

ARCHIVES PROCESSING NOTE

You will find two versions of the document withdrawal sheets in this file. The original document withdrawal sheets were completed in the 1970s and early 1980s. Since that time, many of the documents have been declassified. In an effort to make the withdrawal sheets easier to use, we have updated the withdrawal sheets, listing only the documents that are still closed. Use these updated withdrawal sheets to request Mandatory Declassification Review of closed security classified documents.

The original withdrawal sheets are in a mylar sleeve in the front of the folder. We have retained them in the file so that you can see the status of the documents when the folder was opened and the history of their declassification. Please replace the sheets in the mylar sleeve when you have finished examining them.

April 11, 2014

LBJ LIBRARY DOCUMENT WITHDRAWAL SHEET

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<u>Doc #</u>	<u>DocType</u>	<u>Doc Info</u>	<u>Classification</u>	<u>Pages</u>	<u>Date</u>	<u>Restriction</u>
49b	report	Intelligence report - sanitized, NLJ 98-294 partial dup., #397b, NSF, Country File, Vietnam, "Volume 35," Box 18		5		A

Collection Title

Folder Title "Deployment of Major U.S. Forces to Vietnam, July 1965, Volume 5"

Box Number 42

Restriction Codes

- (A) Closed by Executive Order 13526 governing access to national security information.
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4/11/2014

Initials

NATIONAL ARCHIVES AND RECORDS SERVICE
 WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

1 of 8

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
#11a memo w/report	JCS top secret (gp 3) to SecDef from Gen. Wheeler	JCS 9-19-78 letter 30 p 06/11/65	A

FILE LOCATION
 National Security File, NSC History
 Deployment of Major U.S. Forces to Vietnam, July 1965, vol. 5

RESTRICTION CODES
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FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
#12b report	CIA top secret (gp 1) <i>sanitized 4-13-82</i> <i>ins re NLS-81-26</i> TS#185866 14 p (duplicates #270b in NSF, CF, Vietnam, Vol. 35) <i>open 4-1-14</i>	06/11/65	A
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
#49b report	EX CIA secret (gp 1) RSS No. 0008/65 5 p (partial duplicate of #397b in NSF, CF, Vietnam, Vol. 35) <i>sanitized 8-13-85 NLS 85-226; some ser. NLS 98-294</i>	06/09/65	A

FILE LOCATION

National Security File, NSC History
 Deployment of Major U.S. Forces to Vietnam, July 1965, vol. 5

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FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
#3a cable	OSD top secret (gp 3) <i>open 4-11-14</i> #18266 from COMUSMACV <i>2 p</i> (duplicates #245 in NSF, CF, Vietnam, Vol. 35)	06/10/65	A
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
#54a report	OSD top secret <i>open 3-27-80 ip</i> re: air mobile division <i>3 p</i>	06/22/65	A

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FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
	TO OSD FOR CONSULTATION		
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
#64a memo	WH secret open 11-13-85 NLJ 85-235 for president from McG. B (duplicates #372 in NSF, CF, Vietnam, Vol. 35)	2 p 06/25/64	A
#66a cable	WH top secret open 2-4-80 ip CAP 65362	2 p 06/27/65	A
#68a cable	WH top secret open 2-4-80 ip CAP 65363	2 p 06/26/65	A

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National Security File, NSC History
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NATIONAL ARCHIVES AND RECORDS SERVICE
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FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
	TO STATE DEPT. FOR CONSULTATION		
#55b memo	WH secret <i>open 10-17-79 imp</i> to president from McG. B.	06/27/65	A
#60b memo	WH secret <i>sanitized 10-17-79 imp</i> Meeting with the president	06/23/65	A
#69a cable	WH secret " CAP 65366	06/26/65	A
	<i>open 11-14</i>		

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 National Security File, NSC History
 Deployment of Major U.S. Forces to Vietnam, July 1965, vol. 5

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FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
#6b report	State secret Memorandum of Law	14 p 06/11/65	A
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
#27a cable	State secret 4220 from Saigon	2 p 06/17/65	A
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
#51a cable	state secret (gp 3) open 1-29-80 ins 2977 to Saigon (duplicates #155 in NSF, CF, Vietnam, Vol. 35)	2 p 06/19/65	A
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
#55a memo	state secret to president from Geo. Ball	6 p 06/23/65	A
#57a report	state secret re military support in Vietnam	5 p undated	A
#60c memo	state secret Exempt open 1-26-96 NLS 95-206 to McG. Bundy from Thompson	2 p 06/23/65	A
#60d List	state secret Dominican Republic	1 p undated	A

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FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
#2a cable	state top secret open 6-27-79 inf 4134 from Saigon 6 p	06/10/65	A
#7a cable	state top secret (gp 1) open 1-29-80 inf 2873 to Saigon 2 p (duplicates #181 in NSF, CF, Vietnam, Vol. 35)	06/11/65	A
#17a cable	state TS (gp 3) 2 p 7915 to London open 4-11-79	06/15/65	A
#20a cable	State top secret (gp 3) sanitized 1-29-80 open 4-11-79 4222 from Saigon 1 p (duplicates #42 in NSF, CF, Vietnam, Vol. 35)	06/16/65	A
#24 cable	state top secret (gp 1) 3 p 2933 to Saigon open 1-29-80 inf (duplicates #167 in NSF, CF, Vietnam, Vol. 35)	06/16/65	A
#28a cable	state top secret open 1-29-80 inf 1 p 4240 from Saigon (duplicates #33 in NSF, CF, Vietnam, Vol. 35)	06/17/65	A
#30a cable	state top secret (gp 2) 3 p 2939 to Saigon open 1-29-80 inf (duplicates #163 in NSF, CF, Vietnam, Vol. 35)	06/17/65	A
#31a cable	state top secret (gp 2) open 1-29-80 inf 1 p 2940 to Saigon (duplicates #162 in NSF, CF, Vietnam, Vol. 35)	06/17/65	A
#32a cable	state top secret (gp 3) 2 p #2945 to Saigon open 1-29-80 inf (duplicates #161 in NSF, CF, Vietnam, Vol. 35)	06/17/65	A
#46a cable	state top secret 6 p #4265 from Saigon open 1-29-80 inf (duplicates #26 in NSF, CF, Vietnam, Vol. 35)	06/18/65	A
#48a memo	state top secret open 6-27-79 inf to president from Geo. Ball 9 p	06/18/65	A
#56a report	state top secret open 4-11-79 written by Geo. Ball sanitized 6/11/79 9 p	06/23/65	A
#56b memo	state top secret open 6-27-79 inf re: Vietnam 3 p	07/01/65	A
#62a cable	state top secret " 1 p 4370 from Saigon	06/24/65	A
#70a cable	state top secret (gp 3) " 1 p 3056 to Saigon	06/26/65	A

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National Security File, NSC History
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NATIONAL ARCHIVES AND RECORDS SERVICE
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FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
#71a cable	state top secret (gp 3) 3057 to Saigon	Agem 6-27-79 inf 2p 06/26/65	A

FILE LOCATION

National Security File, NSC History
 Deployment of Major U.S. Forces to Vietnam, July 1965, vol. 5

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Office of the Attorney General
Washington, D. C.

MEMORANDUM FOR THE PRESIDENT

Re: Whether further Congressional approval is necessary or desirable in connection with proposed deployment and use of troops in South Vietnam.

You have asked for my views as to whether further Congressional approval should be sought in connection with the proposed deployment and use of troops in South Vietnam. What is contemplated, as I understand it, is (1) an increase of 30 to 40,000 in the number of troops stationed in South Vietnam, now approximately 50,000 and (2) the use of such troops, in one to two-battalion strength, for attacks on concentrations of Viet Cong forces.

The use of troops being contemplated would involve some departure from the functions generally served by U.S. ground forces previously, i.e., as "advisers" accompanying South Vietnamese forces, or as guards engaged in protecting U.S. installations and forces against attack. The operations being contemplated would involve attacks on "targets

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of opportunity" located as much as 150 miles distant from U. S. installations. The objective would be to have the U. S. forces act as a light, mobile reserve to South Vietnamese ground forces, able to strike quickly at the request of such forces when heavy concentrations of Viet Cong forces are detected. All of the activities being contemplated would be undertaken with the consent of the government of South Vietnam and would be limited to the territory of that country.

It is my view that, as a matter of law, further Congressional approval at this time is not necessary.

I

Under the Constitution the President has authority, as Commander-in-Chief of the armed forces (Article II, section 2), and as the sole organ of the United States in the field of foreign relations (United States v. Curtiss-Wright Corp., 299 U.S. 304, 320 (1936)), to deploy and use the armed forces abroad. This authority has generally been broadly interpreted, and the armed forces have been used

without legislative authority on scores of occasions including those involving "acts of war."

In the absence of some action by Congress, the only legal limitation on the power of the President to commit the armed forces arises by implication from Article I, section 8 of the Constitution, under which only Congress is authorized to "declare war." I believe it is a fair, although not uncontroversial, summary of nearly two centuries of history to say that the power to "declare war" is the power to confer substantially unlimited authority to use the armed forces to conquer and, if necessary, subdue a foreign nation. Unless such unlimited authority is exercised by the President, his legal position in using the armed forces is sustainable. It has been argued that the President may, without Congressional approval, take only urgent defensive measures, or that he may take only minor police measures that are not likely to commit the United States to full scale war. However, the action taken by President Truman in Korea, which is not widely regarded as having been illegal,

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shows how extensive the powers of the President may be.

The same illustration also shows how inextricably tied together the legal and policy issues involved in such a situation necessarily are.

On many occasions the President has asked for Congressional approval of his action. When Congress responds to such a request the strictly legal effects of its action, if short of a declaration of war, are likely to be to limit rather than extend his authority. In the absence of Congressional action, the President's legal position is sustainable so long as it is consistent with the Constitution, i. e., so long as his action does not amount to an infringement of the power of Congress to declare all-out war. There is authority, however, indicating that in areas where both Executive and Congressional powers are operative, the Executive must observe the limits of any Congressional authorization that may be enacted even though, in the absence of any authorization, his Executive powers under the Constitution would clearly go beyond the

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Congressional grant. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637, 661-662 (Justices Jackson and Clark); Little v. Barreme, 2 Cranch 170, 177-178 (Chief Justice Marshall). The Congressional authorization obviously can serve indispensable political purposes and it may serve to allay the legal doubts of narrow constructionists. These advantages must be weighed, however, against the legal limitations that may be effectively imposed by a Congressional authorization and its legislative history.

It is my view that as President you would have the authority, in the absence of any action by Congress, to use the armed forces in the manner now proposed. The commitment involved is certainly far less than all-out war, and the likelihood of involving the United States in all-out war as a result of the proposed moves, assuming that to be a relevant consideration, is relatively slight in view of the limitations on both the size of the force committed and the nature of the mission. It should be noted also that none of the acts proposed is an act of war against a foreign nation; that is to say, the activity involved would take place solely within the territory of South Vietnam and at the invitation of its

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government, and would be directed against forces claiming to be insurgents rather than the forces of a foreign nation.

I also believe it is clear that you have the legal authority to take the proposed measures under the terms and legislative history of the Vietnam Resolution of August 10, 1964 (P.L. 88-408, 78 Stat. 384), ^{1/} and the appropriation of May 7, 1965 (P.L. 89-18, 79 Stat. 109).

1/ This Resolution provides:

"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."

It was repeatedly stated in connection with those enactments that the military measures previously taken, including the bombing of targets in North Vietnam, were being approved by Congress. In my judgment the steps now proposed, being confined to South Vietnamese territory, are of a kind with the steps already approved. There is some legislative history to the effect that the Congressional approval did not extend to involvement in large-scale land war in Asia. In this regard, however, there were repeated references to war in "division strength." These limitations -- if they exist -- are not infringed by the limited measures now contemplated.

I therefore conclude that, from a legal standpoint, there is no need to seek further Congressional approval at this time.



Attorney General

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INCOMING TELEGRAM *Department of State*

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~~TOP SECRET~~

Action CONTROL: 9239
RECEIVED: JUNE 10, 1965, 9:16 A.M.

F_S

Info FROM: SAIGON
ACTION: SECSTATE IMMEDIATE 4134

(SECTION ONE OF TWO)

DECLASSIFIED
STATE letter JAN 29 1979

Authority _____
By *if*, NARS, Date 6-27-79

~~T O P S E C R E T~~

N O D I S

FOR THE SECRETARY FROM ALEXIS JOHNSON

DEPTEL 2847

I AM NOT QUITE SURE WHY WE LUMP THE IL-28'S AND SAM'S INTO A SINGLE PACKAGE. THE FORMER ARE PRIMARILY AN OFFENSIVE WEAPON WITH NO DIRECT EFFECT ON OUR ABILITY TO STRIKE IN THE HANOI AREA, WHILE THE LATTER ARE OF COURSE STRICTLY DEFENSIVE AND DO HAVE A DIRECT EFFECT ON OUR AIR CAPABILITIES IN THE HANOI AREA.

AS FAR AS THE OFFENSIVE THREAT OF THE IL-28'S IS CONCERNED, SOME COULD OF COURSE GET THROUGH TO THE NORTHERN PART OF SVN IN LOW LEVEL APPROACHES AND COULD DO SOME DAMAGE BUT HOPEFULLY AT CONSIDERABLE LOSS TO THEMSELVES, PARTICULARLY IF THEY SOUGHT TO ATTACK A HAWK DEFENDED AREA SUCH AS DA NANG. (HOWEVER, WE SHOULD NOTE HAWKS HAVE YET TO BE TESTED IN ACTUAL COMBAT.) WHILE IN THEORY THEIR RANGE WOULD PERMIT THEM TO PENETRATE LIGHTLY LOADED EVEN AS FAR AS SAIGON, THIS WOULD REQUIRE HIGH LEVEL FLIGHT WHERE THEY ARE MUCH MORE VULNERABLE TO DETECTION AND INTERCEPTION. THUS I AM SKEPTICAL THAT SMALL NUMBER OF IL-28'S AT PHUC YEN IS IN AND OF ITSELF SUFFICIENT THREAT NOW TO JUSTIFY AN ATTACK DIRECTED PRIMARILY AT THEM.

OF COURSE THE IL-28'S ARE CO-LOCATED AT PHUC YEN WITH THE MIG'S AND IF OUR PURPOSE IS TO CONVINCED DRV THAT WE INTEND TO ATTACK HANOI AREA, LOGICAL FIRST STEP WOULD BE DESTRUCTION OF DEFENSES, THAT IS, SAM'S AND MIG'S. THUS I WOULD THINK IT MUCH MORE LOGICAL TO LINK SAM'S AND MIG'S THAN SAM'S AND IL-28'S. WHETHER WE SHOULD MAKE SUCH A LINK IN A SINGLE MAJOR ATTACK IS ANOTHER QUESTION.

~~TOP SECRET~~

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~~TOP SECRET~~

-2- 4134, JUNE 10, FROM SAIGON (SECTION ONE OF TWO)

I MYSELF PROCEED FROM THE CONVICTION THAT NO AMOUNT OF AIR ATTACKS ON THE NORTH ARE IN AND OF THEMSELVES GOING TO CAUSE HANOI TO CEASE AND DESIST AS LONG AS IT FEELS THAT THE WAR IN THE SOUTH IS GOING WELL FROM ITS STANDPOINT. HOWEVER, I ALSO AGREE THAT IF THE BOMBING OF THE NORTH IS TO PLAY ITS PROPER SUPPORTING ROLE IN CONVINCING THE DRV TO LAY OFF, WE SHOULD NOT BY OUR ACTIONS ESTABLISH ANY PATTERN THAT TENDS TO GIVE THE IMPRESSION THAT THE HANOI AREA IS IMMUNE FROM ATTACK.

IF THE ASSUMPTION IS CORRECT THAT NO AMOUNT OF BOMBING IS AND OF ITSELF GOING TO CHANGE DRV ATTITUDES, IT WOULD SEEM TO ME THAT, UNLESS THERE ARE STRONG MILITARY REASONS TO CONTRARY, THERE WOULD BE MERIT IN WITHHOLDING A MAJOR SPECTACULAR AIR ATTACK IN HANOI AREA UNTIL PSYCHOLOGICAL MOMENT WHEN IT WOULD DO MAXIMUM TO COMPLEMENT FAVORABLE DEVELOPMENTS IN SVN AND THUS BEST SERVE TO TIP HANOI BALANCE IN DIRECTION WE DESIRE. (THIS WOULD ALSO PRESUMABLY BE THE BEST TIME TO GO AFTER THE MIG'S UNLESS IN THE MEANWHILE THEY HAVE BECOME SO EFFECTIVE AGAINST OUR AIRCRAFT THAT THERE IS A STRONG MILITARY REQUIREMENT FOR THEIR DESTRUCTION ON THE GROUND.) I RECOGNIZE THOUGH THAT IT IS NOW VERY HARD TO SAY WHEN SUCH DEVELOPMENTS CAN TAKE PLACE IN SVN.

