONOLOGY OF EVENTS

Sun, August 2:

First Tonkin Gulf Incident - USS Maddox attacked.

Mon, August 3:

President made public instructions to Navy to continue patrols, double patrol force; provide air cover; attack any force which attacked them.

U.S. published protest against unprovoked Communist North Vietnamese boat attack on Maddox on high seas

Tues, August 4:

Second Tonkin Gulf Incident: Destroyers Maddox and Turner Joy attacked in international waters.

9:52/^{p.m.}(VN time): destroyers report they under torpedo attack

Midnight: Destroyers report two enemy craft sunk

1:30 a.m (VN time) destroyers report attacking crafts had broken off engagement

6:45 p.m. (local) White House meeting with Congressional Leadership

President issues statement stressing outrage at incident and US determination to carry out our full commitment to the people and Government of South Vietnam; also requests Congress to pass resolution making it clear that US Government is united in determination to take all necessary measures in support of freedom and in defense of peace in Southeast Asia

U.S. requests convening urgent meeting of United Nations Security Council

Wed, August 5:

Air action taken against PT and gun boats and certain supporting facilities in North Vietnam

Amb. Stevenson made full report to Security Council on North Vietnamese aggression and US limited response

President transmits Resolution to Congress

CHRONOLOGY OF EVENTS

- 2 -

Thurs, August 6:

Joint Hearing before Senate Committee on Foreign Relations and Committee on Armed Services

Joint Hearing before House Committee on Foreign Affairs and Armed Services

Senate and House Joint Committees report out favorably Southeast Asia Resolution (S.J.Res 189; H.J.Res. 1145)

Senate begins floor debate

Friday, August 7

House begins floor debate

Senate continues floor debate

House passes Resolution 416-0

Senate passes Resolution 88-2

11-6

48. SOUTHEAST ASIA RESOLUTION¹

Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

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

SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, 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.

SEC. 3. 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, except that it may be terminated earlier by concurrent resolution of the Congress.

¹ Text of Public Law 88-408 [H.J. Res. 1146], 78 Stat. 384, approved Aug. 10, 1964.

EW
11c

February 28, 1967

MEMORANDUM TO: The Secretary
THROUGH: S/S
FROM: H - H.G. Torbert Jr.
SUBJECT: Digest of Tonkin Gulf Proceedings, August 2-7, 1964

Attached are pertinent documents concerning the proceedings resulting from the Tonkin Gulf incident, August 2-7 1964. Included are the following:

A chronology of events; the House and Senate Committee Reports on the Resolution; House and Senate floor debate and the House and Senate votes on the Resolution.

In regard to your consultations with the Congressional leadership at the White House on August 4, 1964, we have canvassed White House offices but no records of this meeting could be found. There is attached a listing of the Congressional members present, the agenda, plus the press statement the President made following your Congressional consultation on August 4 (Tabs 2, 3, and 4).

Your statement to the joint hearing of the Senate Foreign Relations and Armed Services Committees appears on page four of the published text (Tab 5). Senator Fulbright's comment at the joint hearing appears on page 10 of this document. (Also see his commendation of your action on p. 18405 of the Senate floor debate (Tab 9). The hearing was in executive session but last year the Foreign Relations Committee requested that the Department edit the transcript for publication. This was completed on July 12, 1966 and the hearings were then printed by the Committee and released in unclassified form on November 24, 1966. We are still attempting to locate a copy of the unedited (classified) transcript for you. In the interim, we are attaching excerpts taken from your unedited, executive session testimony. (Tab 6).

H:JCahill

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Sir: This was sent over by
Brom Smith.

THE WHITE HOUSE
WASHINGTON

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AGENDA FOR MEETING WITH CONGRESSIONAL LEADERS

6:45 PM - August 4, 1964

1. Military situation report by the Secretary of Defense, to include both Maddox action and planned reply.
2. Political situation report by the Secretary of State, to include both meaning of the present situation and diplomatic steps being taken.
3. Discussion led by the President aimed toward the question of Congressional Resolution -- text to be presented and explained by the Secretary of State.
4. Discussion of what Leadership will say about this meeting.

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WHITE HOUSE CONGRESSIONAL MEETING

Tuesday, August 4, 1964

List of Participants

Senator Mansfield
Senator Humphrey
Senator Fulbright
Senator Russell
Senator Dirksen
Senator Kuchel
Senator Hickenlooper
Senator Saltonstall
Senator Aiken

Speaker McCormack
Representative Albert
Representative Vinson
Representative Thos. Morgan
Representative Halleck
Representative Arends
Representative Bolton

STATEMENT BY THE PRESIDENT

11-F

My fellow Americans:

As President and Commander in Chief, it is my duty to the American people to report that renewed hostile actions against U.S. ships on the high seas in the Gulf of Tonkin have today required me to order the military forces of the United States to take action in reply.

The initial attack on the destroyer Maddox, on August 2, was repeated today by a number of hostile vessels attacking two U.S. destroyers with torpedoes. The destroyers, and supporting aircraft, acted at once on the orders I gave after the initial act of aggression. We believe at least two of the attacking boats were sunk. There were no U.S. losses.

The performance of commanders and crews in this engagement is in the highest tradition of the United States Navy.

But repeated acts of violence against the armed forces of the United States must be met not only with alert defense, but with positive reply. That reply is being given as I speak to you. Air action is now in execution against gun boats and certain supporting facilities of North Vietnam which have been used in these hostile operations.

In the larger sense, this new act of aggression, aimed directly at our own forces, again brings home to all of us in the United States the importance of the struggle for peace and security in Southeast Asia. Aggression by terror against the peaceful villagers of South Vietnam has now been joined by open aggression on the high seas against the United States of America. The determination of all Americans to carry out our full commitment to the people and government of South Vietnam will be redoubled by this outrage.

Yet our response, for the present, will be limited and fitting. We Americans know, although others appear to forget, the risks of spreading conflict -- we still seek no wider war.

I have instructed the Secretary of State to make this position totally clear to friends, to adversaries, and indeed to all. I have instructed Ambassador Stevenson to raise this matter immediately and urgently before the Security Council of the United Nations.

Finally, I have today met with the leaders of both parties in the Congress of the United States, and I have informed them that I shall immediately request the Congress to pass a resolution making it clear that our Government is united in its determination to take all necessary measures in support of freedom, and in defense of peace, in Southeast Asia. I have been given encouraging assurance by these leaders that such a resolution will be promptly introduced, freely and expeditiously debated, and passed with overwhelming support.

MORE

It is a solemn responsibility to have to order even limited military action by forces whose overall strength is as vast and as awesome as those of the United States of America. But it is my considered conviction, shared throughout your government, that firmness in the right is indispensable today for peace. That firmness will always be measured. Its mission is peace.

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August 3, 1964

Office of the White House Press Secretary

11-9

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have instructed the Navy

(1) to continue the patrols in the Gulf of Tonkin off the coast of North Vietnam,

(2) to double the force by adding an additional destroyer to the one already on patrol,

(3) to provide a combat air patrol over the destroyers, and

(4) to issue orders to the commanders of the combat aircraft and the two destroyers

(a) to attack any force which attacks them in international waters, and

(b) to attack with the objective not only of driving off the force but of destroying it.

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Tonkin Gulf Proceedings
August 2-7 1964

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DEPARTMENT OF STATE
EXECUTIVE SECRETARIAT

August 17, 1967

TO: Mr. Bromley Smith
The White House

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The enclosed paper on "The
Legality of U.S. Participation
in the Defense of Viet-Nam"
contains a section on the Joint
Resolution of August 10, 1964
starting on Page 39.

Walsh
John P. Walsh
Acting Executive Secretary

Attachment:
As stated.