ON OTHER SIDE OF QUESTION, THERE IS SOMETHING TO BE SAID FOR A MAJOR AIR STRIKE IN THE NORTH SUCH AS THAT PROPOSED AS A RESPONSE TO THE RECENT SHARP INCREASE IN VC ACTIVITY HERE. THIS HAS AN EMOTIONAL ATTRACTION AND MIGHT SIGNAL HANOI THAT THEY CAN HAVE NO ASSURANCE THAT OUR AIR ACTIONS WILL REMAIN AT THEIR PRESENT LEVEL REGARDLESS OF WHAT THEY DO HERE AND THAT STEPPED UP VC ACTIVITY HERE WILL BE MET BY STEPPED UP ACTIVITY IN THE NORTH. THE QUESTION IS WHAT IN FACT WOULD BE THE EFFECTS ON THE DRV, THAT, IS WOULD THEY REDUCE THEIR ACTIVITIES IN SVN OR WOULD THEY RESPOND BY SEEKING TO EXERCISE TO THE MAXIMUM WHATEVER CAPABILITIES THEY MAY HAVE TO INCREASE THEM. I AGREE WITH INTELLIGENCE COMMUNITY ESTIMATE THAT IT IS NOT LIKELY DRV WOULD REACT BY OVERT INVASION, BUT THAT THERE IS POSSIBILITY THAT THEY WOULD REACT BY EXERCISING WHAT MACV ESTIMATES TO BE THEIR CAPABILITY OF COVERTLY INTRODUCING INTO SVN UP TO THREE PAVN DIVISIONS. ON OTHER HAND, IT CAN BE ARGUED THAT THEY HAVE ALREADY MADE THEIR DECISIONS ON PAVN FORCES TO BE INTRODUCED INTO SVN AND MAJOR AIR STRIKE SUCH AS THAT PROPOSED WILL NOT INFLUENCE THEM IN ONE DIRECTION OR ANOTHER. I AM INCLINED TOWARD THIS LATTER VIEW.

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-3- 4134, JUNE 10, FROM SAIGON (SECTION ONE OF TWO)

ALL OF FOREGOING ARGUES FOR A GREATER CLARIFICATION THAN THAT CONTAINED IN REFTEL OF OUR PURPOSE IN CONDUCTING A MAJOR AIR STRIKE ON SAM'S AND PHUC YEN THE LIKELIHOOD OF ACHIEVING THOSE PURPOSES AND WEIGHING THIS AGAINST THE DISADVANTAGES.

IF THE PURPOSE IS MATERIALLY AND IN A SHORT TIME SPAN TO INFLUENCE HANOI'S POLICY AND ACTIONS WITH RESPECT TO SVN, MY OWN ESTIMATE IS THAT IT WILL NOT REPEAT NOT DO SO. IF THE PURPOSE IS TO SIGNAL HANOI AND THE INTERNATIONAL COMMUNITY THAT THE HANOI AREA IS NOT EXCLUDED FROM ATTACKS AND THAT GENERAL US ACTIONS MIGHT BE STEPPED UP, I FEEL THAT WE COULD AT LEAST IN LARGE PART DO SO AT THIS TIME BY SINGLE ATTACKS ON THE SAM SITES. THIS, I BELIEVE, WOULD CARRY MUCH THE SAME MESSAGE WITHOUT THE DISADVANTAGES OF A MAJOR STRIKE.

IF OUR PURPOSE IS PRIMARILY TO REMOVE THE OFFENSIVE THREAT OF THE IL-28'S, I QUESTION WHETHER THAT THREAT IS NOW SUFFICIENTLY URGENT AND IMPORTANT IN ITSELF TO JUSTIFY THE DISADVANTAGES OF A MAJOR ATTACK.

CFN 2847

JOHNSON

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Action CONTROL : 9247
RECEIVED : JUNE 10, 1965, 9:24 A.M.

Info FROM : SAIGON
ACTION : SECSTATE IMMEDIATE 4134
(SECTION TWO OF TWO)

~~TOP SECRET~~

N O D I S

FOR THE SECRETARY FROM ALEXIS JOHNSON

IN THIS CONNECTION, I AGREE WITH INTELLIGENCE COMMUNITY ESTIMATE THAT IT IS UNLIKELY DRV NOW INTENDS TO USE IL-28'S IN OFFENSIVE OPERATIONS. AS NOTED IN THE INTELLIGENCE ESTIMATE, IL-28'S CAN, OF COURSE, ALSO BE REPLACED. THERE IS ALWAYS THE POSSIBILITY MENTIONED IN THE INTELLIGENCE ESTIMATE THAT THE RESULT WILL BE CHICOMS ENGAGING IN AIR COMBAT OVER THE DRV FROM CHICOM BASES. IF THIS WERE IN FACT TO HAPPEN, IT WOULD PRESUMABLY RESULT IN A HEIGHTENED THREAT OF ATTACKS IN SVN BY CHICOM BASED IL-28'S. THUS, INSTEAD OF REDUCING THE THREAT OF IL-28'S TO SVN, IT WOULD HAVE BEEN INCREASED. TO MEET THIS THREAT, AS WELL AS TO DEFEND AGAINST CHICOM MIG'S OVER THE DRV, WOULD REQUIRE CONSIDERATION OF ATTACKS ON CHICOM BASES WITH ALL THE UNPREDICTABLE RESULTS THAT WOULD FLOW THERE FROM AND WHICH SHOULD BE CAREFULLY THOUGHT THROUGH BEFORE WE UNDERTAKE ACTION LIKELY TO HAVE THIS RESULT.

THE MAJOR QUESTION IS OF COURSE WHETHER AND UNDER WHAT CIRCUMSTANCES THE CHICOMS WOULD UNDERTAKE AIR COMBAT OVER THE DRV FROM CHICOM BASES. THIS CANNOT BE ANSWERED WITH ANY CONFIDENCE. HOWEVER, I AM INCLINED TO FEEL THAT IF THE DRV HAD BOTH ITS SAMS AND MIG'S DESTROYED, THE FIRST CHINESE MOVE WOULD LIKELY BE TO ATTEMPT TO OPERATE OUT OF DRV BASES AND, ONLY IF NOT ABLE TO DO SO BECAUSE OF OUR ATTACKS WOULD THEY CONSIDER OPERATING OUT OF THEIR OWN MAINLAND BASES.

WHILE THERE MAY BE SOME REASONS VIS-A-VIS COMMUNIST CHINA THAT WE SHOULD NOT GO TOO FAR TO AVOID AIR COMBAT WITH COMMUNIST CHINA, I BELIEVE IT IMPORTANT THAT WE NOT TAKE OUR EYE OFF

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~~TOP SECRET~~

-2- 4134, JUNE 10, FROM SAIGON (SECTION TWO OF TWO)

THE BALL OF OUR OBJECTIVE HERE IN SVN, AND THAT EVERY MOVE WE MAKE SHOULD BE WEIGHED AGAINST THE DEGREE TO WHICH IT ADDS TO O OR SUBTRACTS FROM ITS ACHIEVEMENT.

WITHOUT GOING INTO THE QUESTION OF THE WHOLE SOUTHEAST ASIA (AND POSSIBLY ELSEWHERE IN ASIA) SCENARIO, INCLUDING POSSIBILITY OF CHICOM LAND ACTION, OVER WHAT STARTS AS AN AIR BATTLE WITH THE CHICOMS, I WOULD PRESUME THAT, BARRING THE USE OF NUCLEAR WEAPONS, SUCH A BATTLE WOULD REPRESENT A SUBSTANTIAL DISSIPATION OF OUR AVAILABLE AIR RESOURCES. I THUS WONDER HOW MUCH IT WOULD CONTRIBUTE TO WINNING OUR WAR IN SVN UNLESS IT WERE PURSUED TO THE ULTIMATE OF CAPITULATION BY THE CHICOMS AT LEAST WITH RESPECT TO THEIR SOUTHEAST ASIAN POLICY.

(IN THE RISK COLUMN I THINK WE SHOULD ALSO AT LEAST RAISE THE QUESTION OF B-52 VULNERABILITY ON A MISSION OF THIS KIND OVER A HIGHLY DEFENDED AREA. I AM WELL AWARE OF SAC CONFIDENCE ON THIS POINT, BUT FACT IS WE HAVE NO ACTUAL EXPERIENCE FACTOR AND A HIGH LOSS RATIO OF B-52'S COULD RESULT IN ADVERSE RATHER THAN FAVORABLE EFFECTS.)

ON BALANCE, MY CONCLUSION IS THAT IF THE PRINCIPAL PURPOSE IS TO ASSURE THAT THE COMMUNISTS DO NOT REACH THE CONCLUSION THAT WE HAVE ACCEPTED CERTAIN LIMITATIONS AND GROUND RULES IN BOMBING THE DRV, ESPECIALLY THAT WE INTEND TO HOLD THE HANOI AREA FREE FROM ATTACK, I BELIEVE THAT THE PURPOSE CAN BE SUBSTANTIALLY ACHIEVED BY SELECTIVE ATTACKS ON SAM SITES AS SUGGESTED IN COMUSMACV 18266 OF MAY 3 TO CINCPAC REPEATED INFO JCS. I ALSO BELIEVE THAT COMUSMACV'S 16836 OF MAY 20 TO CINCPAC WITH RESPECT TO CONDUCT OF ROLLING THUNDER IS PERTINENT TO ACCOMPLISHING THIS PURPOSE. THIS LATTER MESSAGE, IN WHICH TAYLOR AND I CONCURRED, INCLUDED RECOMMENDATIONS THAT EMPHASIS BE GIVEN TO STRIKING LOC TARGETS IN DRV, THAT ONE STRIKE PER WEEK BE MADE AGAINST TARGETS WHERE LOCATION TYPE AND COMPOSITION VARY AT RANDOM INCLUDING OCCASIONAL STRIKES NORTH OF THE 20TH PARALLEL, AND THAT A VARIETY OF TACTICS AND TECHNIQUES BE DEVELOPED. TO A DEGREE, IT SEEMS TO ME THAT ROLLING THUNDER 17 AND 18 HAVE CARRIED OUT THESE CONCEPTS.

THUS, I WOULD CARRY ON SUBSTANTIALLY AS WE ARE ADDING SELECTIVE ATTACKS ON THE SAM'S. THIS IS GOING TO BE A LONG WAR AND THERE ARE NO SHORTCUTS YET IN SIGHT. WE SHOULD NOT LET OUR NATURAL

~~TOP SECRET~~

~~TOP SECRET~~

-3-, 4134, JUNE 10, FROM SAIGON, (SECTION TWO OF TWO)

FRUSTRATIONS AND IMPATIENCE MISLEAD US INTO ILL CONSIDERED EFFORTS TO FIND SHORTCUTS. IF AND WHEN THE POSSIBILITIES OF REAL SHORTCUTS PRESENT THEMSELVES, I AM CONFIDENT THEY WILL BE READILY APPARENT TO ALL OF US.

I HAVE DISCUSSED THIS MATTER WITH GENERAL WESTMORELAND AND HE HAS READ THIS MESSAGE AND CONCURS.

CFN 2847

JOHNSON

RNL/1

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INCOMING TELEGRAM *Department of State*

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Action

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RUHLKM/CINCPACAF
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RUMSAL/2D AIRDIV
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~~TOP SECRET~~ LIMDIS 18266 FROM: MACJ-312

SUBJ: ATTACK ON SAM SITES IN HANOI AREA BY TACTICAL AIRCRAFT

1. CURRENT INTELLIGENCE SHOWS THREE SAM SITES, VICINITY OF HANOI, ARE NEARING OOPERATIONAL READINESS. THEY POSE A POTENTIAL THREAT TO TROJAN HORSE OPERATIONS AND WHEN OPERATIONAL, COULD DENY US HIGH ALTITUDE PHOTO INTELLIGENCE OF HANOI AREA UNLESS DESTROYED.

2. FURTHER, INFORMATION NOW AVAILABLE SHOWS THAT THERE ARE IL-28 ACFT IN DRV FOR THE FIRST TIME. THESE ACFT REPRESENT AN OFFENSIVE AIR THREAT TO AIR BASES

PAGE 2 RUMSMA 1834U ~~TOP SECRET~~ LIMDIS IN RVN.

3. FACTORS THAT DICTATE DESTRUCTION OF THE SAM SITES BEFORE THEY BECOME OPERATIONAL ARE:

- A. THE TROJAN HORSE HIGH ALTITUDE PHOTO INTELLIGENCE OF HANOI WILL CONTINUE WITH SMALL RISK.
- B. TO KNOCK THE SITES OUT ONE AT A TIME JUST PROIR TO BECOMING OPERATIONAL INVOLVES THE MINIMUM RISK AND COST BUT TO WAIT EVEN FOR THE FIRST ONE TO BE ACTIVATED WOULD INVOLVE MUCH RISK AND POTENTIALLY HIGH LOSSES.

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Authority *RAC 21005*

By *100/4*, NARA, Date *4-4-14*

~~TOP SECRET~~

-2- 18266, 301024Z, JUNE, FROM: COMUSMACV

C. TO DESTROY THE SITES WILL HAVE A DEMORALIZING EFFECT ON THE DRV WHILE GIVING THE RVN AN ADDED PSYCHOLOGICAL BOOST.

D. EVERY SAM SITE THAT IS ALLOWED TO REACH COMPLETION ADDS TO THE PROTECTION OF PHUC YEN AIRFIELD. THE ABILITY TO PROTECT THIS FIELD INCREASES THE DIFFICULTY AND COST OF STRIKING AND CLEARING IT OF THE MIG THREAT; ALSO, THE OFFENSIVE POTENTIAL OF THE IL-28 BECOMES GREATER. CONVERSELY, WITH SAM'S VKNON-OPERATIONAL THE MIG'S AT PHUC YEN POSE LESS OF A THREAT AND THE IL-28'S CANNOT BE CONSIDERED AS TOO SERIOUS AN OFFENSIVE THREAT IF THEY CAN BE ATTACKED WITHOUT THE HAZARD OF SAM'S RINGING THE FIELD.

PAGE 3 RUMSMA 1834U ~~TOP SECRET~~ LIMDIS

4. I BELIEVE THE SAM SITES MUST BE DESTROYED. THEREFORE, RECOMMEND THAT THEY BE ATTACKED ONE AT A TIME WHEN INTELLIGNEC INDICATES TARGET IS MOST LUCRATIVE BUT PRIOR TO BECOMING OPERATIONAL. THE 2D AIR DIVISION HAS BRIEFED ME ON A PLAN AND TACTICS FOR THIS OPERATION THAT APPEAR FEASIBLE AND SOUND. THE POLITICAL IMPLICATIONS OF SUCH AN EFFORT ARE ACKNOWLEDGED BUT NOT ADDRESSED.

5. AMBASSADOR TAYLOR HAS BEEN BRIEFED ON THIS SUBJECT AND IS PREPARED TO DISCUSS MATTER DURING HIS FORECOMING VISIT TO WASHINGTON.

GP-3
BT

ADVANCE COPY TO S/S-O 4:02 PM, 6/10/65.

HANDLED AS EXDIS PER MR. HCLMES (SS-O) 6/10/65.

~~TOP SECRET~~

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OUTGOING TELEGRAM Department of State

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ACTION: CIRCULAR ²⁴⁸³ (ALL AMERICAN DIPLOMATIC POSTS,
POLADS, AND USUN NEW YORK)

JUN 10 6 49 PM '65

Following excerpts from television interview of Secretary on June 9 sent for your use and guidance on current US posture regarding Viet Nam.

1. "Our men were sent there in the first instance to help the South Vietnamese. We put some additional forces in there to secure certain installations, because they had been subject to mortar attack and bombings and things of that sort. Now, obviously we don't expect these men to sit there like hypnotized rabbits waiting for the Viet Cong to strike. They are out in the surrounding countryside to be sure that the Viet Cong is kept off balance and a strong strike force is not organized in the neighborhood to strike these installations. So that we would expect during this monsoon season there would be some sharp engagements between the Viet Cong and our people."

2. "Through four years of bilateral discussions, through attempts to use the machinery of the Geneva Conferences, at the United

Drafted by: P: DNArzac: pas 6/10/65

Telegraphic transmission and classification approved by: P - William J. Jordan

Clearances: FE - Mr. Under
S/S - Mr. Walsh

DOD - Col Bankson
USIA - Mr. Tull

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United Nations, through the offer of unconditional discussion, by varying our operations actually on the ground, by all sorts of ways, we have probed to find out whether the other side is interested in a peaceful settlement. The conclusion one must reach today is that they have shown no indication of being willing to hold their hand and stop their aggression against the South."

3. "These are questions (unification) that can be settled by the Vietnamese themselves, both in the North and in the South, be free elections, in time. What cannot be permitted is that either side attempt to settle these questions by force."

4. "Our basic mission there is to assist the South Vietnamese to build a viable society, to be free from aggression from the outside. For the last five years the other side has publicly announced that it was going after South Viet Nam and has been sending trained infiltrators in increasing numbers and indeed now certain units of the North Vietnamese armed forces. It would be disastrous to the peace of the Pacific and to the general peace if this major step in aggression were to be left unchallenged."

5. "There are many who say that you can't settle this problem by military means. We would agree with that, in the sense that it requires action on the military, economic, political and social sides

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sides. But we ~~hxx~~ have to be careful that we don't say it is only the other side that can achieve a solution by military means. In 1959 and 1960 Hanoi made some basic decisions to step it up and go after South Viet-Nam, and that has required ourselves and the Australians and the Koreans and others to come in there and give them some help. It is quite clear that the other side has stepped up its military operations. If there is to be peace in that area, and the South Vietnamese are to be secure, this stepped-up operation has to be met."

6. "I don't want to predict the future as respects American forces. I think that it is fair to say that neither side wants a big war over Southeast Asia. But on the other hand, the other side wants Southeast Asia. So we have got to create a situation where they must recognize that they are not going to get Southeast Asia by force, and therefore the only solution is to bring this to a peaceful solution as soon as possible. We are not going to be chased out of there in our effort to assist the South Vietnamese."

Inform Consuls.

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INCOMING TELEGRAM Department of State

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Authority E.O. 11652 SEC. 5(A) and (D)
By ip NARS, Date 4-6-78

~~TOP SECRET JUN 11~~

LIMDIS

RE DEPTTEL 2849 (RPTD MANILA 2102).

IN ANTICIPATION OF REFTTEL, AMBASSADOR TAYLOR HAD EARLIER
AUTHORIZED GENERAL WESTMORELAND TO SEEK GVN CLEARANCE FOR
DEPLOYMENT OF ADDITIONAL F-100 SQUADRON TO SOUTH VIETNAM.
ON BEHALF OF GVN, GENERAL TRAN VAN MINH APPROVED ENTRY OF
SQUADRON.
GP-4.
JOHNSON
BT

NOTE: Advance copy to S/S-0 at 12:15 a.m., June 11, 1965

NOTE: Passed White House, CIA at 12:30 a.m., June 11, 1965

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~~SECRET~~ Attachment

DEPARTMENT OF STATE

EXECUTIVE SECRETARIAT

June 11, 1965

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FOR: Mr. McGeorge Bundy
The White House

FROM: Benjamin H. Read *for*
Executive Secretary

The attached Memorandum
of Law is transmitted to you
at the request of Bromley Smith.

Attachment:

"Memorandum of Law"
dated June 11, 1965.

~~SECRET~~ Attachment

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THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

June 11, 1965

MEMORANDUM OF LAW

Question

This memorandum examines the power of the President to commit ground and air forces to South Viet Nam, above the present total of approximately 52,000 to an anticipated total of 95,000, and to authorize the use of ground forces in combat in accordance with the terms of the White House statement of June 9, 1965.

Summary

The President does have power, under the Constitution and under the Joint Resolution of Congress of August 10, 1964, to deploy United States ground and air forces to South Viet Nam in the numbers and for the purposes indicated above.

Where the President determines that the defense of the United States requires immediate action, he is empowered under the Constitution to engage United States forces in combat without Congressional authorization. There are numerous precedents in United States history for deployment abroad of United States armed forces, and some of them include use in combat. In the Korean conflict, the United States maintained a troop strength in Korea of over 250,000.

If authorization from the Congress is considered requisite to sending 43,000 additional United States troops to Viet Nam at this time, the Joint Resolution of August 10, 1964 gives a broad authorization to the President. The Resolution declares:

"Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast

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Authority State 12-15-78 letter
By if, NARS, Date 3-26-79

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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."

While the Joint Resolution expresses no limitation on numbers of forces or on the missions they might be assigned, and while the legislative history does not disclose a purpose to effect any such limitations, the record shows that the Resolution was passed on the understanding that there would be consultation with the Congress "in case a major change in present policy becomes necessary." The committing of an additional 43,000 United States forces to South Viet Nam, with combat missions included in their assignment, could be argued to constitute a policy decision calling for Congressional consultation. Consultation would not require new affirmative action by the Congress, but would afford the Congress an opportunity for review.

Deployment by the President of United States forces as indicated in the question stated at the outset of this memorandum would not require the declaration of a state of war.

Discussion

The missions of the additional 43,000 American troops to be deployed to South Viet Nam would be governed by the terms of the White House statement dated June 9. The text of that statement is as follows:

"There has been no change in the mission of United States ground combat units in Vietnam in recent days or weeks. The President has issued no order of any kind in this regard to General [William C.] Westmoreland recently or at

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any other time. The primary mission of these troops is to secure and safeguard important military installations like the air base at Danang. They have the associated mission of active patrolling and securing action in and near the areas thus safeguarded.

"If help is requested by the appropriate Vietnamese commander, General Westmoreland also has authority within the assigned mission to employ these troops in support of Vietnamese forces faced with aggressive attack when other effective reserves are not available and when, in his judgment, the general military situation urgently requires it."

This memorandum will consider, in turn, four aspects of the question of Presidential authority:

1. The power of the President under the Constitution;
2. The authorization given by the Joint Resolution of Congress dated August 10, 1964;
3. The political commitment of the Administration in connection with the Joint Resolution, to consult with the Congress "in case a major change in present policy becomes necessary";
4. Whether any declaration of war is required.

1. The Constitution. Basic Presidential authority to deploy United States military forces abroad derives from Article II, Section 2 of the Constitution which provides that "The President shall be commander in chief of the army and navy of the United States". This power of the President is complemented by his position as Chief Executive: Under

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Article II, Section 3, "he shall take care that the laws be faithfully executed". The power is also complemented by the special responsibilities of the President in the field of foreign affairs. U.S. vs. the Curtiss-Wright Export Corp., 299 U.S. 304 (1936).

The line between Executive and Legislative power is not marked out with precision in the Constitution. For example, Article I, Section 8, provides that Congress "shall have power...To declare war, ...To raise and support armies,... To provide and maintain a navy". However, the debate at the Federal Convention in 1787 when the Constitution was being drafted makes clear that the powers of Congress are without prejudice to the right of the President to take action on his own "to repel sudden attacks". In cases where the President considers the need of military measures to defend the United States so urgent as to brook no delay, the President is empowered to commit and use United States forces in hostilities without first securing an authorization from the Congress. In the case of Viet Nam, Congressional authorization has already been given in the Joint Resolution of August 10, 1964.

Since the Constitution was adopted, there have at least been 125 instances in which the President, without Congressional authority and in the absence of a declaration of war, has ordered the armed forces to take action or maintain positions abroad. These instances range from the war of the Barbary Pirates in Jefferson's time to the sending of troops to Lebanon in 1958 by President Eisenhower. Substantial numbers of troops have sometimes been involved; President Roosevelt in 1941 deployed over 10,000 United States troops to Iceland to secure that country against Nazi aggression, and President Eisenhower in 1958 dispatched 14,000 American troops to Lebanon. Some of the historical instances have involved the use of United States forces in combat; in the most notable case--the Korean conflict of 1950-53--the United States maintained a troop strength of over 250,000 in Korea.

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A memorandum detailing these historical events and discussing the question of the President's constitutional authority, prepared in the Department of State at the outset of the Korean conflict in 1950, is attached (Tab A). A further presentation of the views of the Executive Branch on this subject, published in 1951 as a Joint Committee Print of the Senate Committees on Foreign Relations and Armed Services, is also attached (Tab B).

Supreme Court decisions have not determined the extent of the President's authority to deploy and use United States armed forces abroad in the absence of express authorization from the Congress. The question has been the subject of Congressional debate at different times, and the power of the President to take action on his own responsibility has been generally supported. It has been supported on the theory that the President has both a right and a duty to take measures which he considers necessary for the defense of the United States. The view has sometimes been stated that the commitment of United States forces to combat may be made by the President on his own responsibility only when he judges the situation to be one of such urgency as to brook no delay and to allow no time for seeking the approval of Congress. Presidential decision that such an emergency exists is one which other branches of the Government are unlikely to try to overturn. There is, of course, a difference between (a) the participation in combat of individual U.S. military personnel attached to the armed forces of another country, and (b) the commitment of organized United States forces to combat. Congressional concern has been particularly with the latter, because of the clearer possibility it carries of involving the United States in large-scale hostilities.

If any question were raised as to the importance of Viet-Nam to the defense of the United States, this would be answered not only by the President's own evaluation, but by the fact that a Protocol to the Southeast Asia Treaty extends its protection to the Republic of Viet-Nam. Both the Treaty and Protocol received the advice and consent of the Senate. They represent a decision of the United States Government, in the constitutional form of a treaty, that the defense and security of Viet-Nam are necessary to the United States.

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2. Joint Resolution of the Congress. The August 10, 1964 Joint Resolution on Southeast Asia provides Congressional authorization for the sending of United States military forces to Viet-Nam and for their use in combat operations.

The Joint Resolution provides "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." In section 2 of the Joint Resolution, Congress has declared: "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."

In the course of Congressional consideration of this resolution, a number of statements were made bearing on the question of the President's authority to commit U. S. military forces to Viet-Nam and to use them in a combat role:

a. Statement by Secretary Rusk before House Committee on Foreign Affairs, August 6, 1964:

"I believe it to be the generally accepted constitutional view that the President has the constitutional authority to take at least limited armed action in defense of American national interests... As I have said before, we cannot now be sure what actions may be required."

b. On the floor of the Senate, August 6, 1964:

"Mr. Brewster: ...So my question is whether there is anything in the resolution which would authorize or recommend or approve the landing of large American armies in Viet-Nam or in China.

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"Mr. Fulbright: There is nothing in the resolution, as I read it, that contemplates it. I agree with the Senator that that is the last thing we would want to do. However, the language of the resolution would not prevent it. It would authorize whatever the Commander-in-Chief feels is necessary. It does not restrain the Executive from doing it."

c. On the floor of the Senate, August 6, 1964:

"Mr. Nelson: Am I to understand that it is the sense of Congress that we are saying to the executive branch: 'If it becomes necessary to prevent further aggression, we agree now, in advance, that you may land as many divisions as deemed necessary, and engage in a direct military assault on North Vietnam if it becomes the judgment of the Executive, the Commander-in-Chief, that this is the only way to prevent further aggression'?"

"Mr. Fulbright: If the situation should deteriorate to such an extent that the only way to save it from going completely under to the Communists would be action such as the Senator suggests, then that would be a grave decision on the part of our country as to whether we should confine our activities to a very limited personnel on land and the extensive use of naval and air power, or whether we should go further and use more manpower.

"I personally feel it would be very unwise under any circumstances to put a large land army on the Asian Continent.

"I do not know what the limits are. I do not think this resolution can be determinative of that fact. I think it would indicate that he would take reasonable means first to prevent any further aggression, or repel further aggression against our own forces, and that he will live up to our obligations under the SEATO treaty and with regard to the protocol states.

"I do not know how to answer the Senator's question and give him an absolute assurance that large numbers

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of troops would not be put ashore. I would deplore it. And I hope the conditions do not justify it now."

d. On the floor of the Senate, August 6, 1964:

"Mr. Nelson: ...But I would be most concerned if the Congress should say that we intend by the joint resolution to authorize a complete change in the mission which we have had in South Vietnam for the past 10 years, and which we have repeatedly stated was not a commitment to engage in a direct land confrontation with our Army as a substitute for the South Vietnam Army or as a substantially reinforced U. S. army to be joined with the South Vietnam Army in a war against North Vietnam and possibly China.

"Mr. Fulbright: Mr. President, it seems to me that the joint resolution would be consistent with what we have been doing. We have been assisting the countries in Southeast Asia in pursuance of the treaty. But in all frankness I cannot say to the Senator that I think the joint resolution would in any way be a deterrent, a prohibition, a limitation, or an expansion on the President's power to use the Armed Forces in a different way or more extensively than he is now using them. In a broad sense, the joint resolution states that we approve of the action taken with regard to the attack on our own ships, and that we also approve of our country's effort to maintain the independence of South Vietnam...

"In frankness, I do not believe the joint resolution would substantially alter the President's power to use whatever means seemed appropriate under the circumstances. Our recourse in Congress would be that if the action were too inappropriate, we could terminate the joint resolution, by a concurrent resolution, and that would precipitate a great controversy between the Executive and the Congress. As a practical question, that could be done."

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e. On the floor of the Senate, August 6, 1964:

"Mr. Cooper:... The Senator will remember that the SEATO Treaty, in article IV, provides that in the event of an armed attack upon a party to the South-east 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.

f. Senator Nelson, on August 7, proposed an amendment to the Joint Resolution which read, in part:

"Our continuing policy is to limit our role to the provision of aid, training assistance, and military advice,

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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.

Mr. Fulbright: (in rejecting the amendment)
"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.

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Political commitment of consultation.

On August 6, 1964 Secretary Rusk, in testifying in executive session before a joint meeting of the Senate Committees on Foreign Relations and Armed Services concerning the Southeast Asia resolution assured the members of Congress that there would be close and continuing bipartisan consultations between the Executive and Legislative Branches on the problems in Southeast Asia, especially if the situation there developed "in ways which we cannot now anticipate."

In the Senate on August 6, Senator Fulbright made the following response after a brief statement by Senator Cooper:

Mr. Fulbright: I have no doubt that the President will consult with Congress in case a major change in present policy becomes necessary."

The language of the Resolution and the statements made on the floor evidently recognized that the President might find it necessary to deploy large numbers of American forces in a combat role to accomplish the goal set forth in the Resolution. At the same time, the Congress passed the Resolution on the understanding that the President would consult with Congress in case a major change in policy became necessary. The commitment of substantially larger numbers of American troops in a short period of time and their assignment to combat would appear to be the kind of policy change which would call for such Congressional consultation. Consultation would not require new affirmative action by the Congress, but would afford the Congress an opportunity to express its views.

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- 12 -

Supplemental Appropriation for Southeast Asia

Congress reaffirmed its support of the Administration policy in Viet Nam as recently as May 6, 1965 when it appropriated at the President's request an additional \$700,000,000 for United States military activities in Southeast Asia. The President stated in his message of May 4:

"This is not a routine appropriation. For each Member of Congress who supports this request is also voting to persist in our effort to halt Communist aggression in South Viet Nam."

The Congress adopted the resolution by an overwhelming vote -- 408 to 7 in the House and 88 to 3 in the Senate. However, a number of Congressmen stated for the record that their vote should not be construed as a blanket endorsement of any future action on the Asian mainland of a different character than the policy then in effect.

Senator Stennis who sponsored the resolution in the Senate was asked directly by Senator Church whether he believed a vote in favor of the resolution endorsed whatever action might be taken in the future. Stennis replied that the resolution placed no limitations on the President's judgment but that each Senator must interpret his own vote. Stennis added:

"I do not believe we are signing a blank check. We are backing up our men and also backing up the present policy of the President. If he substantially enlarges or changes it, I would assume he would come back to us in one way or another."

The appropriation by Congress neither enlarged nor restricted the legal authority of the President to send combat troops to South Viet Nam. The vote did express strong support for the policy which the President was pursuing to

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defend South Viet-Nam, with the expectation that a substantial change in character of U. S. actions would be preceded by the President's going back to Congress "one way or another."

4. Declaration of War

A declaration of war by Congress is not necessary to commit American forces to South Viet-Nam for the purposes set forth earlier.