Tonkin Gulf Resolution

Cross Hall file 3A
12a File Date:
4 Mar 66

DEPARTMENT OF STATE
OFFICE OF THE LEGAL ADVISER

THE LEGALITY OF UNITED STATES PARTICIPATION
IN THE DEFENSE OF VIET NAM

March 4, 1966

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March 4, 1966

THE LEGALITY OF UNITED STATES PARTICIPATION
IN THE DEFENSE OF VIET NAM

I. THE UNITED STATES AND SOUTH VIET NAM HAVE THE
RIGHT UNDER INTERNATIONAL LAW TO PARTICIPATE
IN THE COLLECTIVE DEFENSE OF SOUTH VIET NAM
AGAINST ARMED ATTACK

In response to requests from the Government of South Viet Nam, the United States has been assisting that country in defending itself against armed attack from the Communist North. This attack has taken the forms of externally supported subversion, clandestine supply of arms, infiltration of armed personnel, and most recently the sending of regular units of the North Vietnamese army into the South.

International law has long recognized the right of individual and collective self-defense against armed attack. South Viet Nam and the United States are engaging in such collective defense consistently with international law and with United States obligations under the United Nations Charter.

A. South Viet Nam is Being Subjected to Armed
Attack by Communist North Viet Nam

The Geneva Accords of 1954 established a demarcation line between North Viet Nam and South Viet Nam. They

provided for withdrawals 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".

During the five years following the Geneva Conference of 1954, the Hanoi regime developed a covert political-military organization in South Viet Nam based on Communist cadres it had ordered to stay in the South, contrary to the provisions of the Geneva Accords. The activities of this covert organization were directed toward the kidnapping and assassination of civilian officials -- acts of terrorism that were perpetrated in increasing numbers.

In the three-year period from 1959 to 1961, the North Viet Nam regime infiltrated an estimated 10,000 men into the South. It is estimated that 13,000 additional personnel were infiltrated in 1962, and, by the end of 1964, North Viet Nam may well have moved over 40,000 armed and unarmed guerrillas into South Viet Nam.

The International Control Commission reported in 1962 the findings of its Legal Committee:

..."there is evidence to show that arms, armed and unarmed personnel, munitions and other supplies have been sent from the Zone in the North to the Zone in the South with the objective of supporting, organizing and carrying out hostile activities, including armed attacks, directed against the Armed Forces and Administration of the Zone in the South.

..."there is evidence that the PAVN [People's Army of Viet Nam] has allowed the Zone in the North to be used for inciting, encouraging and supporting hostile activities in the Zone in the South, aimed at the overthrow of the Administration in the South."

Beginning in 1964, the Communists apparently exhausted their reservoir of southerners who had gone North. Since then the greater number of men infiltrated into the South have been native-born North Vietnamese. Most recently, Hanoi has begun to infiltrate elements of the North Vietnamese army in increasingly larger numbers. Today, there is evidence that nine regiments of regular North Vietnamese forces are fighting in organized units in the South.

In the guerrilla war in Viet Nam, the external aggression from the North is the critical military element of the insurgency, although it is unacknowledged by North Viet Nam. In these circumstances, an "armed attack" is not as easily fixed by date and hour as in the case of

traditional warfare. However, the infiltration of thousands of armed men clearly constitutes an "armed attack" under any reasonable definition. There may be some question as to the exact date at which North Viet Nam's aggression grew into an "armed attack", but there can be no doubt that it had occurred before February 1965.

B. International Law Recognizes the Right of Individual and Collective Self-Defense Against Armed Attack

International law had traditionally recognized the right of self-defense against armed attack. This proposition has been asserted by writers on international law through the several centuries in which the modern law of nations has developed. The proposition has been acted on numerous times by governments throughout modern history. Today the principle of self-defense against armed attack is universally recognized and accepted.^{1/}

The Charter of the United Nations, concluded at the end of World War II, imposed an important limitation on

^{1/} See, e.g., Jessup, A Modern Law of Nations, 163 ff. (1948); Oppenheim, International Law, 297 ff. (8th ed., Lauterpacht, 1955). And see, generally, Bowett, Self-Defense in International Law (1958).

the use of force by United Nations Members. Article 2, paragraph 4, 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 Purposes of the United Nations."

In addition, the Charter embodied a system of international peacekeeping through the organs of the United Nations.

Article 24 summarizes these structural arrangements in stating that the United Nations Members--

"confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf."

However, the Charter expressly states in Article 51 that the remaining provisions of the Charter -- including the limitation of Article 2, paragraph 4, and the creation of United Nations machinery to keep the peace -- in no way diminish the inherent right of self-defense against armed attack. Article 51 provides:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to

maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

Thus, Article 51 restates and preserves, for Member States in the situations covered by the Article, a long-recognized principle of international law. The Article is a "saving clause" designed to make clear that no other provision in the Charter shall be interpreted to impair the inherent right of self-defense referred to in Article 51.

Three principal objections have been raised against the availability of the right of individual and collective self-defense in the case of Viet Nam: (1) that this right applies only in the case of an armed attack on a United Nations Member; (2) that it does not apply in the case of South Viet Nam because the latter is not an independent sovereign state; and (3) that collective self-defense may be undertaken only by a regional organization operating under Chapter VIII of the United Nations Charter. These objections will now be considered in turn.

C. The Right of Individual and Collective Self-Defense Applies in the Case of South Viet Nam Whether or Not that Country is a Member of the United Nations

1. South Viet Nam enjoys the right of self-defense

The argument that the right of self-defense is available only to Members of the United Nations mistakes the nature of the right of self-defense and the relationship of the United Nations Charter to international law in this respect. As already shown, the right of self-defense against armed attack is an inherent right under international law. The right is not conferred by the Charter, and, indeed, Article 51 expressly recognizes that the right is inherent.

The Charter nowhere contains any provision designed to deprive non-Members of the right of self-defense against armed attack.^{2/} Article 2, paragraph 6, does charge the

^{2/} While non-Members, such as South Viet Nam, have not formally undertaken the obligations of the United Nations Charter as their own treaty obligations, it should be recognized that much of the substantive law of the Charter has become part of the general law of nations through a very wide acceptance by nations the world over. This is particularly true of the Charter provisions bearing on the use of force. Moreover, in the case of South Viet Nam, the South Vietnamese Government has expressed its ability and willingness to abide by the Charter, in applying for United Nations membership. Thus it seems entirely appropriate to appraise the actions of South Viet Nam in relation to the legal standards set forth in the United Nations Charter.

United Nations with responsibility for ensuring that non-Member States act in accordance with United Nations "Principles so far as may be necessary for the maintenance of international peace and security". Protection against aggression and self-defense against armed attack are important elements in the whole Charter scheme for the maintenance of international peace and security. To deprive non-Members of their inherent right of self-defense would not accord with the Principles of the Organization, but would instead be prejudicial to the maintenance of peace. Thus Article 2, paragraph 6 -- and, indeed, the rest of the Charter -- should certainly not be construed to nullify or diminish the inherent defensive rights of non-Members.

2. The United States has the right to assist in the defense of South Viet Nam although the latter is not a United Nations Member

The cooperation of two or more international entities in the defense of one or both against armed attack is generally referred to as collective self-defense. United States participation in the defense of South Viet Nam at the latter's request is an example of collective self-defense.

The United States is entitled to exercise the right of individual or collective self-defense against armed attack, as that right exists in international law, subject only to treaty limitations and obligations undertaken by this country.

It has been urged that the United States has no right to participate in the collective defense of South Viet Nam because Article 51 of the United Nations Charter speaks only of the situation "if an armed attack occurs against a Member of the United Nations". This argument is without substance.

In the first place, Article 51 does not impose restrictions or cut down the otherwise available rights of United Nations Members. By its own terms, the Article preserves an inherent right. It is, therefore, necessary to look elsewhere in the Charter for any obligation of Members restricting their participation in collective defense of an entity that is not a United Nations Member.

Article 2, paragraph 4, is the principal provision of the Charter imposing limitations on the use of force by Members. It states that they--

"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 Purposes of the United Nations."