The President's powers under the Constitution exist side by side with the authority of Congress in this area. In addition to the power to raise and support armies and to provide and maintain a navy, the power to express Congressional policy and the power of the purse, the Congress has the power to declare war. As Constitutional history will show, this is not the same as the power to "make" war -- a power which the Federal Convention in 1787 deliberately withheld from the Congress.

Our Constitutional arrangements are such that the President is endowed with power to take actions which may eventuate in armed conflict. It remains for the Congress to give the legal characterization of "war", with the resulting legal consequences, to a particular conflict if it so decides. Thus no declaration of war is necessary for hostilities to occur or for U. S. forces to be major participants in them. The Korean conflict illustrates these points well.

By reason of the general legislative power of Congress, including its power over finances, there must be a basic concurrence and collaboration between the Executive and Legislative Branches of Government if any given policy and

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course of action of the President is to be sustained over a period of time. The Congress thus has a major role, and indeed a major influence, on the decisions made by the President both as Commander-in-Chief and in the field of foreign relations.

Leonard C. Meeker

Leonard C. Meeker

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Raymond

Bush

Union Calendar No. 889

6c

81st Congress, 2d Session

House Report No. 2495

BACKGROUND INFORMATION ON KOREA

REPORT

OF THE

COMMITTEE ON FOREIGN AFFAIRS

PURSUANT TO

H. Res. 206

A RESOLUTION AUTHORIZING THE COMMITTEE ON FOREIGN AFFAIRS TO CONDUCT THOROUGH STUDIES AND INVESTIGATIONS OF ALL MATTERS COMING WITHIN THE JURISDICTION OF SUCH COMMITTEE



JULY 11, 1950.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

UNITED STATES
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Communist forces quickly captured, with almost no fighting, the South Korean capital of Seoul and Kimpo Airport (1). They swept southward to take Incheon (2), one of South Korea's major ports. South Korean forces set up temporary military headquarters around Suwon (3), where fighting continued at the week-end. American troops were concentrated in the neighborhood of Taejon (4). Their main point of entry, by air and sea, is the city of Pusan (5). Communist attackers consolidated a number of beachheads in the area of Kangnung and Samchak (6) and struck inland. U. S. aircraft, including heavy bombers, attacked the North Korean capital of Pyongyang (7).

FOREWORD

COMMITTEE ON FOREIGN AFFAIRS,
July 11, 1950.

Contained herein are analyses, excerpts from relevant documents, texts of important statements, and a full chronology relative to the situation in Korea. This compilation has been prepared by Mr. George Lee Millikan and Mr. Sheldon Z. Kaplan, consultants on the staff of the Committee on Foreign Affairs. The inclusion of any item or statement cited does not necessarily imply endorsement or approval by the Committee on Foreign Affairs of such item or statement. It is hoped that these statements and factual material will serve as background data on Korea.

JOHN KEE, *Chairman.*

Union Calendar No. 889

81ST CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2495

BACKGROUND INFORMATION ON KOREA

JULY 11, 1950.—Committee to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KEE, from the Committee on Foreign Affairs, submitted the following

REPORT

[Pursuant to H. Res. 206, a resolution authorizing the Committee on Foreign Affairs to conduct thorough studies and investigations of all matters coming within the jurisdiction of such committee]

I. POLITICAL EVOLUTION OF KOREAN PROBLEM

A. WARTIME AGREEMENTS ON STATUS OF KOREA

1. Cairo Conference, 1943

Statement by President Roosevelt, Generalissimo Chiang Kai-shek, and Prime Minister Churchill, December 1, 1943 (excerpt):

* * * The Three Great Allies are fighting this war to restrain and punish the aggression of Japan. * * * Japan will also be expelled from all other territories which she has taken by violence and greed. The aforesaid three great powers, mindful of the enslavement of the people of Korea, are determined that in due course Korea shall become free and independent.

With these objects in view the three Allies, in harmony with those of the United Nations at war with Japan, will continue to persevere in the serious and prolonged operations necessary to procure the unconditional surrender of Japan.

2. Potsdam Conference

Declaration of July 26, 1945, reaffirming the principles of the Cairo declaration (excerpt):

(1) We—the President of the United States, the President of the National Government of the Republic of China, and the Prime Minister of Great Britain representing the hundreds of millions of our countrymen, have conferred and agree that Japan shall be given an opportunity to end this war.

* * * * *
(8) The terms of the Cairo Declaration shall be carried out * * *

3. Soviet adherence to the Potsdam Declaration

Contained in its declaration of war against Japan:

True to its obligation as an Ally, the Soviet Government has accepted the proposal of the Allies and has joined in the declaration of the Allied Powers of July 26.

B. DIVISION OF KOREA AT THE THIRTY-EIGHTH PARALLEL; OCCUPATION OF KOREA

1. Military decision for surrender purposes

The thirty-eighth parallel was established as the line of division between what is now known as North Korea and South Korea through a military decision and for the sole and only purpose of taking the surrender of the Japanese armies, then occupying the entire country. The decision was carried out through General Order No. 1, issued by General MacArthur on September 2, 1945.

How, when, and where the decision was made was indicated in the testimony of various witnesses before the House Committee on Foreign Affairs during its consideration of H. R. 5330 (81st Cong.), from the hearings on which the following excerpts are taken:

STATEMENT BY UNDER SECRETARY OF STATE WEBB

The circumstances surrounding the establishment of the thirty-eighth degree parallel line in Korea were as follows:

Japan's first offer of surrender was made on August 10, 1945. On the following day, August 11, the Secretary of War submitted to the Secretary of State a draft of General Order No. 1 which General MacArthur, as Supreme Commander for the Allied Powers, was to cause the Japanese Government to issue to all of its armed forces; this order directed Japanese commanders to surrender to various designated Allied commanders as indicated in paragraph 1 thereof. As regards Korea, paragraph 1 provided that Japanese forces north of 38° north latitude were to surrender to the Soviet commander, while those south of that line were to surrender to the American commander.

The War Department's draft of General Order No. 1 was discussed by the State-War-Navy Coordinating Committee at its meetings on August 11 and 12, 1945. At the latter meeting the Committee agreed to defer consideration of General Order No. 1 "until it has been reviewed and revised as deemed necessary" by the Joint Chiefs of Staff.

The review of General Order No. 1 by the Joint Chiefs of Staff was concluded on August 14, following which it was approved by the State-War-Navy Coordinating Committee and submitted to the President for his approval.

Following approval of the President, General Order No. 1 was telegraphed by the Joint Chiefs of Staff to General MacArthur in Manila on August 15, 1945. At the same time General Order No. 1 was sent to General Deane, commanding general, United States Military Mission to the U. S. S. R., in Moscow for his information.

The text of General Order No. 1 was thereupon communicated to Generalissimo Stalin as well as to the British Government. In his reply of August 16 Generalissimo Stalin, while suggesting certain amendments which were subsequently accepted by the United States Government, made no reference to those provisions of the order having to do with the 38° parallel line.

It is worthy of note that Soviet military forces entered north Korea on August 12, 1945, while General Order No. 1 was still under discussion.

General Order No. 1, including the provision concerning the 38° parallel line, was issued by General MacArthur on September 2, 1945.

FROM TESTIMONY OF JOHN M. ALLISON, DEPARTMENT OF STATE

Mr. ALLISON (reading):

"Subsequent to the declaration of war upon Japan by the U. S. S. R. and in preparation for the surrender of Japanese forces throughout the Far East, the State-War-Navy Coordinating Committee and the Joint Chiefs of Staff approved

a War Department recommendation which later formed the basis for General Order No. 1, defining areas of responsibility for accepting the surrender of all Japanese military forces.

"Among other recommendations prompted by military consideration to achieve this purpose, the one pertaining to Korea provided that Japanese troops north of 38 degrees in Korea were to surrender to Soviet forces while those south of 38 degrees were to surrender to United States forces. On September 8, the United States forces entered Korea, accepting the surrender of Japanese forces south of the 38th parallel in a formal ceremony on the following day."

The general order was issued over General MacArthur's name as Supreme Commander, on the basis of the recommendation of the War Department.

Mr. RICHARDS. Mrs. Douglas—

Mrs. DOUGLAS. The General Order was issued on September 2, but the decisions in the order were arrived at prior to September 2, were they not?

Was this line that was drawn across Korea only for purposes of surrender, or was it also a line that was chosen to determine where the Russians would fight and we would fight?

Mr. ALLISON. I could read more from this document on that.

Mr. RICHARDS. Proceed.

Mr. ALLISON:

"The division between United States and Soviet forces along the 38th parallel was a line of demarcation adopted solely for the purpose of receiving the surrender of the Japanese forces. It was never intended by the United States to be the artificial barrier it has now become."

TESTIMONY OF GEN. T. S. TIMBERMAN

* * * That decision was taken in the State-War-Navy Committee here in Washington and it was approved by the President. So the State Department did have a voice in this drawing of the thirty-eighth parallel. As to whether the Russians would stop on the northern border of Korea my research * * * indicated the Russians planned all along on coming into Korea, because they asked at the conference in July 1945, that the Americans cooperate with them in the reduction of the Japanese forces in Korea. At that time General Marshall explained to them that this was impossible as we were then trying to build up to the capture of the Japanese homeland, which would be the then total American military effort.

That discussion was at Potsdam.

The objective set by the Russians, the Russian forces, was the destruction of the Japanese Army in Manchuria. But in discussing where to draw the coordinating lines for our submarines and air, the Russians asked if we could coordinate with them, or assist them rather, in an amphibious landing in Korea.

General Marshall at that time stated that we could not, then, because all our effort would be placed in the invasion of the Japanese homeland.

2. General Order No. 1 of September 7, 1945 (excerpt):

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, PACIFIC,
OFFICE OF THE COMMANDING GENERAL,
Yokohama, Japan, September 7, 1945.

To the People of Korea:

As Commander in Chief, United States Army Forces, Pacific, I do hereby proclaim as follows:

By the terms of the instrument of surrender, signed by command and in behalf of the Emperor of Japan and the Japanese Government and by command and in behalf of the Japanese Imperial General Headquarters, the victorious military forces of my command will today occupy the territory of Korea south of 38° north latitude.

Having in mind the long enslavement of the people of Korea and the determination that in due course Korea shall become free and independent, the Korean people are assured that the purpose of the occupation is to enforce the instrument of surrender and to protect them in their personal and religious rights. In giving effect to these purposes, your active aid and compliance are required.

By virtue of the authority vested in me as Commander in Chief, United States Army Forces, Pacific, I hereby establish military control over Korea south of 38° north latitude and the inhabitants thereof, and announce the following conditions of the occupation:

ARTICLE I

All powers of Government over the territory of Korea south of 38° north latitude and the people thereof will be for the present exercised under my authority.

* * * * *
Given under my hand at Yokohama, this seventh day of September 1945.

DOUGLAS MACARTHUR,
General of the Army of the United States, Commander in Chief,
United States Army Forces, Pacific.

C. DEVELOPMENT OF THE IMPASSE AND THE ATTEMPT TO RESOLVE IT

1. The "iron curtain"

Committee on Foreign Affairs, House Report No. 962 (81st Cong.) (excerpt):

A line of supposedly temporary utility for administering a surrender took on thereafter more permanent and wider significance. An "iron curtain" had enveloped Korea north of the line 38° north latitude. No one as yet called it an iron curtain, for this phrase for identifying the economic, cultural, and informational barrier that separates the areas in the Russian orbit from the rest of the world had not yet come into general usage. The commanding general of United States forces began a series of interchanges with the commander of Soviet forces, attempting to lower the barrier which the Red Army had thrown across the Korean Peninsula. No argument for restoring communications, freedom of movement, and commerce between the predominantly industrial northern and the primarily agricultural southern portions of the country prevailed.

2. Agreement for joint action

The Moscow agreement of December 1945 (excerpt):

1. With a view to the reestablishment of Korea as an independent state, the creation of conditions for developing the country on democratic principles and the earliest possible liquidation of the disastrous results of the protracted Japanese domination in Korea, there shall be set up a provisional Korean democratic government, which shall take all the necessary steps for developing the industry, transport, and agriculture of Korea and the national culture of the Korean people.

2. In order to assist the formation of a provisional Korean government and with a view to the preliminary elaboration of the appropriate measures, there shall be established a Joint Commission consisting of representatives of the United States command in southern Korea and the Soviet command in northern Korea. In preparing their proposals the Commission shall consult with the Korean democratic parties and social organizations. The recommendations worked out by the Commission shall be presented for the consideration of the Governments of the Union of Soviet Socialist Republics, China, the United Kingdom, and the United States prior to final decision by the two Governments represented on the Joint Commission.

3. It shall be the task of the Joint Commission, with the participation of the provisional Korean democratic government and of the Korean democratic organizations to work out measures also for helping and assisting (trusteeship) the political, economic, and social progress of the Korean people, the development of democratic self-government, and the establishment of the national independence of Korea.

The proposals of the Joint Commission shall be submitted, following consultation with the provisional Korean Government for the joint consideration of the Governments of the United States, Union of Soviet Socialist Republics, United Kingdom, and China for the working out of an agreement concerning a four-power trusteeship of Korea for a period of up to five years.

4. For the consideration of urgent problems affecting both southern and northern Korea and for the elaboration of measures establishing permanent coordination in administrative-economic matters between the United States command in southern Korea and the Soviet command in northern Korea, a conference of the representatives of the United States and Soviet commands in Korea shall be convened within a period two weeks.

3. Division in the Joint Commission

Committee on Foreign Affairs, House Report No. 962 (81st Cong.) (excerpt):

The Joint Commission, which met repeatedly between March 20 and May 8, 1946, in pursuance of the second paragraph of the Moscow declaration, was even less successful in dealing with the political problems of the country than the conference had been in the economic field. The language of the Moscow agreement relating to a four-power trusteeship to help Korea along the road to national independence was repugnant to many Koreans, who remembered bitterly the Japanese protectorate of 40 years before and its disastrous sequel. It should be recalled here that most Koreans had looked forward to independence as an immediate objective. In the interval between the Japanese collapse and the arrival of United States occupation forces political activity had been feverish. During this period a number of Korean leaders had met in the capital, Seoul, to form a People's Republic. When United States forces arrived this group had offered itself as an official government through which the United States Army might carry out its mission. The United States commander had rejected this offer, just as he rejected also a similar offer from a more conservative group identified as the exiled Korean Provisional Government. In the view of the United States commander, independence was to be arrived at by hard work and the exercise of prudent judgment rather than through spontaneous and immediate expression of pent-up aspirations. With the announcement of the Moscow declaration, the nationalistic aspirations of the Koreans again were sharply manifested. Almost all Korean political groups joined in expressing resentment and in demanding immediate independence forthwith. The significant exception was the Communist groups in both zones. On January 3, 1946, these announced their support of the Moscow undertaking. In the Joint Commission the Soviet delegation insisted that the occupying powers should confine consultations with Korean groups to such as had agreed fully and consistently with the Moscow declaration. This was tantamount to giving a tremendous advantage to representatives of the Communist orientation. The United States delegation took a less drastic view—one which would have admitted groups to consultation not on the basis of past record but on the basis of present attitude. The difference was composed by a formula limiting consultation to such groups, democratic in principle, as agreed to uphold the aims of the Moscow accord and to abide by the Commission's decisions. The Soviet delegation then insisted upon barring from consultation individuals who had expressed opposition to the Moscow trusteeship provision. In the view of the United States delegation, such a restriction was at odds with the ostensible purpose of establishing a democratic government. Disagreement was so fundamental that discussion of other facets of the Korean political problem was impossible.

4. The issue between the military commanders

Letter of General Hodge of December 24, 1946 (excerpt):

* * * I consider it the right of a declarant party or organization to appoint the representative which it believes will best present to the Joint Commission its views of the implementation of the Moscow Decision. However, should such representative for good reason be believed to be antagonistic to the implementation of the Moscow Decision or to either of the Allied Powers, the Joint Commission may, after mutual agreement, require the declarant party to name a substitute spokesman.

Reply of General Chistiakov of February 28, 1947 (excerpt):

* * * the Soviet Delegation considers it expedient that parties and organizations which will take part in consultation with the Joint Commission be informed beforehand that they must not designate for consultation such representatives who have compromised themselves by actively voicing opposition to the Moscow decision.