Action taken in defense against armed attack cannot be characterized as falling within this proscription. The record of the San Francisco Conference makes clear that Article 2, paragraph 4, was not intended to restrict the right of self-defense against armed attack.^{3/}

One will search in vain for any other provision in the Charter that would preclude United States participation in the collective defense of a non-Member. The fact that Article 51 refers only to armed attack "against a Member of the United Nations" implies no intention to preclude Members from participating in the defense of non-Members. Any such result would have seriously detrimental consequences for international peace and security and would be inconsistent with the Purposes of the United Nations as they are set

^{3/} See, e.g., 6 UNCIO Documents 459.

forth in Article 1 of the Charter.^{4/} The right of Members to participate in the defense of non-Members is upheld by leading authorities on international law.^{5/}

D. The Right of Individual and Collective Self-Defense Applies Whether or Not South Viet Nam is Regarded as an Independent Sovereign State

1. South Viet Nam enjoys the right of self-defense

It has been asserted that the conflict in Viet Nam is "civil strife" in which foreign intervention is forbidden.

^{4/} In particular, the statement of the first Purpose:

"To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;"

^{5/} Bowett, Self-Defense in International Law, 193-195 (1958); Goodhart, "The North Atlantic Treaty of 1949," 79 Recueil Des Cours, 183, 202-204 (1951, vol. II), quoted in 5 Whiteman's Digest of International Law, 1067-1068 (1965); Kelsen, The Law of the United Nations, 793 (1950); see Stone, Aggression and World Order, 44 (1958).

Those who make this assertion have gone so far as to compare Ho Chi Minh's actions in Viet Nam with the efforts of President Lincoln to preserve the Union during the American Civil War. Any such characterization is an entire fiction disregarding the actual situation in Viet Nam. The Hanoi regime is anything but the legitimate government of a unified country in which the South is rebelling against lawful national authority.

The Geneva Accords of 1954 provided for a division of Viet Nam into two zones at the 17th parallel. Although this line of demarcation was intended to be temporary, it was established by international agreement, which specifically forbade aggression by one zone against the other.

The Republic of Viet Nam in the South has been recognized as a separate international entity by approximately sixty governments the world over. It has been admitted as a member of a number of the specialized agencies of the United Nations. The United Nations General Assembly in 1957 voted to recommend South Viet Nam for membership in the Organization, and its admission was frustrated only by the veto of the Soviet Union in the Security Council.

In any event there is nowarrant for the suggestion that one zone of a temporarily divided state -- whether it be Germany, Korea, or Viet Nam -- can be legally overrun by armed forces from the other zone, crossing the internationally recognized line of demarcation between the two. Any such doctrine would subvert the international agreement establishing the line of demarcation, and would pose grave dangers to international peace.

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".

2. The United States is entitled to participate in the collective defense of South Viet Nam whether or not the latter is regarded as an independent sovereign state

As stated earlier, South Viet Nam has been recognized as a separate international entity by approximately sixty governments. It has been admitted to membership in a number of the United Nations specialized agencies, and has been excluded from the United Nations Organization only by the Soviet veto.

There is nothing in the Charter to suggest that United Nations Members are precluded from participating in the defense of a recognized international entity against armed attack merely because the entity may lack some of the attributes of an independent sovereign state. Any such result would have a destructive effect on the stability of international engagements such as the Geneva Accords of 1954 and on internationally agreed lines of demarcation. Such a result, far from being in accord with the Charter and the Purposes of the United Nations, would undermine them and would create new dangers to international peace and security.

E. The United Nations Charter Does Not Limit the Right of Self-Defense to Regional Organizations

Some have argued that collective self-defense may be undertaken only by a regional arrangement or agency operating under Chapter VIII of the United Nations Charter. Such an assertion ignores the structure of the Charter and the practice followed in the more than twenty years since the founding of the United Nations.

The basic proposition that rights of self-defense are not impaired by the Charter -- as expressly stated in Article 51 -- is not conditioned by any Charter provision limiting the application of this proposition to collective defense by a regional arrangement or agency. The structure of the Charter reinforces this conclusion. Article 51 appears in Chapter VII of the Charter, entitled "Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression", whereas Chapter VIII, entitled "Regional Arrangements", begins with Article 52 and embraces the two following articles. The records of the San Francisco Conference show that Article 51 was deliberately

placed in Chapter VII rather than Chapter VIII, "where it would only have a bearing on the regional system."^{6/}

Under Article 51, the right of self-defense is available against any armed attack, whether or not the country attacked is a member of a regional arrangement and regardless of the source of the attack. Chapter VIII, on the other hand, deals with relations among members of a regional arrangement or agency, and authorizes regional action as appropriate for dealing with "local disputes". This distinction has been recognized ever since the founding of the United Nations in 1945.

For example, the North Atlantic Treaty has operated as a collective security arrangement, designed to take common measures in preparation against the eventuality of an armed attack for which collective defense under Article 51 would be required. Similarly, the Southeast Asia Treaty Organization was designed as a collective defense arrangement under Article 51. Secretary of State Dulles emphasized

^{6/} 17 UNCIO Documents 288.

this in his testimony before the Senate Foreign Relations Committee in 1954.

By contrast, Article 1 of the Charter of Bogota (1948), establishing the Organization of American States, expressly declares that the Organization is a regional agency within the United Nations. Indeed, Chapter VIII of the United Nations Charter was included primarily to take account of the functioning of the Inter-American System.

In sum, there is no basis in the United Nations Charter for contending that the right of self-defense against armed attack is limited to collective defense by a regional organization.

F. The United States Has Fulfilled its Obligations to the United Nations

A further argument has been made that the Members of the United Nations have conferred on United Nations organs-- and, in particular, on the Security Council -- exclusive power to act against aggression. Again, the express language of Article 51 contradicts that assertion. A victim of armed attack is not required to forgo individual or collective defense of its territory until such time as

the United Nations organizes collective action and takes appropriate measures. To the contrary, Article 51 clearly states that the right of self-defense may be exercised "until the Security Council has taken the measures necessary to maintain international peace and security."^{7/}

As indicated earlier, Article 51 is not literally applicable to the Viet Nam situation since South Viet Nam is not a Member. However, reasoning by analogy from Article 51 and adopting its provisions as an appropriate guide for the conduct of Members in a case like Viet Nam, one can only conclude that United States actions are fully in accord with this country's obligations as a Member of the United Nations.

^{7/} An argument has been made by some that the United States, by joining in the collective defense of South Viet Nam, has violated the peaceful settlement obligation of Article 33 in the Charter. This argument overlooks the obvious proposition that a victim of armed aggression is not required to sustain the attack undefended while efforts are made to find a political solution with the aggressor. Article 51 of the Charter illustrates this by making perfectly clear that the inherent right of self-defense is impaired by "Nothing in the present Charter", including the provisions of Article 33.

Article 51 requires that:

"Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

The United States has reported to the Security Council on measures it has taken in countering the Communist aggression in Viet Nam. In August 1964 the United States asked the Council to consider the situation created by North Vietnamese attacks on United States destroyers in the Tonkin Gulf. The Council thereafter met to debate the question, but adopted no resolutions. Twice in February 1965 the United States sent additional reports to the Security Council on the conflict in Viet Nam and on the additional measures taken by the United States in the collective defense of South Viet Nam. In January 1966 the United States formally submitted the Viet Nam question to the Security Council for its consideration and introduced a draft resolution calling for discussions looking toward a peaceful settlement on the basis of the Geneva Accords.

At no time has the Council taken any action to restore peace and security in Southeast Asia. The Council has not expressed criticism of United States actions. Indeed, since the United States submission of January 1966, Members of the Council have been notably reluctant to proceed with any consideration of the Viet Nam question.

The conclusion is clear that the United States has in no way acted to interfere with United Nations consideration of the conflict in Viet Nam. On the contrary, the United States has requested United Nations consideration, and the Council has not seen fit to act.

G. International Law Does Not Require a Declaration of War as a Condition Precedent to Taking Measures of Self-Defense Against Armed Attack

The existence or absence of a formal declaration of war is not a factor in determining whether an international use of force is lawful as a matter of international law. The United Nations Charter's restrictions focus on the manner and purpose of its use and not on any formalities of announcement.

It should also be noted that a formal declaration of war would not place any obligations on either side in the conflict by which that side would not be bound in any event. The rules of international law concerning the conduct of hostilities in an international armed conflict apply regardless of any declaration of war.

H. Summary

The analysis set forth above shows that South Viet Nam has the right in present circumstances to defend itself against armed attack from the North and to organize a collective self-defense with the participation of others. In response to requests from South Viet Nam, the United States has been participating in that defense, both through military action within South Viet Nam and actions taken directly against the aggressor in North Viet Nam. This participation by the United States is in conformity with international law and is consistent with our obligations under the Charter of the United Nations.

II. THE UNITED STATES HAS UNDERTAKEN COMMITMENTS TO ASSIST SOUTH VIET NAM IN DEFENDING ITSELF AGAINST COMMUNIST AGGRESSION FROM THE NORTH

The United States has made commitments and given assurances, in various forms and at different times, to assist in the defense of South Viet Nam.

A. The United States Gave Undertakings at the End of the Geneva Conference in 1954

At the time of the signing of the Geneva Accords in 1954, President Eisenhower warned "that any renewal of Communist aggression would be viewed by us as a matter of grave concern", at the same time giving assurance that the United States would "not use force to disturb the settlement". And the formal declaration made by the United States Government at the conclusion of the Geneva Conference stated that the United States "would view any renewal of aggression in violation of the aforesaid agreements with grave concern and as seriously threatening international peace and security".

B. The United States Undertook an International Obligation to Defend South Viet Nam in the SEATO Treaty

Later in 1954 the United States negotiated with a number of other countries and signed the Southeast Asia

Collective Defense Treaty. The Treaty contains in the first paragraph of Article 4 the following provision:

"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. Measures taken under this paragraph shall be immediately reported to the Security Council of the United Nations."

Annexed to the Treaty was a Protocol stating that:

"The parties to the Southeast Asia Collective Defense Treaty unanimously designate for the purpose of Article IV of the Treaty the States of Cambodia and Laos and the free territory under the jurisdiction of the State of Viet Nam."

Thus, the obligations of Article IV, paragraph 1, dealing with the eventuality of armed attack, have from the outset covered the territory of South Viet Nam. The facts as to the North Vietnamese armed attack against the South have been summarized earlier, in the discussion of the right of self-defense under international law and the Charter of the United Nations. The term "armed attack" has the same meaning in the SEATO Treaty as in the United Nations Charter.

Article IV, paragraph 1, places an obligation on each party to the SEATO Treaty to "act to meet the common danger

in accordance with its constitutional processes" in the event of an armed attack. The Treaty does not require a collective determination that an armed attack has occurred in order that the obligation of Article IV, paragraph 1, become operative. Nor does the provision require collective decision on actions to be taken to meet the common danger. As Secretary Dulles pointed out when transmitting the Treaty to the President, the commitment in Article IV, paragraph 1, "leaves to the judgment of each country the type of action to be taken in the event an armed attack occurs."

The Treaty was intended to deter armed aggression in Southeast Asia. To that end it created not only a multilateral alliance but also a series of bilateral relationships. The obligations are placed squarely on "each Party" in the event of armed attack in the Treaty area -- not upon "the Parties", a wording that might have implied a necessity for collective decision. The Treaty was intended to give the assurance of United States assistance to any Party or protocol state that might suffer a Communist armed attack, regardless of the views or actions of other parties. The fact that the obligations are individual, and may even to

some extent differ among the parties to the Treaty, is demonstrated by the United States understanding, expressed at the time of signature, that its obligations under Article IV, paragraph 1, apply only in the event of Communist aggression, whereas the other parties to the Treaty were unwilling so to limit their obligations to each other.

Thus, the United States has a commitment under Article IV, paragraph 1, in the event of armed attack, independent of the decision or action of other treaty parties. A joint communiqué issued by Secretary Rusk and Foreign Minister Thanat Khoman of Thailand on March 6, 1962, reflected this understanding:

"The Secretary of State assured the Foreign Minister that in the event of such aggression, the United States intends to give full effect to its obligations under the Treaty to act to meet the common danger in accordance with its constitutional processes. The Secretary of State reaffirmed that this obligation of the United States does not depend on the prior agreement of all other Parties to the Treaty, since this Treaty obligation is individual as well as collective."

Most of the SEATO countries have stated that they agreed with this interpretation. None has registered objection to it.

When the Senate Committee on Foreign Relations reported on the Southeast Asia Collective Defense Treaty, it noted that the treaty area was further defined so that the "Free Territory of Viet Nam" was an area "which, if attacked, would fall under the protection of the instrument".

In its conclusion the Committee stated:

"The Committee is not impervious to the risks which this treaty entails. It fully appreciates that acceptance of these additional obligations commits the United States to a course of action over a vast expanse of the Pacific. Yet these risks are consistent with our own highest interests."

The Senate gave its advice and consent to the Treaty by a vote of 82 to 1.

C. The United States Has Given Additional Assurances to the Government of South Viet Nam

The United States has also given a series of additional assurances to the Government of South Viet Nam. As early as October 1954 President Eisenhower undertook to provide direct assistance to help make South Viet Nam "capable of resisting attempted subversion or aggression through military means". On May 11, 1957 President Eisenhower and President Ngo Dinh Diem of the Republic of Viet Nam issued a joint

statement which called attention to "the large build-up of Vietnamese Communist military forces in North Viet Nam" and stated:

"Noting that the Republic of Vietnam is covered by Article IV of the Southeast Asia Collective Defense Treaty, President Eisenhower and President Ngo Dinh Diem agreed that aggression or subversion threatening the political independence of the Republic of Vietnam would be considered as endangering peace and stability."

On August 2, 1961 President Kennedy declared that "the United States is determined that the Republic of Viet Nam shall not be lost to the Communists for lack of any support which the United States can render". On December 7 of that year President Diem appealed for additional support. In his reply of December 14, 1961 President Kennedy recalled the United States declaration made at the end of the Geneva Conference in 1954, and reaffirmed that the United States was "prepared to help the Republic of Viet Nam to protect its people and to preserve its independence." This assurance has been reaffirmed many times since.

III. 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^{8/} 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 troops 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

8/ These Accords were composed of a bilateral cease-fire agreement between the "Commander-in-Chief of the People's Army of Viet Nam" and the "Commander-in-Chief of the French Union Forces in Indo-China", together with a Final Declaration of the Conference, to which France adhered. However, it is to be noted that the South Vietnamese Government was not a signatory of the cease-fire agreement and did not adhere to the Final Declaration. South Viet Nam entered a series of reservations in a statement to the Conference. This statement was noted by the Conference, but by decision of the Conference Chairman it was not included or referred to in the Final Declaration.

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. General elections that would result in reunification were required 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.

C. The Introduction of United States 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, and the United States

had gradually enlarged its Military Assistance Advisory Group to slightly less than 900 men. These actions were reported to the ICC and were justified as replacements for equipment in Viet Nam in 1954 and for French training and advisory personnel who had been withdrawn after 1954.

As the Communist aggression intensified during 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 international law principle that a material breach of an 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.^{9/}

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.

9/ This principle of law and the circumstances in which it may be invoked are most fully discussed in the Fourth Report on the Law of Treaties by Sir Gerald Fitzmaurice, Articles 18, 20 (UN Doc. A/CN.4/120(1959)) II Yearbook of the International Law Commission 37 (UN Doc. A/CN.4/SER.A/1959/Add.1) and in the later Report by Sir Humphrey Waldock, Article 20 (UN Doc. A/CN.4/156 and Add.1-3 (1963)) II Yearbook of the International Law Commission 36 (UN Doc. A/CN.4/SER.A/1963/Add.1). Among the authorities cited by the Fourth Report for this proposition are: II Oppenheim, International Law 136, 137 (7th ed. Lauterpacht 1955); I Rousseau, Principes généraux du droit international public 365 (1944); II Hyde, International Law 1660 et seq. (2d ed. 1947); II Guggenheim, Traité de droit international public 84, 85 (1935); Spiropoulos, Traité théorique et pratique de droit international public 289 (1933); Verdross, Völkerrecht, 328 (1950); Hall, Treatise 21 (8th ed. Higgins 1924); 3 Accioly, Tratado de Direito Internacional Publico 82 (1956-57). See also draft articles 42 and 46 of the Law of Treaties by the International Law Commission, contained in the Report on the work of its Fifteenth Session (General Assembly, Official Records, 18th Session, Supplement No. 9(A/5809)).