5. Efforts at agreement by diplomacy

Committee on Foreign Affairs, House Report No. 962 (81st Cong.) (excerpt):

A letter of April 8, 1947, from the United States Secretary of State to the Soviet Foreign Minister proposed—

"* * * that our governments agree to instruct our respective commanders in Korea to reconvene the Joint Commission as soon as possible and charge it with expediting its work under the terms of the Moscow Agreement on a basis of respect for the democratic right of freedom of opinion * * *"

The Russian reply reiterated the position taken by the Russian commander in Korea but agreed to a resumption on May 20 of the Joint Commission. On May 2 the United States Secretary of State again requested that the Soviet Government confirm the democratic right of free expression in the basis for resuming the work of the Joint Commission. On May 7 the Soviet Foreign Minister replied that the Soviet Union would accept the principles of the American commander's letter of December 24, 1946.

6. *Renewal of the impasse; the issues in the Joint Commission*

United States and Soviet views on consultative groups, July 14, 1947:

* * * The Joint Commission has continued the discussion of a disagreement, which arose in the thirty-seventh meeting and extended through to the forty-second meeting, on the list of parties and organizations to be invited for initial consultation. The basic issues involved in this disagreement are as follows:

I. Soviet delegation's general position:

1. That parties and organizations falling within the following categories should not be included in the list for initial consultation, specifically:

A. Those not classified by them as social organizations, and

B. Those which it contends do not intend to support fully the Moscow decision, especially members of the antitrusteeship committee and similar organizations.

II. American delegation's general position:

1. That Soviet delegation's proposals are contrary to—

A. Paragraph 1 of the three principles of the Foreign Ministers upon which agreement for reconvention to the Joint Commission was reached: "Signing the declaration in good faith with respect to upholding fully the Moscow decision and will make the signatory party or organization eligible for initial consultation."

B. Paragraph 5, Joint Commission decision published in com-

municat. No. 11, mutually agreed to and signed by the Chief Commissioner of each delegation: "Subcommission No. 1, upon receiving the applications for consultation, shall compile a list of all democratic parties and social organizations and their designated representatives of North and South Korea which have signed the declaration * * *"

III. The Soviet Delegation's specific contentions are:

1. That industrial, mercantile and producers organizations, such as chambers of commerce, Industrial Medical Institute, Buddhist Research Institute, Accountants Society and societies organized for the study of politics and economics, are not in fact organizations as the word "social" is used in the Moscow decision.

2. A party or organization local in character which has no central zonal office is not eligible for consultation.

3. The good faith of a party or organization which signs the declaration and applies for consultation, and thus agrees to uphold the Moscow decision, is challenged by the Soviet delegation if such party or organization continues membership in the antitrusteeship committee or a similar organization. Such party or organization is acceptable for consultation only if it publicly withdraws from membership in the antitrusteeship committee or similar organization.

4. The fact that a party is eligible for consultation under the agreement of the Ministers, as published in Joint Commission decision, does not mean that it must be admitted for consultation by the Joint Commission.

5. In order for a party to be placed on the list for consultation, it must be acceptable to both delegations.

IV. The American delegation's specific contentions are:

1. A. The Moscow decision does not define the term "social organization."

B. The Soviet delegation refused requests of the American delegation to define the terms in the Joint Commission decision.

C. The American delegation served notice on the Soviet delegation prior to final decision that after joint approval of the Joint Commission, decision No. 12, the American delegation would not agree to amendment or change in the decision as finally agreed upon. Therefore, the term "social organization" must be interpreted as defined in the dictionaries of the world.

2. District and other purely local organizations are not barred by a provision of the Moscow agreement, the Marshall-Molotov agreement or Joint Commission decision. In order to eliminate small organizations, the American delegation several times offered to limit oral consultation to parties and organizations with membership in excess of 1,000 or any other reasonable figure proposed by the Soviet delegation. This proposal, however, has not been accepted by the Soviet delegation.

3. A. Parties which are members of the antitrusteeship committee and similar organizations are clearly eligible for initial consultation under the Marshall-Molotov agreement if they have applied for consultation and signed the required declaration.

B. They remain eligible unless and until they are by mutual agreement excluded after indictment as provided by paragraph 3 of the agreement reached by the Foreign Ministers—namely, "individuals, parties and social organizations invited for consultation with the Joint Commission should not, after signing the declaration contained in communique No. 5 foment or instigate active opposition to the work of the Joint Commission or to either of the Allied powers or to the fulfillment of the Moscow decision. Those individuals, parties and social organizations which, after signing the declaration contained in communique No. 5, do foment or instigate active opposition to the work of the Joint Commission or to either of the Allied powers or to the fulfillment of the Moscow decision, shall be excluded from further consultation with the Joint Commission. The decision excluding such individuals, parties and social organizations shall be by agreement of the Joint Commission."

4. The arbitrary line of distinction drawn by the Soviet delegation between "eligibility for consultation" and "admission for consultation" nullifies the agreements reached by the two Ministers (quoted in 1. A. above) and by the Joint Commission.

5. The first paragraph of the agreement accepted by Mr. Molotov and rewritten into Joint Commission decisions specifically states that all parties and social organizations which sign the application for consultation are eligible and must be accepted for consultation. The contention by the Soviet delegation is an attempt to establish an arbitrary veto power over consultation, which is implicit in the method of work now desired by the Soviet delegation. There is no provision in any of the agreements reached which provides such veto power.

There are two basic issues involved in the differences outlined above:

The first issue is whether one delegation may unilaterally exercise veto power and exclude from consultation any party or social organization that it does not approve. The Soviet delegation wishes to exercise such veto power. The American delegation maintains that this is an arbitrary position and is contrary to the agreement of the Foreign ministers. Furthermore, it is impractical in application because it could be used to exclude parties and social organizations to such a degree that consultation would not represent a fair sample of Korean opinion. The United States position is that exclusion from consultation can only be by mutual agreement of both delegations as specifically stated in the Marshall-Molotov letters. The United States delegation has many times offered to review systematically the whole list of applicants and consider any and all objections by either delegation to various parties and organizations in order to make a decision as to which should be excluded through mutual agreement. The Soviet delegation has repeatedly refused such proposals.

The second issue is in regard to membership of a party or organization in the so-called antitrusteeship committee or similar organization. The Soviet delegation has not brought specific charges against any one party that it has actually fomented or instigated active opposition to the Joint Commission or the Moscow decision after signing the declaration, but has arbitrarily accused all the member parties of bad faith and imply that they are guilty even before they have been indicted. The United States position is that no party or social organization can be assumed guilty of acting in bad faith until it has been indicted and proved guilty of actions which do in fact incite and foment active opposition to the Joint Commission, the Moscow decision, or either of the Allies.

The American delegation has consistently upheld and will continue to insist on complete implementation of the Marshall-Molotov agreements which guarantee wide-scale participation of Korean democratic parties and social organizations in consultation and freedom of expression of opinion by all Koreans.

The Joint Commission is continuing its meetings in an attempt to resolve these basic differences.

7. Further attempt to resolve differences by diplomatic means; proposal for four-power conversations on the Moscow agreement

Letter of Acting Secretary of State Lovett of August 26, 1947 (excerpt):

For almost two years the Government of the United States has devoted its utmost efforts to carrying out the terms of the Moscow agreement on Korea. The present stalemate in the Joint Commission negotiations and the failure of that Commission to accomplish even the first task of its mission have made it abundantly clear to all that bilateral negotiations on the subject of consultation with Korean political parties and organizations will only serve to delay the implementation of this agreement and defeat its announced purpose of bringing about early independence for Korea. The United States Government cannot in good conscience be a party to any such delay in the fulfillment of its commitment to Korean independence and proposes that the four powers adhering to the Moscow agreement meet to consider how that agreement may be speedily carried out.

The United States Government therefore submits for the consideration of your government the enclosed outline of proposals designed to achieve the aims of the Moscow agreement on Korea. The United States Government proposes that these suggestions be considered at an early date by the powers adhering to that agreement. It is, therefore, hoped that the Soviet Chargé d'Affaires at Washington or an authorized deputy may be designated to participate in four-power conversations on this problem * Washington beginning on September 8, 1947.

United States proposals regarding Korea

1. In both the U. S. S. R. and United States zones of Korea there shall be held early elections to choose wholly representative provisional legislatures for each zone. Voting shall be by secret, multiparty ballot on a basis of universal suffrage, and elections shall be held in accordance with the laws adopted by the present Korean legislatures in each zone.

2. These provisional zonal legislatures shall choose representatives in numbers which reflect the proportion between the populations of the two zones, these representatives to constitute a national provisional legislature. This legislature shall meet at Seoul to establish a provisional government for a united Korea.

3. The resulting Provisional Government of a United Korea shall meet in Korea with representatives of the four Powers adhering to the Moscow agreement on Korea to discuss with them what aid and assistance is needed in order to place Korean independence on a firm economic and political foundation and on what terms this aid and assistance is to be given.

4. During all the above stages the United Nations shall be invited to have observers present so that the world and the Korean people may be assured of the wholly representative and completely independent character of the actions taken.

5. The Korean Provisional Government and the powers concerned shall agree upon a date by which all occupation forces in Korea will be withdrawn.

6. The provisional legislatures in each zone shall be encouraged to draft provisional constitutions which can later be used as a basis for the adoption by the national provisional legislature of a constitution for all of Korea.

7. Until such time as a united, independent Korea is established, public and private Korean agencies in each zone shall be brought into contact with international agencies established by or under the United Nations, and the presence of Korean observers at official international conferences shall be encouraged in appropriate cases.

Reply of Foreign Minister Molotov of September 4, 1947 (excerpt):

The Soviet Government considers inexpedient your proposal to submit the question of the establishment of a provisional Korean democratic government to the consideration of the Governments of the four countries inasmuch as the Joint Commission is still far from exhausting all its possibilities for working out

agreed recommendations, which is entirely possible. The "United States proposals concerning Korea" set forth in Mr. Lovett's letter are also unacceptable.

These proposals cannot fail to entail the further division of Korea inasmuch as they envisage the establishment of separate provisional legislative assemblies in the south and in the north Korea (in the Soviet and American zones) whereas the vital task is to achieve as rapidly as possible the establishment of a single, even though provisional, organ of authority—the General Korean Provisional Democratic Government. The American proposal does not correct the situation now existing in Korea—the division of the country into two zones, to the liquidation of which all efforts should be directed—but on the contrary consolidates this abnormal situation.

Having in mind that the proposal for the consideration of the question of Korea in a joint conference of the representatives of the four powers does not stem from the Moscow decision of the three Ministers for Foreign Affairs concerning Korea, and taking into consideration the views set forth above, the Soviet Government sees no possibility of accepting the proposals advanced in Mr. Lovett's letter.

8. Proposal for withdrawal of troops

Letter of Foreign Minister Molotov of October 9, 1947 (excerpt):

The position of the United States of America delegation has made impossible the formation of a provisional Korean democratic government in accordance with the Moscow agreement, which hinders the reestablishment of Korea as a united democratic state.

In view of the situation which had been created the Government of the U. S. S. R. instructed the Soviet delegation to introduce in the Joint Commission at Seoul a new proposal, namely: To give to the Koreans the possibility of forming a government themselves, without aid and participation on the part of the United States of America and the Soviet Union, on condition that American and Soviet troops be withdrawn from Korea. If the Government of the United States of America should agree to the proposal for the withdrawal from Korea of all foreign troops at the beginning of 1948, the Soviet troops would be ready to leave Korea simultaneously with the American troops.

Notwithstanding the fact that this proposal was introduced by the Soviet delegation at the session of the Joint Commission on September 26, the United States of America delegation has unfortunately not replied to date, which cannot fail to delay the solution of the Korean question.

Reply of Acting Secretary of State Lovett of October 18, 1947 (excerpt):

The Secretary of State announced on September 17 that the problem of setting up an independent Government for a unified Korea would be presented to the General Assembly of the United Nations and on September 23 the General Assembly voted to place this question on its agenda. In the opinion of the United States Government the question of withdrawal of occupation forces from Korea must be considered an integral part of the solution of that problem.

* * * * *

In view of the continued inability of the Soviet and United States delegations in the Joint Commission to agree on how to proceed with their work and the refusal of the Soviet Government to participate in discussions on this problem with the other governments adhering to the Moscow agreement on Korea, the United States Government considers it is obligated to seek the assistance of the United Nations in order that, as the Secretary of State said on September 17, "the inability of two powers to reach agreement" should not further delay the early establishment of an independent, united Korea.

D. THE UNITED NATIONS AND THE KOREAN PROBLEM

1. The choice before the United States

Committee on Foreign Affairs, House Report No. 962 (81st Cong.) (excerpt):

The situation confronting this Government as a result of the Soviet refusal to cooperate in formulating a just and mutually acceptable solution presented three

logically possible peaceful courses: To abandon all of Korea to the Soviets; to go to the other extreme and establish what would be in effect a United States protectorate over South Korea; or to provide the people of South Korea with sufficient assistance and support to enable them to progress through their own efforts toward their goal of freedom and independence, while at the same time allowing the United States progressively to reduce its commitment of men and money in Korea. The third course was the one determined upon—for it alone was compatible with American traditions and interests and with the obligations of this country to the Korean people.

2. *Placing the issue before the General Assembly*

Committee on Foreign Affairs, House Report No. 962 (81st Cong.)
(excerpt):

This course involved laying the issue before the United Nations as the only appropriate avenue through which to reestablish Korea as an independent political entity. The first step in this direction was taken a month before the above-cited rejection of the Soviet suggestion of mutual withdrawal of forces. On September 17, 1947, the Secretary of State told the General Assembly of the United Nations: " * * * It appears evident that further attempts to solve the Korean problem by means of bilateral negotiations will only serve to delay the establishment of an independent, united Korea.

It is, therefore, the intention of the United States Government to present the problem of Korean independence to this session of the General Assembly. Although we shall be prepared to submit suggestions as to how the early attainment of Korean independence might be effected, we believe that this is a matter which now requires the impartial judgment of the other members. We do not wish to have the inability of two powers to reach agreement delay any further the urgent and rightful claims of the Korean people to independence."

3. *The United States proposal and the Soviet position*

Committee on Foreign Affairs, House Report No. 962 (81st Cong.)
(excerpt):

The United States proposal.—The United States' position in the study of the problem by the First Committee was stated in a draft resolution recommending the following: (a) Elections in the two occupation zones of Korea by March 31, 1948, under observation of the United Nations "as the initial step leading to the creation of a National Assembly and the establishment of a National Government of Korea"; (b) creation of a national security force by the Korean National Government immediately upon its establishment, early transfer to that Government of the governmental functions exercised by the occupying powers, and early arrangements between it and the occupying powers for the withdrawal of their forces; (c) creation of a United Nations Temporary Commission on Korea to oversee the elections and to be available for consultation on each of the steps proposed for developing self-rule in Korea and the end of occupation in that country.

The Soviet position.—The Soviet contention reiterated the position that the United States alone had violated the Moscow agreement and had blocked the independence of Korea. It viewed the Korean question as one concerning the peace terms and, therefore, beyond the jurisdiction of the United Nations. It offered a counter proposition for mutual withdrawal of occupying troops as the first step and organization of a national government as the second.

4. *Action of the General Assembly*

Resolution of November 14, 1947 (excerpts):

A

INASMUCH as the Korean question which is before the General Assembly is primarily a matter for the Korean people itself and concerns its freedom and independence, and

RECOGNIZING that this question cannot be correctly and fairly resolved without the participation of representatives of the indigenous population,

The General Assembly

1. *Resolves* that elected representatives of the Korean people be invited to take part in the consideration of the question;

2. *Further resolves* that in order to facilitate and expedite such participation and to observe that the Korean representatives are in fact duly elected by the Korean people and not mere appointees by military authorities in Korea, there be forthwith established a United Nations Temporary Commission on Korea, to be present in Korea, with right to travel, observe, and consult throughout Korea.