D. South Viet Nam was Justified in Refusing to Implement the Election Provisions of the Geneva Accords

The Geneva Accords contemplated the reunification of the two parts of Viet Nam. They contained a provision for general elections to be held in July 1956 in order to obtain a "free expression of the national will". The Accords stated that "consultations will be held on this subject between the competent representative authorities of the two zones from 20 July 1955 onwards".

There may be some question whether South Viet Nam was bound by these election provisions. As indicated earlier, South Viet Nam did not sign the cease-fire agreement of 1954, nor did it adhere to the Final Declaration of the Geneva Conference. The South Vietnamese Government at that time gave notice of its objection in particular to the election provisions of the Accords.

However, even on the premise that these provisions were binding on South Viet Nam, the South Vietnamese Government's failure to engage in consultations in 1955, with a view to holding elections in 1956, involved no breach of

obligation. The conditions in North Viet Nam during that period were such as to make impossible any free and meaningful expression of popular will.

Some of the facts about conditions in the North were admitted even by the Communist leadership in Hanoi. General Giap, currently Defense Minister of North Viet Nam, in addressing the Tenth Congress of the North Vietnamese Communist Party in October 1956, publicly acknowledged that the Communist leaders were running a police state where executions, terror and torture were commonplace. A nationwide election in these circumstances would have been a travesty. No one in the North would have dared to vote except as directed. 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. The South Vietnamese Government realized these facts and quite properly took the position that consultations for elections in 1956 as contemplated by the Accords would be a useless formality. ^{10/}

10/ In any event, if North Viet Nam considered there had been a breach of obligation by the South, its remedies lay in discussion with Saigon, perhaps in an appeal to the Co-Chairmen of the Geneva Conference, or in a reconvening of the Conference to consider the situation. Under international law, North Viet Nam had no right to use force outside its own zone in order to secure its political objectives.

IV. THE PRESIDENT HAS FULL AUTHORITY TO COMMIT UNITED STATES FORCES IN THE COLLECTIVE DEFENSE OF SOUTH VIET NAM

There can be no question in present circumstances of the President's authority to commit United States forces to the defense of South Viet Nam. The grant of authority to the President in Article II of the Constitution extends to the actions of the United States currently undertaken in Viet Nam. In fact, however, it is unnecessary to determine whether this grant standing alone is sufficient to authorize the actions taken in Viet Nam. These actions rest not only on the exercise of Presidential powers under Article II but on the SEATO Treaty -- a treaty advised and consented to by the Senate -- and on actions of the Congress, particularly the Joint Resolution of August 10, 1964. When these sources of authority are taken together -- Article II of the Constitution, the SEATO Treaty, and actions by the Congress -- there can be no question of the legality under domestic law of United States actions in Viet Nam.

A. The President's Power Under Article II of the Constitution Extends to the Actions Currently Undertaken in Viet Nam

Under the Constitution, the President, in addition to being Chief Executive, is Commander-in-Chief of the Army and Navy. He holds the prime responsibility for the conduct of United States 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.

At the Federal Constitutional Convention in 1787, it was originally proposed that Congress have the power "to make war". There were objections that legislative proceedings were too slow for this power to be vested in Congress; it was suggested that the Senate might be a better repository. Madison and Gerry then moved to substitute "to declare war" for "to make war", "leaving to the Executive the power to repel sudden attacks". It was objected that this might make it too easy for the Executive to involve the nation in war, but the motion carried with but one dissenting vote.

In 1787 the world was a far larger place, and the framers probably had in mind attacks upon the United States.

In the 20th century, the world has grown much smaller. An attack on a country far from our shores can impinge directly on the nation's security. In the SEATO Treaty, for example, it is formally declared that an armed attack against Viet Nam would endanger the peace and safety 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, starting with the "undeclared war" with France (1798-1800). For example, President Truman ordered 250,000 troops to Korea during the Korean War of the early 1950's. President Eisenhower dispatched 14,000 troops to Lebanon in 1958.

The Constitution leaves to the President the judgment to determine whether the circumstances of a particular armed attack are so 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 United States 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 same provision the United States has undertaken a commitment in the SEATO Treaty to "act to meet the common danger in accordance with its constitutional processes" in the event of such an attack.

Under our Constitution it is the President who must decide when an armed attack has occurred. He has also the constitutional responsibility for determining what measures of defense are required when the peace and safety of the United States are endangered. If he considers that deployment of U. S. forces to South Viet Nam is required, and that

military measures against the source of Communist aggression in North Viet Nam are necessary, he is constitutionally empowered to take those measures.

The SEATO Treaty specifies that each party will act "in accordance with its constitutional processes".

It has recently been argued that the use of land forces in Asia is not authorized under the Treaty because their use to deter armed attack was not contemplated at the time the Treaty was considered by the Senate. Secretary Dulles testified at that time that we did not intend to establish (1) a land army in Southeast Asia capable of deterring Communist aggression, or (2) an integrated headquarters and military organization like that of NATO; instead, the United States would rely on "mobile striking power" against the sources of aggression. However, the Treaty obligation in Article IV, paragraph 1, to meet the common danger in the event of armed aggression, is not limited to particular modes of military action. What constitutes an adequate deterrent or an appropriate response, in terms of military strategy, may change; but the essence

of our commitment to act to meet the common danger, as necessary at the time of an armed aggression, remains. In 1954 the forecast of military judgment might have been against the use of substantial United States ground forces in Viet Nam. But that does not preclude the President from reaching a different military judgment in different circumstances, twelve years later.

C. The Joint Resolution of Congress of August 10, 1964 Authorizes United States Participation in the Collective Defense of South Viet Nam

As stated earlier, the legality of United States participation in the defense of South Viet Nam does not rest only on the constitutional power of the President under Article II -- or indeed on that power taken in conjunction with the SEATO Treaty. In addition, the Congress has acted in unmistakable fashion to approve and authorize United States 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". Thus, the Congress gave its sanction to specific actions by the President to repel attacks against United States naval vessels in the Gulf of Tonkin and elsewhere in the western Pacific. Congress further approved the taking of "all necessary measures... to prevent further aggression". This authorization extended to those measures the President might consider necessary to ward off further attacks and to prevent further aggression by North Viet Nam in Southeast Asia.

The Joint Resolution then went on to provide in section 2:

"The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, 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".

Section 2 thus constitutes an authorization to the President, in his discretion, to act -- using armed force if he determines that is required -- to assist South Viet Nam at its request 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.

It has been suggested that the legislative history of the Joint Resolution shows an intention to limit United States assistance to South Viet Nam to aid, advice, and training. This suggestion is based on an amendment offered from the floor by Senator Nelson which would have added the following to the text:

"The Congress also approves and supports the efforts of the President to bring the problem of peace in Southeast Asia to the Security Council of the United Nations, and the President's declaration that the United States, seeking no extension of the present military conflict, will respond to provocation in a manner that is 'limited and fitting'. Our continuing policy is to limit our role to the provision of aid, training assistance, and military advice, and it is the sense of Congress that, except when provoked to a greater response, we should continue to attempt to avoid a direct military involvement in the Southeast Asian conflict". 11/

11/ 110 CONG. REC. 18459 (August 7, 1964).

Senator Fulbright, who had reported the Joint Resolution from the Foreign Relations Committee, spoke on the amendment as follows:

"Mr. Fulbright. It states fairly accurately what the President has said would be our policy, and what I stated my understanding was as to our policy; also what other Senators have stated. In other words, it states that our response should be appropriate and limited to the provocation, which the Senator states as 'respond to provocation in a manner that is limited and fitting', and so forth. We do not wish any political or military bases there. We are not seeking to gain a colony. We seek to insure the capacity of these people to develop along the lines of their own desires, independent of domination by communism.

"The Senator has put into his amendment a statement of policy that is unobjectionable. However, I cannot accept the amendment under the circumstances. I do not believe it is contrary to the joint resolution, but it is an enlargement. I am informed that the House is now voting on this resolution. The House joint resolution is about to be presented to us. I cannot accept the amendment and go to conference with it, and thus take responsibility for delaying matters.

"I do not object to it as a statement of policy. I believe it is an accurate reflection of what I believe is the President's policy, judging from his own statements. That does not mean that as a practical matter I can accept the amendment. It would delay matters to do so. It would cause confusion and require a conference, and present us

with all the other difficulties that are involved in this kind of legislative action. I regret that I cannot do it, even though I do not at all disagree with the amendment as a general statement of policy".^{12/}

Senator Nelson's amendment related the degree and kind of U. S. response in Viet Nam to "provocation" on the other side; the response should be "limited and fitting". The greater the provocation, the stronger are the measures that may be characterized as "limited and fitting". Bombing of North Vietnamese naval bases was a "limited and fitting" response to the attacks on U. S. destroyers in August 1964, and the subsequent actions taken by the United States and South Viet Nam have been an appropriate response to the increased war of aggression carried on by North Viet Nam since that date. Moreover, Senator Nelson's proposed amendment did not purport to be a restriction on authority available to the President but merely a statement concerning what should be the continuing policy of the United States.

Congressional realization of the scope of authority being conferred by the Joint Resolution is shown by the legislative history of the measure as a whole. The following exchange between Senators Cooper and Fulbright is

^{12/} Ibid.

illuminating:

"Mr. Cooper... The Senator will remember that the SEATO Treaty, in article IV, provides that in the event an armed attack is made upon a party to the Southeast Asia Collective Defense Treaty, or upon one of the protocol states such as South Vietnam, the parties to the treaty, one of whom is the United States, would then take such action as might be appropriate, after resorting to their constitutional processes. I assume that would mean, in the case of the United States, that Congress would be asked to grant the authority to act.

"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. 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." 13/

13/ 110 CONG. REC. 18409 (August 6 1964.)

Senator Morse, who opposed the Joint Resolution, expressed the following view on August 6, 1964, concerning the scope of the proposed resolution:

"Another Senator thought, in the early part of the debate, that this course would not broaden the power of the President to engage in a land war if he decided that he wanted to apply the resolution in that way.

"That Senator was taking great consolation in the then held belief that, if he voted for the resolution, it would give no authority to the President to send many troops into Asia. I am sure he was quite disappointed to finally learn, because it took a little time to get the matter cleared, that the resolution places no restriction on the President in that respect. If he is still in doubt, let him read the language on page 2, lines 3 to 6, and page 2, lines 11 to 17. The first reads:

'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.'

"It does not say he is limited in regard to the sending of ground forces. It does not limit that authority. That is why I have called it a predated declaration of war, in clear violation of article I, section 8 of the Constitution, which vests the power to declare war in the Congress, and not in the President.

"What is proposed is to authorize the President of the United States, without a declaration of war, to commit acts of war". 110 CONG. REC. 18426-7 (August 6, 1964)

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". The President has made no such determination, nor has Congress terminated the Joint Resolution.^{14/}

Instead, Congress in May 1965 approved an appropriation of \$700 million to meet the expense of mounting military requirements in Viet Nam. (Public Law 89-18, 79 Stat. 109) The President's message asking for this appropriation stated that this was "not a routine request. For each member of Congress who supports this request is also voting to persist in our efforts to halt Communist aggressions in South Viet Nam". The Appropriation Act constitutes a clear Congressional endorsement and approval of the actions taken by the President.

^{14/} On March 1, 1966, the Senate voted, 92-5, to table an amendment that would have repealed the Joint Resolution.

On March 1, 1966 the Congress continued to express its support of the President's policy by approving a \$4.8 billion supplemental military authorization by votes of 392-4 and 93-2. An amendment that would have limited the President's authority to commit forces to Viet Nam was rejected in the Senate by a vote of 94-2.

D. No Declaration of War by the Congress is Required to Authorize United States Participation in the Collective Defense of South Viet Nam

No declaration of war is needed to authorize American actions in Viet Nam. As shown in the preceding sections, the President has ample authority to order the participation of United States armed forces in the defense of South Viet Nam.

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

James Madison, one of the leading framers of the Constitution, and Presidents John Adams and Jefferson all construed the Constitution, in their official actions during the early years of the Republic, as authorizing the United States to employ its armed forces abroad in hostilities in the absence of any Congressional declaration of war. Their views and actions constitute highly persuasive evidence as to the meaning and effect of the Constitution. History has accepted the interpretation that was placed on the Constitution by the early Presidents and Congresses in regard to the lawfulness of hostilities without a declaration of war. The instances of such action in our history are numerous.

In the Korean conflict, where large-scale hostilities were conducted with an American troop participation of a quarter of a million men, no declaration of war was made by the Congress. The President acted on the basis of his constitutional responsibilities. While the Security Council, under a treaty of this country -- the United Nations Charter -- recommended assistance to the Republic of Korea against the

Communist armed attack, the United States had no treaty commitment at that time obligating us to join in the defense of South Korea. In the case of South Viet Nam we have the obligation of the SEATO Treaty and clear expressions of Congressional support. If the President could act in Korea without a declaration of war, a fortiori he is empowered to do so now in Viet Nam.

It may be suggested that a declaration of war is the only available constitutional process by which Congressional support can be made effective for the use of United States armed forces in combat abroad. But the Constitution does not insist on any rigid formalism. It gives Congress a choice of ways in which to exercise its powers. 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.

V. CONCLUSION

South Viet Nam is being subjected to armed attack by Communist North Viet Nam, through the infiltration of armed personnel, military equipment and regular combat units. International law recognizes the right of individual and collective self-defense against armed attack. South Viet Nam, and the United States upon the request of South Viet Nam, are engaged in such collective defense of the South. Their actions are in conformity with international law and with the Charter of the United Nations. The fact that South Viet Nam has been precluded by Soviet veto from becoming a Member of the United Nations, and the fact that South Viet Nam is a zone of a temporarily divided state, in no way diminish the right of collective defense of South Viet Nam.

The United States has commitments to assist South Viet Nam in defending itself against Communist aggression from the North. The United States gave undertakings to this effect at the conclusion of the Geneva Conference in 1954. Later that year the United States undertook an international obligation in the SEATO Treaty to defend South Viet Nam

against Communist armed aggression. And during the past decade the United States has given additional assurances to the South Vietnamese Government.

The Geneva Accords of 1954 provided for a cease-fire and regroupment of contending forces, a division of Viet Nam into two zones, and a prohibition on the use of either zone for the resumption of hostilities or to "further an aggressive policy". From the beginning, North Viet Nam violated the Geneva Accords through a systematic effort to gain control of South Viet Nam by force. In the light of these progressive North Vietnamese violations, the introduction into South Viet Nam beginning in late 1961 of substantial United States military equipment and personnel, to assist in the defense of the South, was fully justified; substantial breach of an international agreement by one side permits the other side to suspend performance of corresponding obligations under the agreement. South Viet Nam was justified in refusing to implement the provisions of the Geneva Accords calling for reunification through free elections throughout Viet Nam since the Communist regime in North Viet Nam created conditions in the North that made free elections entirely impossible.

The President of the United States has full authority to commit United States forces in the collective defense of South Viet Nam. This authority stems from the Constitutional powers of the President. However, it is not necessary to rely on the Constitution alone as the source of the President's authority, since the SEATO Treaty -- advised and consented to by the Senate and forming part of the law of the land -- sets forth a United States commitment to defend South Viet Nam against armed attack, and since the Congress -- in the Joint Resolution of August 10, 1964, and in authorization and appropriations acts for support of the U. S. military effort in Viet Nam -- has given its approval and support to the President's actions. United States actions in Viet Nam, taken by the President and approved by the Congress, do not require any declaration of war, as shown by a long line of precedents for the use of United States armed forces abroad in the absence of any Congressional declaration of war.