B

The General Assembly,

* * * * *

1. *Decides* that the Commission shall consist of representatives of Australia, Canada, China, El Salvador, France, India, Philippines, Syria, Ukrainian Soviet Socialist Republic;

2. *Recommends* that the elections be held not later than 31 March 1948 on the basis of adult suffrage and by secret ballot to choose representatives with whom the Commission may consult regarding the prompt attainment of the freedom and independence of the Korean people and which representatives, constituting a National Assembly, may establish a National Government of Korea. The number of representatives from each voting area or zone should be proportionate to the population, and the elections should be under the observation of the Commission;

3. *Further recommends* that as soon as possible after the elections, the National Assembly should convene and form a National Government and notify the Commission of its formation;

4. *Further recommends* that immediately upon the establishment of a National Government, that Government should, in consultation with the Commission: (a) constitute its own national security forces and dissolve all military or semimilitary formations not included therein; (b) take over the functions of government from the military commands and civilian authorities of north and south Korea, and (c) arrange with the occupying Powers for the complete withdrawal from Korea of their armed forces as early as practicable and if possible within ninety days;

5. *Resolves* that the Commission shall facilitate and expedite the fulfilment of the foregoing programme for the attainment of the national independence of Korea and withdrawal of occupying forces, taking into account its observations and consultations in Korea. The Commission shall report, with its conclusions, to the General Assembly and may consult with the Interim Committee (if one be established) with respect to the application of this resolution in the light of developments;

6. *Calls upon* the Member States concerned to afford every assistance and facility to the Commission in the fulfilment of its responsibilities;

7. *Calls upon* all Members of the United Nations to refrain from interfering in the affairs of the Korean people during the interim period preparatory to the establishment of Korean independence, except in pursuance of the decisions of the General Assembly; and thereafter, to refrain completely from any and all acts derogatory to the independence and sovereignty of Korea.

5. *Frustration of the Temporary Commission*

Committee on Foreign Affairs, House Report No. 962 (81st Cong.)
(excerpt):

The United Nations Temporary Commission on Korea arrived in South Korea on January 8, 1948. It held its first meeting on January 12. North Korea was barred to it. The Soviet Commander in that area refused to even receive a communication suggesting an appointment for a courtesy call. The Ukrainian Soviet Socialist Republic, which had been designated to have a representative on the Temporary Commission, failed to send one. Efforts to elicit cooperation from the Soviet authorities in Korea and from the Government of the Ukrainian Soviet Socialist Republic met only with rebuffs which reiterated the negative position of the Soviet Government in the General Assembly.

6. *South Korean elections*

Committee on Foreign Affairs, House Report No. 962 (81st Cong.)
(excerpt):

On February 11, 1948, the Temporary Commission officially recognized the frustration of its objectives. It referred to the Interim Committee of the United Nations General Assembly the question of what to do next. On February 26,

1948, the Interim Committee instructed the Temporary Commission to proceed to carry out the United Nations program "in such parts of Korea as are accessible to the Commission." On February 29, 1948, the Temporary Commission announced that it would—

"* * * observe elections in such parts of Korea as are accessible to the Commission, not later than May 10, 1948, according to the terms of reference of the Resolutions of the General Assembly, and taking into account the recommendations made by the Interim Committee as to the conditions to be fulfilled for such elections, namely, 'that the elections to be held on the basis of adult suffrage and by secret ballot,' and in 'a free atmosphere wherein democratic rights of freedom of speech, press, and assembly would be recognized and respected.'"

Conditions surrounding the election.—Responsibility for planning and preparing the mechanical details of the election was that of the United States military government. The spirit in which the electoral arrangements were made was indicated in a proclamation by the commanding general of United States forces calling upon all Koreans to support the election as—

"* * * the greatest opportunity of all time for all Koreans to demonstrate that they can completely handle their own affairs in a democratic manner and can conduct fair and free elections under laws developed by Koreans themselves."

The United Nations Temporary Commission on Korea maintained close touch with the United States headquarters and closely observed the situation in the field. It freely advised the United States commander regarding the conditions necessary to establish "a free atmosphere wherein democratic rights of freedom of speech, press, and assembly would be recognized and respected." It summed up its preliminary field observations with a finding that these conditions had been met. Following the election, and after minute study of all the evidence adduced by its observations before and during the balloting, the Temporary Commission recorded (resolution of June 25, 1948)—

"* * * its opinion that the results of the ballot of May 10, 1948, are a valid expression of the free will of the electorate in those parts of Korea which were accessible to the Commission and in which the inhabitants constituted approximately two-thirds of the people of all Korea."

For their first democratic election approximately 75 percent of the eligible voters in South Korea had registered, and on election day, May 10, 1948, an estimated 95.2 percent of these cast their ballots. The fact that elections were held was a significant achievement of the collaboration among the United States authorities, the Korean people, and the representatives of the United Nations, for Communist elements in South Korea and Soviet authorities and their Korean followers in North Korea had spared no effort to obstruct the election. The obstructive efforts included large-scale terrorism and violence and a threat (carried out 4 days after the election) to shut off electric power supplied to South Korea from North Korea.

7. Establishment of Government—the National Assembly

Department of State, "Korea, 1945 to 1948," Publication 3305 (excerpt):

The representatives elected by the Korean people in the May 10 election convened as the National Assembly for the first time on May 31, 1948, and elected as chairman Syngman Rhee. In his inaugural speech Dr. Rhee expressed regret that the Koreans in the northern zone had not been permitted by the U. S. S. R. to participate in the May 10 election held in partial fulfillment of the November 14, 1947, resolution of the United Nations General Assembly and directed attention to the fact that seats proportionate in number to the population—about one-third of the entire population—had been left vacant for the later participation of the people of the northern zone. Following the selection of two vice chairmen, the National Assembly took up the major tasks before it in the establishment of an independent Korean government. It established rules of procedure, organized its committees, and set up a liaison system with the United Nations Temporary Commission on Korea and the United States military government. The National Assembly carried on its activities in extremely orderly and democratic fashion and with intense enthusiasm and purposefulness.

The United Nations Temporary Commission on Korea on June 10 informed the National Assembly, which had sought close consultative contact with the Commission, that it was prepared to consult with the National Assembly with respect to the implementation of the General Assembly resolutions. On June 12, in a further effort to promote unification, the National Assembly again appealed to the

people of north Korea, urging them to hold free elections for representatives to the National Assembly, who could then join with the representatives from the southern zone in establishing an independent Korean government.

During this early period the major work of the National Assembly was the discussion and drafting of a constitution for the Republic of Korea. As the work of the constitution drafting committee progressed, it became apparent that opinion within the Assembly upon the form of government to be adopted was divided into two general groupings, one favoring a strong-executive system of democratic government, the other favoring a parliamentary system in which the cabinet would be responsible to the legislative body.

The constitution.—Department of State, "Korea, 1945 to 1948," Publication 3305 (excerpt):

After considerable debate and discussion the National Assembly adopted a constitution for the Republic of Korea on July 12. This constitution was signed and promulgated on July 17. The form of government it established is a strong executive system of democratic government. Some elements of the government—such as the power of executive officials to speak in the legislative body and to present bills, and certain features of the structure and functioning of the executive branch—represent concessions to the group within the Assembly that favored a cabinet responsible to the legislature. But the major features of the government are its separation into three branches and the strength of the executive branch.

The President and Vice President are elected for four-year terms by the legislative body. The Prime Minister is appointed by the President with the approval of the legislative body. The President is empowered to appoint or discharge the 8 to 15 members of the State Council without the approval of the legislative body. From these members he designates the heads of the 11 executive ministries. Other officials appointed by the President include the heads of four executive offices responsible to the State Council and the heads of other executive commissions and agencies. The President is the chief executive and is responsible for the execution of law and for other specific functions of government normally assigned the executive branch of the government, such as the conduct of foreign relations and the granting of pardons. In addition, he possesses the extensive appointive power described above, an executive veto over the acts of the legislature, and, in the event of emergencies that do not permit the prior convening of the legislature, the power to issue necessary executive orders and to make dispositions, subject to later review by the legislature. If the President is unable for any reason to execute the duties of his office, the Vice President is to act for him. The Prime Minister acts as vice chairman of the State Council and assists the President. Under the authority of the chief executive the Prime Minister is responsible for the activities of the executive ministries and is charged with the responsibility for administrative matters not assigned to specific ministries. The State Council, of which the President is the chairman, formulates executive policy by majority vote. The ministers of the State Council who make up the President's Cabinet may issue ministerial regulations and orders. The four executive offices that are not headed by ministers of the State Council perform primarily administrative rather than executive functions and are responsible to the Prime Minister.

For a period of 2 years the present National Assembly is to continue as the legislative branch of the government. Subsequently the legislative organ is to be a unicameral body, similar to the present National Assembly, elected directly by the people for a 4-year term. It will hold annual sessions, convening on December 20. Special sessions are to be called by its speaker, upon the request of the President or of at least one-fourth of its own membership. In addition to normal legislative functions, the legislative body is empowered to consent to or reject treaties with foreign powers, to declare war, and to impeach executive and judicial officials. The judicial branch is composed of the supreme court and lower courts to be established by law. The chief justice of the supreme court is appointed by the President with the consent of the legislative body. The tenure of office of judges is 10 years. The principle of judicial review is recognized. The supreme court determines the constitutionality or legality of administrative orders and regulations. The constitutionality of a law, however, is determined by a constitution committee, composed of the Vice President, five justices of the supreme court, and five members of the National Assembly. The constitution is markedly liberal in its economic articles and in its guaranties of civil liberties. The constitution protects basic civil liberties and, in addition, the right to equal opportunity for education, the right of collective bargaining by laborers, the right of

labor to share in the profits of private profit-making enterprises, and the right to government protection in the event of old age, infirmity, or incapacity to work.

8. *Formation of government in North Korea*

Department of State, "Korea, 1945 to 1948" (excerpt):

At almost the same time that the Republic of Korea assumed authority in the southern zone, another government was brought into being in the northern zone. The newly elected Supreme People's Council in North Korea on September 9, 1948, proclaimed the establishment of a "Democratic People's Republic of Korea" claiming jurisdiction over the entire country.

The procedures followed in establishing the government in the northern zone were not in accordance with those outlined in the November 14, 1947, resolutions of the General Assembly. The elections for the delegates to the Supreme People's Council, held on August 25, were not observed by the United Nations Temporary Commission on Korea. The election was essentially undemocratic in that the voter was presented with lists of candidates drawn up by the North Korean People's Committee for his approval or disapproval.

Both the United Nations Commission and the United States military government tried to secure information on the "secret election" which North Korean leaders assert was held in South Korea. Evidence was extremely difficult to obtain, however, and it is certain that only a very small number of persons even received ballots.

The South Koreans who allegedly occupy 360 of the 572 seats in the Supreme People's Council apparently represent only small Communist dissident factions in the southern zone. Both Communist and non-Communist dissident elements in the southern zone, which opposed and boycotted the UN-observed election of May 10 and participated in the first North-South Conference of Political Leaders (April 19-28, 1948) were repudiated by the people of the southern zone in the May 10 election. Before the second North-South Conference of Political Leaders (June 29-July 5, 1948) the non-Communist elements of these dissident groups generally refused to join in further discussions with the political organizations of the northern zone, and since that time they have repeatedly denounced both the second North-South Conference of Political Leaders and the August election of delegates to the Supreme People's Council of the "Democratic People's Republic of Korea."

9. *Transfer of authority from United States military command to the Republic of Korea*

Address of Dr. Syngman Rhee on May 31, 1948 (excerpt):

When we have set up our government, the American military government will withdraw for the military government authorities are fully ready to turn the administration over to our government. We hope our government will request the Government of the United States of America to let us retain some of our American friends who have been serving in the central administration as well as those in the provincial governments who can be helpful to us either as advisers or technicians. The American forces of occupation, we hope, will remain for security purposes until our government has organized our own security force. However, the United States will act in this matter in accordance with the decision of the United Nations. Therefore, in cooperation with the United States and the United Nations, we shall act according to our common understanding and agreement. The only point which must be clearly understood is that the remaining of the security forces shall not interfere with the exercise of our sovereign rights. There is no doubt that whenever we request the withdrawal of the American forces they will evacuate at once. It is a well-known fact that the United States has no political or territorial interest in any part of the world. America's interest is in the establishment of democratic governments wherever possible for the sake of world peace and of commercial relations for mutual benefit. Therefore, what America expects from us is nothing more than the good will of our people. Although American forces may remain for the time being due to international circumstances, they will leave Korea without delay whenever the Korean Government formally requests their withdrawal.

Letter from President Rhee to General Hodge of August 11, 1948 (excerpts):

I have the honor to inform you that, in consequence of the deliberations and acts of the Korean National Assembly, which was constituted as a result of the

election held on May 10, 1948, under the observation of the United Nations Temporary Commission on Korea, there was formed as of August 5, 1948, the Government of the Republic of Korea.

* * * * *

In furtherance of the United Nations General Assembly resolutions on Korea, particularly paragraph 4 of resolution II, I have the honor further to inform you that the Government of the Republic of Korea, after consultation with the United Nations Temporary Commission on Korea, will be prepared to take over the functions of government. To that end your cooperation and assistance are requested in transferring to the Government of the Republic of Korea all such functions now exercised by you as Commanding General, United States Army Forces in Korea, including the direction of all police, coast guard, and constabulary units now in being.

The Government of the Republic of Korea recognizes that it will be necessary for you to retain control over areas and facilities of vital importance to you (such as ports, camps, railways, lines of communications, airfields, etc.), as you deem necessary in order to accomplish the transfer of authority to the Government of the Republic of Korea and the withdrawal of United States occupation forces from Korea in accordance with the United Nations General Assembly resolutions on Korea. During this period, the personnel of your command, both military and civilian, including their dependents, shall remain under your exclusive jurisdiction.

Letter from General Hodge to President Rhee of August 11, 1948 (excerpts):

I am pleased to note that the Government of the Republic of Korea recognizes that it will be necessary for me to retain control over areas and facilities of vital importance (such as ports, camps, railways, lines of communication, airfields, etc.) as I deem necessary in order to accomplish the transfer of authority to the Government of the Republic of Korea and the withdrawal of United States occupation forces from Korea in accordance with the United Nations General Assembly resolutions on Korea. Furthermore, I note that the Government of the Republic of Korea recognizes my exclusive jurisdiction over the personnel of my command, both military and civilian, including their dependents.

I shall be pleased to cooperate with you in arranging a progressive and orderly transfer of governmental functions, and including the assumption of responsibilities for the direction of all police, coast guard, and constabulary units now in being, leading to the withdrawal of United States forces from Korea and the termination of the United States occupation.

Agreement of August 24, 1948, between the United States and the Republic of Korea on transfer of jurisdiction over security forces:

ARTICLE I

The Commanding General, United States Army Forces in Korea, agrees that, pursuant to directives from his government and within his capabilities, he will continue to organize, train and equip the Security Forces of the Republic of Korea now in being, provided that his obligation shall cease upon the completion of withdrawal from Korea of forces under his command.

ARTICLE II

The Commanding General, United States Army Forces in Korea, agrees to transfer to the Government of the Republic of Korea progressively, and as rapidly as he deems compatible with common security, responsibility for the direction of the Security Forces of the Republic of Korea, consisting of all Police, Coast Guard and Constabulary units now in being, and the President of the Republic of Korea agrees to accept progressively, for the Government of the Republic of Korea, responsibility for the direction of these forces. It is further agreed that the Commanding General, United States Army Forces in Korea, shall retain until completion of withdrawal of United States Army Forces as contemplated in par. 4 (c) of Resolution No. II passed by the United Nations General Assembly 14 November 1948 (which reads as follows: "(c) arrange with the occupying powers for the complete withdrawal from Korea of their armed forces as early as practicable and if possible within 90 days") the authority to exercise such over-all operational control of Security Forces of the Republic of Korea (including the Constabulary and Coast Guard and such National Police detachments as may be stationed in critical

areas) as he deems necessary in the interests of common security, or to facilitate the organization, training and equipping of the Security Forces of the Republic of Korea. The provisions of this article shall not interfere with the sovereign rights of the Government of the Republic of Korea in the administration of the Korean Security Forces, the screening of their personnel to eliminate enemies of the Government of the Republic of Korea, the selection of recruits to fill the ranks of existing or future units and the formation of such additional Korean Security Forces as may be provided by law in accordance with the provisions of Article 61 of the Constitution of the Republic of Korea.