Reed

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August 10, 1964

MEMORANDUM FOR MCGEORGE BUNDY

The following will attend the Joint Resolution signing:

Department of State

Secretary Rusk
Under-Secretary Ball
Under-Secretary Harriman
Assistant-Secretary Bundy
Ambassador Lodge
AID Administrator Bell
Mr. Michael Forrestal

USIA

Director Rowan
Deputy-Director Sorensen
Mr. Ken Bunce, Ass't Director for Far Eastern Affairs
Mr. James Tull, member Viet Nam Task Force
Mr. Henry Loomis, Director VOA

Defense - Military

Chairman, Joint Chief of Staff
CS - USA
CS - USN
CS - USAF
CS - USMC

Defense - Civilian

Secretary of Defense
Deputy Secretary of Defense
Secretary of the Army
Secretary of the Navy
Secretary of the Air Force
Ass't Secretary (ISA) McNaughton
Ass't Secretary (PA) Sylvester
Deputy Ass't Secretary Solbert
Deputy Ass't Secretary Rowen
Director SEA Region Admiral Blouin

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14



Public Law 88-408
88th Congress, H. J. Res. 1145
August 10, 1964

Joint Resolution

78 STAT. 384.

To promote the maintenance of international peace and security in southeast Asia.

Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

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

Southeast Asia.

SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, 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.

59 Stat. 1031.
6 UST 81.

SEC. 3. 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, except that it may be terminated earlier by concurrent resolution of the Congress.

Approved August 10, 1964.

(over)

LEGISLATIVE HISTORY:

- HOUSE REPORT No. 1708 (Comm. on Foreign Affairs).
- SENATE REPORT No. 1329 accompanying S. J. Res. 189 (Comm. on Foreign Relations).
- CONGRESSIONAL RECORD, Vol. 110 (1964):
 - Aug. 6: Considered in Senate.
 - Aug. 7: Considered and passed Senate, in lieu of S. J. Res. 189.
 - Aug. 7: Considered and passed House.

*Final Version
Resolution
15*

~~CONFIDENTIAL~~

WHEREAS naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace;

WHEREAS these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom;

WHEREAS the United States is assisting the peoples of Southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way;

Now therefore, BE IT RESOLVED, by the Senate and House of Representatives of the United States of America in Congress assembled:

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.

SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in Southeast Asia. Consonant with the Constitution and the Charter ^{of the United States}

Authority Senate Act 1/2/77
By hmg, NARS, Date 3/23/77

DECLASSIFIED

of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, 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.

SEC. 3. 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, except that it may be terminated earlier by concurrent resolution of the Congress.

~~CONFIDENTIAL~~

WHEREAS naval units of the Communist regime in Viet-Nam, in violation of the ^{principles of the} Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace;

WHEREAS these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Viet-Nam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom;

WHEREAS the United States is assisting the peoples of Southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way;

Now therefore, BE IT RESOLVED, by the Senate and House of Representatives of the United States of America in Congress assembled:

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.

~~CONFIDENTIAL~~

DECLASSIFIED

Authority State Sec 1/7/77
By pmg, NARS, Date 3/23/77

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CONFIDENTIAL

SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in Southeast Asia. Consonant with the Constitution and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, 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.

SEC. 3. 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, ^{except that it} ~~and shall so~~ *may be terminated earlier by concurrent resolution of the Congress* report to the Congress.

CONFIDENTIAL

AUGUST 10, 1964

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

REMARKS OF THE PRESIDENT
UPON THE SIGNING OF H. J. 1145
JOINT RESOLUTION
TO PRO OTE THE MAINTENANCE OF
INTERNATIONAL PEACE AND SECURITY IN SOUTHEAST ASIA
IN THE EAST ROOM

[As Actually Delivered]

My Fellow Americans, one week ago, half a world away, our Nation was faced by the challenge of deliberate and unprovoked acts of aggression in Southeast Asia.

The cause of peace clearly required that we respond with a prompt and unmistakable reply.

As Commander-in-Chief, the responsibility was mine -- and mine alone. I gave the orders for that reply, and it has been given.

But, as President, there rested upon me still another responsibility -- the responsibility of submitting our course to the representatives of the people, for them to verify it or veto it.

I directed that to be done last Tuesday, too.

Within 24 hours, the resolution before me now had been placed before each House of Congress. In each House, the resolution was promptly examined in committee and reported for action.

In each House, there followed free and serious debate.

In each House, the resolution was passed on Friday last -- with a total of 502 votes in support and two opposed.

Thus, today, our course is clearly known in every land.

There can be no mistake -- no miscalculation -- of where America stands or what this generation of Americans stand for.

The unanimity of the Congress reflects the unanimity of the country.

This resolution is sort. It is straightforward. I hope it will be read around the world.

The position of the United States is stated plainly. To any armed attack upon our forces, we shall reply.

To any in Southeast Asia who ask our help in defending their freedom, we shall give it.

In that region, there is nothing we covet, nothing we seek -- no territory, no military position, no political ambition.

MORE

(OVER)

Our one desire -- our one determination -- is that the people of Southeast Asia be left in peace to work out their own destinities in their own way.

This Resolution stands squarely within the four corners of the Constitution of the United States. It is clearly consistent with the principles and purposes of the Charter of the United Nations.

This is another new page in the outstanding record of accomplishment the Eighty-eighth Congress is writing.

Americans of all parties and philosophies can be justly proud -- and justly grateful. Proud that democracy has once again demonstrated its capacity to act swiftly and decisively against aggressors. Grateful that there is in our national government understanding, accord and unity between the Executive and the Legislative branches -- without regard to partisanship.

This is a great strength that we must preserve.

This Resolution confirms and reinforces powers of the Presidency. I pledge to all Americans to use those powers with all the wisdom and judgment God grants to me.

It is everlastingly right that we should be resolute in reply to aggression and steadfast in support of our friends.

But it is everlastingly necessary that our actions should be careful and measured.

We are the most powerful of all nations -- we must strive also to be the most responsible of nations.

So, in this spirit, and with this pledge, I now sign this Resolution.

E N D

18

~~TOP SECRET~~

QUESTION INDEX

Question 1: What is the purpose of the Resolution?

Question 2: Why does the present situation require a Resolution?

- a. Seriousness of the situation and Hanoi responsibility.
- b. Congress will not be here.
- c. Bit-by-bit nature of Communist tactics makes flexible response essential.
- d. Need military pressures to (1) assist negotiations, and (2) against Hanoi itself if necessary.
- e. Special circumstances of election year.

Question 3: Does Resolution imply a blank check?

Question 4: What would Allied and Communist reactions be to this Resolution?

Question 5: What is our immediate objective in the area?

Question 6: What is our long-term objective in the area?

Question 7: Why is Southeast Asia this important to us?

Question 8: Supposing that Laos and South Vietnam were to fall under North Vietnamese control, would the rest of Southeast Asia necessarily fall? (This is the question the President directed to Mr. McCone last week and on which we should have a considered CIA memorandum now available. A provisional answer is given in the attached.)

Question 9: What is the relationship of the proposed Resolution to negotiations?

Question 10: Under what circumstances might we resort to military force under the Resolution?

Question 11: If we resort to military force, what are the likely implications with respect to wider hostilities against North Vietnam, Communist China, or even the USSR?

Question 12: What Allied support might we seek and expect if we take military actions under the Resolution?

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~~TOP SECRET~~

Authority State Or. 4-9-79

By LW per, NARS, Date 9-23-83

isp

~~TOP SECRET~~

-2-

Question 13: Is there a will to win in South Vietnam so that added action by us would do any good?

Question 14: Are we doing as well as we could be doing in South Vietnam under present policy or could we not hope to improve markedly and not have to take wider action?

DRAFT OF REMARKS

FOR RESOLUTION SIGNING CEREMONY

Last Tuesday I decided to ask the Congress to consider a Resolution supporting our determination as a nation to repel aggression in Southeast Asia. Within twenty-four hours leaders of Congress and officers of the Department of State together drafted that Resolution.

In each House the Resolution was promptly examined in committee and reported to the floor. In each House there followed a free and serious debate. In each House, on Friday, the Resolution was passed, with only 2 opposed, and a total of 502 in favor.

Seldom have we had a more dramatic example of effective cooperation by both parties, both Houses of Congress, and both the Executive and Legislative Branches. The united determination thus demonstrated by our government rests in turn upon the united determination of all Americans.

This Resolution is short and straightforward, and I hope that it will be carefully read all around the world. It states plainly the position of the United States. We are determined to reply to any armed attack on our forces, and to help those in Southeast Asia who seek our help in defending their freedom.

This Resolution makes it clear, once more, that the United States has no territorial, military or political ambition in Southeast Asia. We desire

only that the people of the area should be left in peace to work out their destinies in their own way.

This Resolution stands squarely within the four corners of two great documents -- the Constitution of the United States and the Charter of the United Nations.

The Eighty-eighth Congress has added a proud page to an already outstanding record of achievement.

I pledge to all Americans that the Presidential powers which are confirmed and reinforced by this Resolution will be used by me with all the wisdom and judgment that I possess. It is everlastingly right that we should be resolute in reply to aggression and steadfast in support of our friends. But it is everlastingly necessary that our actions should be careful and measured. As we are the most powerful of all the nations, we must also be the most responsible.


In this spirit, and with this pledge, I now sign this Resolution.

DEPARTMENT OF STATE
EXECUTIVE SECRETARIAT

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

A. Formosa Resolution of 1955

202 6 Aug 64 3A

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 18, 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 testimony 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 positions 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 ~~21~~ 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. ~~xxxxxx~~

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 ~~xxxxxxx~~ 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^d

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 ~~Holifield~~ 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 regrets at the ~~presence of~~ 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 request 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 Congressman 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-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.

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 Lang^Eor ~~Langor~~ dissenting.

B. The Middle East Resolution

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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 mechanism 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 28, 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 Committees.

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 passive 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 in-
~~herent~~^{herent} 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 legis-
late." (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; un-
desirable 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 28 to 58.

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 6, 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)

C. Cuban resolution

V-N 22
Congressional
Res.

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.

D. Vietnam Resolution

1. Background

On August 2, 1964, the U. S. destroyer MADDOX, while on routine patrol in international waters in the Gulf of Tonkin, was attacked by three North Vietnamese PT boats. The MADDOX returned the fire and hit one of the attacked vessels before the attack was broken off. There were no United States casualties in this brief encounter. The United States, on August 3, took steps to convey a note to the Hanoi regime, warning of the "grave consequences which would inevitably result from any further unprovoked offensive military action against United States forces." Further unprovoked attacks occurred the next night (August 4) when the destroyers MADDOX and C. TURNER JOY were again attacked by North Vietnamese PT boats 65 miles from the shore. There no longer seemed to be any doubt that this was a deliberate military aggression.

Soon after the reports were ^{received} in President Johnson announced in a television speech that retaliatory air action was being executed against Vietnamese gunboats and supporting facilities. He warned that all actions of violence against the United States would be met with a positive reply, but emphasized the "limited and fitting" nature of this reply, and assured the American public that "We still seek no wider war." He further stated that he had met with Congressional leaders to urge passage of a resolution expressing the united determination of the Government "to take all necessary measures in support of freedom and in defense of peace in Southeast Asia." An emergency meeting of the United Nations Security Council was called to report these acts of deliberate aggression.

In a message to Congress on August 5, the President requested passage of a resolution declaring Congressional support for the President in repelling any armed attack against United States forces and declaring that the United States is prepared to take all necessary steps to assist any SEATO member or protocol state requesting assistance in defense of its freedom. The resolution was based on the precedent of the Formosan Resolution of 1955, the Middle East resolution of 1957 and the Cuban resolution of 1962. The President urged the necessity of putting forth a united front in this, an election year.

2. Senate Committee Hearings

The Senate Committees on Foreign Relations and Armed Services met in joint executive session on August 6 to consider the following joint resolution introduced by Senator Fulbright. (The words "of the United States"

following ↗

following "Constitution" were initially omitted and were included at the start of the Senate debate as an amendment. The resolution was passed in this final form).

Secretary of State Rusk, Secretary of Defense McNamara and General Wheeler, Chairman of the Joint Chiefs of Staff testified. The Committee voted 31 to 1 to report the resolution favorably without amendment.

3. House Committee Hearings

The House Committee on Foreign Affairs also met in executive session on August 6, and heard Secretaries Rusk and McNamara and General Wheeler. The Committee voted 29-0, with two members voting present, to report the resolution favorably.

The Committee reported that it had given special attention to three basic questions: (1) The resolution did not include an express reference to the SEATO Treaty to include the SEATO members and protocol states; (2) In a very brief paragraph, the Committee concluded that "the resolution does not enter the field of controversy as to the respective limitations of power in the executive and the legislative branches." The Formosa resolution was cited for this proposition; (3) the Committee agreed that the resolution should not include a time limit. They concluded that the termination will be a matter for Presidential determination that "the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise." The "otherwise clause" was approved as permitting alternative methods of bringing peace and security, such as the International Control Commission. It was also noted that termination could be effected by joint Congressional resolution.

geographic area
to be included.
Instead, the area
was delineated
by reference to
The

4. Senate Debate and Passage

Senate debate began on August 6. The resolution itself was not the chief topic of debate. Rather, after a brief endorsement of the resolution itself most Senators addressed themselves to the various aspects of the Vietnam situation.

Senators Cooper and Fulbright engaged in an interesting exchange concerning the effect of the resolution. It was agreed that the provisions

of section 1

of section 1 concerning the power of the President "to take all necessary measures to repel any armed attack against the United States and to prevent further aggression" gives no new power to the President. Rather, it is a confirmation that the President has the powers. Further, in Senator Fulbright's words "We are in effect approving of his use of the powers that he has."

It was also agreed that the President was given a new power under section 2 of the Resolution. The President is given the authority to employ United States forces, not primarily to prevent an attack upon our forces, but to prevent further aggression against South Vietnam or aggression against any SEATO member. Senator Fulbright explained the need for such a power in light of "the new developments in the field of warfare." He pointed out that the President needs such a power in order to respond most effectively to new developments in the Southeast Asia area. He stated that the President is accustomed to consulting with the Joint Chiefs and Congressional leaders and will certainly continue to do so in most situations. "But he does not have to do that." Finally Fulbright assured the Congress that the President would use this power with discretion and would consult with Congress in case a major change in policy becomes necessary.

Senator Kuchel and several others emphasized the need for the resolution to demonstrate American unity behind a firm policy in Southeast Asia. The need for bipartisan support in an election year was also stressed.

Late in the August 6 debate, Senator Mansfield introduced a unanimous consent agreement concerning the August 7 debate preceding a vote on the resolution. The agreement, which was adopted, limited debate to three hours, two of which would be given to Senator Morse and the other to be divided among the majority and minority leaders.

Senators Morse and Gruening were a vocal minority of two in their opposition to the resolution. They based their argument on the premise that the resolution is an affirmation of the United States role as "provocateur" in Southeast Asia. They urged that this course be abandoned and that the problem be solved in a peaceful manner by the United Nations.

Morse argued that section 1 of the resolution, in recognizing "the inherent right of the President to meet an aggression in the self-defense of the Republic is concerned, is superfluous and not needed. More dangerous was section 2, which Morse described as giving the President the "right to commit an act of war in the absence of an aggression."

He felt

He felt that, in addition to being unwise from the standpoint of American foreign policy, this section constituted an unconstitutional delegation by Congress of its power to declare war.

Morse's arguments apparently fell upon deaf ears. Most Senators confined their comments to support for the President's position and actions in the Tonkin Gulf, and cited the Formosan, Middle East and Cuban resolutions as clear precedent for Congressional action supporting the President's determination. The resolution was passed 88-2 with the ten absent Senators indicating they would have voted "yea.."

5. House Debate and Passage

There were no dissenters to the resolution in the House. Representative Gross described it as "in the nature of an after-the-fact sense resolution endorsing an action already taken by the President." Representative Reuss urged invoking the moral authority of the United Nations in Southeast Asia. Representative Alger supported the resolution on the assumption that the President, after taking the initial action in an emergency, will then consult Congress for further authorization.

As in the Senate, the need for bipartisan unity was stressed by most speakers. The final vote was 416-0, with Representative Powell voting present and 14 members not voting.

See attached Resolution.