ARTICLE III

Pursuant to the provisions of the note transmitted by the President of the Republic of Korea to the Commanding General, United States Army Forces in Korea, on August 9, 1948, the President of the Republic of Korea agrees that the Commanding General, United States Army Forces in Korea, shall retain control over areas and facilities of vital importance (such as ports, camps, railways, lines of communication, airfields, etc.) which he deems necessary in order to accomplish the transfer of authority to the Government of the Republic of Korea and the withdrawal of United States occupation forces from Korea in accordance with the United Nations General Assembly Resolution on Korea. The Commanding General, United States Army Forces in Korea agrees to list for the Government of the Republic of Korea as soon as practicable those areas and facilities as described above currently in use by his forces, and to keep the Government informed of all changes therein. It is further agreed that the Commanding General, United States Army Forces in Korea, shall retain exclusive jurisdiction over the personnel of his command, both military and civilian, including their dependents, whose conduct as individuals shall be in keeping with pertinent laws of the Republic of Korea. It is further agreed that any individuals under the jurisdiction of the Commanding General, United States Army Forces in Korea, as described above, who may be apprehended by law enforcement agencies of the Government of the Republic of Korea shall be immediately turned over to the custody and control of the Commanding General, United States Army Forces in Korea, and that any individuals not under the jurisdiction of the Commanding General, United States Army Forces in Korea, who may be apprehended in acts detrimental to the security of personnel or property under his jurisdiction, shall be immediately turned over to the custody and control of the Government of the Republic of Korea.

10. Recognition of the new government

Resolution of the General Assembly of December 12, 1948 (excerpts):

The General Assembly, * * *

* * * * *
 2. Declares that there has been established a lawful government (the Government of the Republic of Korea) having effective control and jurisdiction over that part of Korea where the Temporary Commission was able to observe and consult and in which the greater majority of the people of all Korea reside; that this government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such government in Korea;
 * * * * *

* * * * *
 9. Recommends that Member States and other nations, in establishing their relations with the Government of the Republic of Korea, take into consideration the facts set out in paragraph 2 of the present resolution.

United States recognition of the Republic of Korea, January 1, 1949 (statement):

On December 12, 1948, the United Nations General Assembly adopted a resolution approving the conclusions of the report of the United Nations Temporary Commission on Korea and declaring in part "that there has been established a lawful government (the Government of the Republic of Korea), having effective control and jurisdiction over that part of Korea where the Temporary Commission was able to observe and consult and in which the great majority of the people of all Korea reside; that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and

which were observed by the Temporary Commission; and that this is the only such Government of Korea." The resolution of December 12 concluded with the recommendation that member states and other nations take the foregoing facts into consideration in establishing their relations with the Government of Korea.

In the light of this action by the General Assembly, and taking into account the facts set forth in the statement issued by this Government on August 12, 1948, concerning the new Korean Government, the United States Government has decided to extend full recognition to the Government of the Republic of Korea. Incidental to this step it is anticipated that, by agreement with that Government, the mission of the United States special representative in Korea will in the near future be raised to Embassy rank.

In conformity with the General Assembly resolution of December 12, the United States Government will endeavor to afford every assistance and facility to the new United Nations Commission on Korea established thereunder in its efforts to help the Korean people and their lawful government to achieve the goal of a free and united Korea.

Committee on Foreign Affairs, House Report No. 1571 (81st Cong.) (excerpt):

* * * recognition has been given by other governments in the following order: The Dominican Republic, July 13; Bolivia, July 14; Cuba, July 17; Canada, July 19; Greece, August 4; Costa Rica, August 12; Turkey and Haiti, August 13; Australia, Nicaragua, and Belgium, August 15; El Salvador, September 3; Iran, September 23; Thailand, September 29; Ecuador, October 4; Uruguay, November 17; Peru, November 29. These acts of recognition bring to 27 the number of governments which have recognized the Republic of Korea, recognition having been previously extended by the United States, the Republic of China, the United Kingdom, France, the Philippines, the Vatican, Chile, Brazil, New Zealand, and the Netherlands.

E. WITHDRAWAL OF MILITARY FORCES

1. Soviet note of September 18, 1948 (excerpt):

The Supreme National Assembly of Korea on September 10, 1948, addressed itself to the Government of the Union of Soviet Socialist Republics and to the Government of the United States of America with a request for the simultaneous and immediate withdrawal of Soviet and American troops from Korea.

The Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics, having considered this appeal of the Supreme National Assembly of Korea, have recognized as possible meeting the wish expressed in this appeal and have given appropriate instructions to the Council of Ministers of the Union of Soviet Socialist Republics concerning the evacuation of Soviet troops from northern Korea so that the evacuation would be concluded at the end of December 1948.

At the same time the Presidium of the Supreme Soviet expressed the hope that the Government of the United States of America will also agree to evacuate American troops from southern Korea within this period.

2. Statement of September 20, 1948, of the United States position on withdrawal of occupation forces from Korea

It has been the consistent view of this government that the best interests of the Korean people would be served by the withdrawal of all occupying forces from Korea at the earliest practicable date. This same view was embodied in the United Nations General Assembly resolution of November 14, 1947, in which provision was made for such withdrawal as soon as practicable after the establishment of the Korean Government which it was the intention of that resolution to bring into being. Had the Soviet Union cooperated in carrying out the provisions of the resolution of November 14, 1947, the question of troop withdrawal from Korea would doubtless have been already resolved.

The United States Government regards the question of the withdrawal of occupying forces as but one facet of the entire question of the unity and independence of Korea. The General Assembly of the United Nations has taken cognizance of this larger question as evidenced by the resolution referred to above, and it may be expected to give further consideration to the matter at its forthcoming meeting.

3. Reply of the United States of September 28, 1948, to Soviet note of September 18 (excerpt)

* * * The United States Government has taken note of the decision of the Soviet Government to evacuate its occupation forces from Korea by the end of December, 1948. * * * the United States Government regards the question of troop withdrawal as part of the larger question of Korean unity and independence, concerning which its views will be presented at the appropriate time by the United States delegate to the General Assembly of the United Nations.

4. Resolution of the General Assembly of December 12, 1948 (excerpt):

The General Assembly, * * *

* * * 3. Recommends that the occupying powers should withdraw their occupation forces from Korea as early as practicable; * * *

5. Gradual withdrawal of United States forces

Committee on Foreign Affairs, House Report No. 962 (81st Cong.) (excerpt):

* * * The United States forces there have from the beginning regarded the key to South Korea's internal security as being the state of readiness of Korean defense forces rather than as the prospect of continued presence of United States troops. Accordingly they have directed their efforts to the training and equipping of native security forces. The question of when to withdraw is, of course, a difficult one. The National Assembly of the Republic of Korea on November 20, 1948, passed a resolution urging the continued presence of United States troops until security forces of the republic should be capable of fully maintaining national security. The General Assembly of the United Nations, in its resolution of December 12, called for the withdrawal of occupying forces at the earliest practicable time. The two resolutions are compatible if one takes the earliest practicable time to mean the time when withdrawal can be accomplished without impairing security. On December 28 the Department of the Army announced plans for early withdrawal of its forces in Korea. It pointed out that this was in keeping with the United Nations General Assembly resolution. It also cited that a revolt of dissident elements of the South Korean constabulary in October 1948, had been put down promptly and efficiently by the main body of the constabulary—an indication of the capacity of the native security forces to defend the area alone. On June 8, 1949, an announcement by the Department of State said that United States forces will "soon have completed" their withdrawal from South Korea. Completion of the withdrawal was reported in the press on June 29. It should be noted, however, that a military mission will continue to function in Korea, giving the Korean forces the benefit of United States military techniques and advice on organization.

6. Final withdrawal of United States forces

Announcement by Department of the Army (Washington Post, July 1, 1949 excerpt):

All United States troops in Korea have been withdrawn after nearly 4 years of occupation, the Army Department disclosed last night. * * * A small training mission of some 500 officers and men was understood to have remained to assist the Koreans in building their armed forces. * * * United States troops in Korea, which had totaled some 50,000 shortly after VJ-day, have been withdrawn gradually since, until last April only about 8,000 remained. These 8,000 have now been quietly withdrawn.

F. KOREA AND INTERNATIONAL ORGANIZATIONS

1. Application for membership in United Nations rejected by Soviet veto

Report by the President to the Congress for the year 1949 on the activities of the United Nations (excerpt):

The Republic of Korea submitted an application for membership on January 19, 1949. Although nine members of the Council voted favorably on this appli-

cation on April 8, a recommendation for admission was frustrated by a Soviet veto. In the course of these developments the Secretary-General on February 10, 1949, circulated a telegram, received the preceding day, purporting to be an application for membership by the Soviet-controlled "Democratic People's Republic of Korea" in North Korea.¹ By a vote of 8 to 2, with 1 abstention, the Council decided not to refer this application to its membership committee. Various members of the majority made clear that the so-called "Democratic People's Republic of Korea" did not qualify for membership; that its communication was not in the form required by the rules of procedure; and that in the light of the General Assembly's declaration on the Government of Korea—the second paragraph of its resolution on Korea December 12, 1948—it would not be proper to entertain the application even to the extent of referring it to a committee. This paragraph stated that the Government of the Republic of Korea, which is in the southern part of the state, was a lawful government and "is the only such Government in Korea."

2. Membership in other international organizations

Committee on Foreign Affairs, House Report No. 1571 (81st Cong.) (excerpt):

The Republic of Korea has also progressed in participation in international organizations.

On June 30, 1949, it was received into membership in the World Health Organization.

On October 22, 1949, the Economic Commission for Asia and the Far East, an adjunct of the Economic and Social Council of the United Nations, admitted the Republic of Korea as an associate member and rejected the application of the North Korean group under the name of the Democratic People's Republic. It is interesting to note that the Soviet Union is a participating government in the Economic Commission for Asia and the Far East, and the Republic of Korea was admitted only after the most strenuous objection by the Soviet Union. As a member of this Commission, the Republic of Korea was drawn into collaboration with the following full members in addition to the Soviet Union: Australia, Burma, Republic of China, France, India, the Netherlands, New Zealand, Pakistan, the Republic of the Philippines, Thailand, the United Kingdom, and the United States. This collaboration extends also to the following associate members of the Commission: Cambodia, Ceylon, Hong Kong, Indonesia, Laos, Malaya and the British Borneo group, Nepal, and Viet Nam.

On November 23, 1949, the Republic of Korea was admitted to membership in the Food and Agriculture Organization.

The Democratic People's Republic of Korea, set up in the northern part of the peninsula, has developed its ties with countries in the Soviet Union's bloc. On October 6 it recognized the Communist People's Republic of China. On November 7 it recognized the East German Communist "Democratic Republic." Kim Doo Bong, president of the presidium of the Democratic People's Republic of Korea, and other members of the government participated in the celebration of Joseph Stalin's seventieth birthday in Moscow in December. The North Korean regime has been recognized by the governments within the Communist orbit—the Soviet Union, the Mongolian People's Republic, Poland, Czechoslovakia, Rumania, Yugoslavia, Hungary, Bulgaria, and Albania.

G. CONTINUATION OF EFFORTS TO UNIFY KOREA

1. Effect of the United Nations General Assembly Resolution of December 12, 1948

Committee on Foreign Affairs, House Report No. 962 (81st Cong.) (excerpt):

* * * The United Nations General Assembly resolution of December 12, 1948, continued, in a new phase, the efforts to bring about unification of Korea, the further development of representative government there, and "the full accomplishment of the objectives set forth in the resolution of November 14, 1947." The United Nations Temporary Commission was reconstituted on the basis of membership of seven nations. The Commission has been in South Korea since January seeking an opportunity to fulfill its mission. It has not been granted permission even to enter North Korea, however—a circumstance which fundamentally impedes its work.

2. Efforts of the United Nations Commission

Committee on Foreign Affairs, House Report No. 1571 (81st Cong.) (excerpt):

* * * The United Nations Commission on Korea has continued its efforts to bring about a solution of the fundamental cleavage of the peninsula along the thirty-eighth parallel. Up to now its efforts have been unproductive. In its report of last August, the Commission officially confirmed the withdrawal of United States forces from South Korea. As of June 29, 1949, the Chairman of the Commission addressed the people of North Korea through the Korean broadcasting system located in the southern zone. He reviewed the efforts of the Commission to establish contact with authorities in the northern zone. He read to his audience, if any, a letter originated by the Commission on March 19, 1949, informing them that the Commission desired to enter the northern zone to observe and verify the withdrawal of Soviet troops from that area. The Commission had been unable to get any official in North Korea to receive the letter. On July 13, 1949, the Commission, acting through the Secretary General of the United Nations, informed the Government of the Soviet Union that it had observed the withdrawal of United States forces from South Korea and was prepared to perform a similar function with respect to the withdrawal of Soviet troops from North Korea whenever facilities might be ordered. This communication was not acknowledged.

In August 1949 the United Nations Commission on Korea published its report to the General Assembly. The report consisted of a thoroughgoing review of all of the circumstances and all of the frustrations related to its mission. The report was signed by the six members of the Commission representing the Republic of the Philippines, China, Australia, El Salvador, France, and India.

The Special Political Committee of the United Nations General Assembly voted on October 3, 1949, to continue the United Nations Commission on Korea. The vote was 44 to 6. The line-up was definitive—the Soviet Union and its satellites on one side, the rest of the nations on the other.

3. Resolution of the General Assembly, October 21, 1949 (excerpts)

The General Assembly.

* * * Mindful of the fact that, due to difficulties referred to in the report of the Commission, the objectives set forth in the resolutions referred to have not been fully accomplished, and in particular that the unification of Korea and the removal of barriers to economic, social, and other friendly intercourse caused by the division of Korea have not yet been achieved.

Having noted that the Commission has observed and verified the withdrawal of United States occupation forces, but that it has not been accorded the opportunity to observe or verify the reported withdrawal of Soviet occupation forces.

Recalling its declaration of December 12, 1948, that there has been established a lawful government (the Government of the Republic of Korea) having effective control and jurisdiction over that part of Korea where the United Nations Temporary Commission on Korea was able to observe and consult and in which the great majority of the people of Korea reside; that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such government in Korea.

Concerned lest the situation described by the Commission in its report menace the safety and well-being of the Republic of Korea and of the people of Korea and lead to open military conflict in Korea.

1. Resolves that the United Nations Commission on Korea shall continue being with the following membership: Australia, China, El Salvador, France, India, Philippines and Turkey and, having in mind the objectives set forth in the General Assembly resolutions of November 14, 1947, and December 12, 1948, and also the status of the Government of the Republic of Korea as defined in the latter resolution, shall:

(a) Observe and report any developments which might lead to or otherwise involve military conflict in Korea;

(b) Seek to facilitate the removal of barriers to economic, social, and other friendly intercourse caused by the division of Korea; and make available its good offices and be prepared to assist, whenever in its judgment a favorable opportunity arises, in bringing about the unification of Korea in accordance

with the principles laid down by the General Assembly in the resolution of November 14, 1947;

(c) Have authority, in order to accomplish the aims defined under subparagraphs (a) and (b) of the present paragraph, in its discretion to appoint observers, and to utilize the services and good offices of one or more persons whether or not representatives on the Commission;

(d) Be available for observation and consultation throughout Korea in the continuing development of representative government based on the freely expressed will of the people, including elections of national scope;

(e) Verify the withdrawal of Soviet occupation forces insofar as it is in a position to do so;

* * * * *
3. Calls upon Member States, the Government of the Republic of Korea, and all Koreans to afford every assistance and facility to the Commission in the fulfillment of its responsibilities, and to refrain from any acts derogatory to the purposes of the present resolution; * * *

II. UNITED STATES ASSISTANCE

A. THE RECORD OF ECONOMIC ASSISTANCE

1. GARIOA funds for Korea, fiscal 1949

Public Law 793, Eightieth Congress (excerpt):

AN ACT Making appropriations for foreign aid, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for foreign aid for such periods as are specified herein ending not later than June 30, 1949, and for other purposes, namely:

TITLE I—ECONOMIC COOPERATION

NATIONAL MILITARY ESTABLISHMENT

DEPARTMENT OF THE ARMY—CIVIL FUNCTIONS

GOVERNMENT AND RELIEF IN OCCUPIED AREAS

For expenses, not otherwise provided for, necessary to meet the responsibilities and obligations of the United States in connection with the government or occupation of certain foreign areas, including personal services in the District of Columbia and elsewhere and, subject to such authorization and limitations as the Secretary of the Army may prescribe, not to exceed \$220,000 may be available for tuition, personal allowances (not to exceed \$10 per day), travel expenses (not to exceed those authorized for like United States military or civilian personnel), and fees incident to instruction in the United States or elsewhere of such persons as may be required to carry out the provisions of this appropriation; travel expenses and transportation; services as authorized by section 15 of the Act of August 2, 1946 (5 U. S. C. 55a), at rates not in excess of \$50 per day and travel expenses for individuals; translation rights, photographic work, educational exhibits, and dissemination of information, including preview and review expenses incident thereto; expenses incident to the operation of schools for American children; printing and binding; hire of passenger motor vehicles and aircraft; repair and maintenance of buildings, utilities, facilities, and appurtenances; contingencies for the United States commanders of foreign areas, to be expended in their respective discretions (not exceeding amounts authorized or approved by the Secretary of the Army); such minimum supplies for the civilian populations of such areas as may be essential to prevent starvation, disease, or unrest, prejudicial to the objectives sought to be accomplished, and such supplies, commodities, and equipment as may be essential to carry out the purposes of this appropriation; \$1,300,000,000, of which not to exceed \$55,000,000 shall be available for administrative expenses: *Provided*, That when military personnel of the Department of the Army are employed primarily for the purposes of this appropriation, the mileage and other travel allowances to which they may be entitled shall be paid herefrom: *Provided further*, That the general provisions of the appropriation Act

for the fiscal year 1949 for the military functions of the Department of the Army shall apply to this appropriation: *Provided further*, That expenditures from this appropriation may be made outside continental United States, when necessary to carry out its purposes, without regard to sections 355, 1136, 3648, and 3734, Revised Statutes, as amended, civil-service or classification laws, or provisions of law prohibiting payment of any person not a citizen of the United States: *Provided further*, That expenditures from this appropriation may be made, when necessary to carry out its purposes, without regard to section 3709, Revised Statutes, as amended, and the Armed Services Procurement Act of 1947 (Public Law 413, Eightieth Congress): *Provided further*, That expenditures may be made hereunder for the purposes of economic rehabilitation in Japan, Korea, and the Ryukyus in such manner as to be consistent with the general objectives of the Economic Cooperation Act of 1948: *Provided further*, That funds appropriated hereunder and unexpended at the time of the termination of occupation by the United States, of any area for which such funds are made available, may be expended by the President for the procurement of such commodities and technical services, and commodities procured from funds herein or heretofore appropriated for government and relief in occupied areas and not delivered to such an area prior to the time of the termination of occupation, may be utilized by the President, as may be necessary to assist in the maintenance of the political and economic stability of such areas: *Provided further*, That before any such assistance is made available, an agreement shall be entered into between the United States and the recognized government or authority with respect to such area containing such undertakings by such government or authority as the President may determine to be necessary in order to assure the efficient use of such assistance in furtherance of such purposes: *Provided further*, That such agreement shall, where applicable, include requirements and undertakings corresponding to the requirements and undertakings specified in sections 5, 6, and 7 of the Foreign Aid Act of 1947 (Public Law 389, 80th Congress): *Provided further*, That funds appropriated hereunder may be used, insofar as practicable, and under such rules and regulations as prescribed by the Secretary of the Army, to pay ocean transportation charges from United States ports, including territorial ports, to ports in Japan, Korea, and the Ryukyus for the movement of supplies donated to, or purchased by, United States voluntary nonprofit relief agencies registered with and recommended by the Advisory Committee on Voluntary Foreign Aid or of relief packages consigned to individuals residing in such countries: *Provided further*, That under the rules and regulations to be prescribed, the Secretary of the Army shall fix and pay a uniform rate per pound for the ocean transportation of all relief packages of food or other general classification of commodities shipped to Japan, Korea, or the Ryukyus regardless of methods of shipment and higher rates charged by particular agencies of transportation, but this proviso shall not apply to shipments made by individuals to individuals: *And provided further*, That the Joint Committee on Foreign Economic Cooperation established pursuant to provisions of section 124 (a) of the Economic Cooperation Act of 1948 shall have the same duties, powers, and responsibilities with respect to programs carried out by appropriations for Government and Relief in Occupied Areas as it has with respect to programs under the Economic Cooperation Act of 1948.

2. *Agreement on aid between United States of America and Republic of Korea, December 31, 1948*

PREAMBLE

The Government of the Republic of Korea having requested the Government of the United States of America for financial, material, and technical assistance to avert economic crisis, promote national recovery, and insure domestic tranquillity in the Republic of Korea, and

The Congress of the United States of America, in the Act approved June 28, 1948 (Public Law 793, 80th Cong.), having authorized the President of the United States of America to furnish assistance to the people of the Republic of Korea and:

The Government of the United States of America and the Government of the Republic of Korea, believing that the furnishing of such assistance, on terms consonant with the independence and security of the Government of the Republic of Korea, will help to achieve the basic objectives of the Charter of the United Nations and the United Nations General Assembly Resolution of November 14, 1947, and will further strengthen the ties of friendship between the American and Korean peoples:

The undersigned, being duly authorized by their respective Governments for that purpose, have agreed as follows:

ARTICLE I

The Government of the United States of America will furnish the Government of the Republic of Korea such assistance as the President of the United States of America may authorize to be provided in accordance with the Act of Congress approved June 28, 1948 (Public Law 793, 80th Congress), and any Acts amendatory or supplementary thereto.

ARTICLE II

The Government of the Republic of Korea in addition to making the most advantageous use of all available Korean resources, will make similarly effective use of the aid furnished to the Government of the Republic of Korea by the Government of the United States of America. In order further to strengthen and stabilize the economy of Korea as soon as possible, the Government of the Republic of Korea hereby undertakes to effectuate, among others, the following measures:

(a) The balancing of the budget through the exercise of economy in governmental expenditures and the increase of governmental revenues by all practicable means.

(b) The maintenance of such controls over the issuance of currency and the use of private and governmental credit as are essential to the attainment of economic stability.

(c) The regulation of all foreign exchange transactions and the establishment of foreign trade controls, including an export and import licensing system, in order to insure that all foreign exchange resources make a maximum contribution to the welfare of the Korean people and recovery of the Korean economy.

(d) The establishment of a rate of exchange for the Korean currency as soon as economic conditions in Korea warrant such action.

(e) The exertion of all possible efforts to attain maximum production, collection, and equitable distribution of locally produced supplies, including the continuance of a program of collection and distribution of indigenously produced cereal grains designed to

(1) Assure a minimum adequate staple ration at controlled prices for all non-self-suppliers, and where necessary to distribute to indigent and needy persons their fair share of available food supplies; and

(2) Obtain foreign exchange.

(f) The facilitation of private foreign investment in Korea together with the admittance of private foreign traders to transact business in Korea subject to such restrictions as are prescribed in the Constitution and the Laws of the Government of the Republic of Korea.

(g) The development of Korean export industries as rapidly as practicable.

(h) The management or disposition of Government-owned productive facilities and properties in such a manner as will insure, in the general welfare, the furtherance of maximum production.

ARTICLE III

1. The Government of the United States of America will appoint an official (hereinafter referred to as the United States Aid Representative) to discharge the responsibilities in Korea of the Government of the United States of America under the terms of this Agreement. Within the terms of this Agreement, the United States Aid Representative and his staff will assist the Government of the Republic of Korea to make the most effective use of Korea's own resources and of aid furnished to the Government of the Republic of Korea by the Government of the United States of America, thereby to advance reconstruction and promote economic recovery in Korea as soon as possible.

2. The Government of the Republic of Korea agrees to extend diplomatic privileges and immunities to the United States Aid Representative and members of his mission.

3. The Government of the Republic of Korea will furnish all practicable assistance to the United States Aid Representative in order to enable him to discharge his responsibilities. The Government of the Republic of Korea will permit the free movement of employees of the Government of the United States of America engaged in carrying out the provisions of this Agreement to, in or from Korea; facilitate the employment of Korean nationals and residents; authorize the acqui-

sition of facilities and services at reasonable prices; and in other ways assist the United States Aid Representative in the performance of his necessary duties. The Government of the Republic of Korea, in consultation with the United States Aid Representative, will effectuate such mutually acceptable arrangements as are necessary for the utilization of the petroleum storage and distribution facilities, and other facilities which are required to carry out the objectives of this Agreement.

4. The Government of the Republic of Korea will permit the United States Aid Representative and his staff to travel and to observe freely the utilization of assistance furnished to Korea by the Government of the United States of America, and will recognize his right to make such recommendations in respect thereto as he deems necessary for the effective discharge of his responsibilities under this Agreement. The Government of the Republic of Korea will maintain such accounts and records pertaining to the Aid Program, and will furnish the United States Aid Representative such reports and information as he may request.

5. In the event the United States Aid Representative ascertains the existence of abuses or violations of this Agreement, he will so inform the Government of the Republic of Korea. The Government of the Republic of Korea will promptly take such action as is necessary to correct such abuses or violations as are found to exist and inform the United States Aid Representative of action taken. If, in the opinion of the United States Aid Representative, appropriate corrective action is not taken by the Government of the Republic of Korea, he may take such steps as may be appropriate and proper and may recommend to the Government of the United States of America the termination of further assistance.

6. The Government of the Republic of Korea will establish an operating agency to develop and administer a program relating to requirements, procurement, allocation, distribution, pricing, and accounting for supplies obtained under this Agreement. In the development and execution of such a program the operating agency will consult with the United States Aid Representative.

ARTICLE IV

1. The Government of the Republic of Korea will develop an over-all economic recovery plan designed to stabilize the Korean economy. An integral part of this economic recovery plan will be an import-export program to be agreed upon by the United States Aid Representative and the Government of the Republic of Korea. In consonance with this Agreement upon the import-export program, the Government of the Republic of Korea will transmit to the United States Aid Representative fully justified import requirements, together with estimates of export availabilities, this information to be transmitted at such times and in such form as may be desired by the United States Aid Representative.

2. The Government of the Republic of Korea will insure that the periodic allocation of foreign exchange by categories of use will be made in consultation with and with the concurrence of the United States Aid Representative, and that expenditures of foreign exchange will be made in accordance with such allocations.

3. Where it is deemed necessary, the Government of the Republic of Korea will employ foreign consultants and technicians to assure the effective utilization of domestic resources and of equipment and materials brought into Korea under the import-export program. The Government of the Republic of Korea will in each case inform the United States Aid Representative of its intention to employ such individuals.

ARTICLE V

1. The Government of the Republic of Korea will take all appropriate steps regarding the distribution within Korea of goods provided by the Government of the United States of America pursuant to this Agreement, and of similar goods imported through the use of other funds or produced locally, to insure a fair and equitable distribution of these supplies at reasonable prices consistent with local economic conditions within the Republic of Korea, and to insure that all such goods are used for the purpose envisaged by this Agreement.

2. The Government of the United States of America shall, from time to time, notify the Government of the Republic of Korea of the indicated dollar cost of commodities, services, and technical information (including any cost of processing, storing, transporting, repairing, or other services incident thereto) made available to Korea on a grant basis pursuant to this Agreement. The Government of the Republic of Korea, upon notification of such indicated dollar costs, shall thereupon deposit in a special account in its name at the Bank of Chosen a commensurate amount in won, computed at a won-dollar ratio which shall be agreed to at such time between the Government of the Republic of Korea and the United States

Aid Representative. The Government of the Republic of Korea will use any balance in the special account to pay the United States Aid Representative such funds as he may require from time to time to meet the won expenses incurred in the discharge of his responsibilities within Korea under this Agreement. The remaining sums in the special account may be used only for such other purposes as may be agreed upon from time to time between the Government of the Republic of Korea and the United States Aid Representative.

3. The Government of the Republic of Korea will not permit the reexport of goods provided by the Government of the United States of America pursuant to this Agreement or the export or reexport of commodities of the same character produced locally or otherwise procure, without the concurrence of the United States Aid Representative.

4. The Government of the Republic of Korea will insure that all commodities made available under this Agreement or the containers of such commodities shall, to the extent practicable, be marked, stamped, branded, or labeled in a conspicuous place as legibly, indelibly, and permanently as the nature of such commodities or containers will permit, in such a manner as to indicate to the people of Korea that such commodities have been furnished or made available by the United States of America.

ARTICLE VI

1. The Government of the Republic of Korea will undertake to use its best endeavor to cooperate with other countries in facilitating and stimulating an increasing interchange of goods and services with other countries and in reducing public and private barriers to trade with other countries.

2. Pending the entry into force of a Treaty of Amity and Commerce between the Government of the United States of America and the Government of the Republic of Korea, the Government of the United States of America shall accord, immediately and unconditionally, to the merchandise trade of the Republic of Korea treatment no less favorable than that accorded to the merchandise trade of any third country. Similarly, treatment no less favorable than that accorded to the merchandise trade of any third country shall be accorded, immediately and unconditionally, within the Republic of Korea, to the merchandise trade of the United States of America.

3. Departures from the application of the most-favored-nation treatment provided for in paragraph 2 of this Article shall be permitted to the extent that they are in accord with the exceptions recognized under the General Agreement on Tariffs and Trade, dated October 30, 1947, concluded at the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as now or hereafter amended. The provisions of this paragraph shall not be construed to require compliance with the procedures specified in the General Agreement with regard to the application of such exceptions.

4. The provisions of paragraphs 2 and 3 of this Article shall apply, with respect to the United States of America, to all territory under its sovereignty or authority.

5. The Government of the Republic of Korea shall accord most-favored-nation treatment to the merchandise trade of any area in the free territory of Trieste, Japan or Western Germany in the occupation or control of which the Government of the United States participates, for such time and to such extent as such area accords most-favored-nation treatment to the merchandise trade of the Republic of Korea.

6. The provisions of paragraphs 2 and 3 of this Article shall not derogate from such other obligations concerning the matters contained in this Agreement as may at any time be in effect between the Government of the United States of America and the Government of the Republic of Korea.

7. The Government of the Republic of Korea will take the measures which it deems appropriate to prevent, on the part of private or public commercial enterprises, business practices or business arrangements affecting international trade which have the effect of interfering with the purposes and policies of this Agreement.

8. The provisions of this Article and of Article VII shall apply during such period as the Government of the United States of America extends aid to the Government of the Republic of Korea under the terms of this Agreement, unless superseded by a Treaty of Amity and Commerce.

ARTICLE VII

The Government of the Republic of Korea shall, with respect to commercial, industrial, shipping and other business activities, accord to the nationals of the

United States of America treatment no less favorable than that now or hereafter accorded by the Republic of Korea to nationals of any third country. As used in this paragraph, the word "nationals" shall be understood to include natural and juridical persons.

ARTICLE VIII

The Government of the Republic of Korea will facilitate the transfer to the United States of America, for stockpiling or other purposes, of materials originating in the Republic of Korea which are required by the United States of America as a result of deficiencies or potential deficiencies in its own resources, upon such reasonable terms of sale, exchange, barter or otherwise, and in such quantities, and for such period of time, as may be agreed to between the Governments of the United States of America and the Republic of Korea after due regard for the reasonable requirements of the Republic of Korea for domestic use and commercial export of such materials. The Government of the Republic of Korea will take such specific measures within the intent of this Agreement as may be necessary to carry out the provisions of this paragraph, including the promotion of the increased production of such materials within the Republic of Korea, and the removal of any hindrances to the transfer of such materials to the United States of America. The Government of the Republic of Korea will, when so requested by the Government of the United States of America, enter into negotiations for detailed arrangements necessary to carry out the provisions of this paragraph.

ARTICLE IX

1. The Government of the Republic of Korea and the Government of the United States of America will cooperate in assuring the peoples of the United States of America and of Korea full information concerning the goods and technical assistance furnished to the Government of the Republic of Korea by the Government of the United States of America.

2. The Government of the Republic of Korea will permit representatives of the press and radio of the United States of America to travel and to observe freely and to report fully regarding the receipt and utilization of American aid.

3. The Government of the Republic of Korea will permit representatives of the Government of the United States of America, including such committees of the Congress as may be authorized by their respective houses to observe, advise, and report on the distribution among the people of commodities made available under this Agreement.

4. The Government of the Republic of Korea will cooperate with the United States Aid Representative in providing full and continuous publicity in Korea on the purpose, source, character, scope, amounts and progress of the economic and technical aid provided to the Government of the Republic of Korea by the Government of the United States of America under the provisions of this Aid Agreement.

ARTICLE X

1. Any or all assistance authorized to be provided pursuant to this Agreement will be terminated—

(a) If requested by the Government of the Republic of Korea.
(b) If the United Nations finds that action taken or assistance furnished by the United Nations makes the continuance of assistance by the Government of the United States of America pursuant to this Agreement unnecessary or undesirable.

(c) If the President of the United States of America determines that the Government of the Republic of Korea is not adhering to the terms of this Agreement; or whenever he finds, by reason of changed conditions, that aid provided under this Agreement is no longer necessary or desirable; or whenever he finds that, because of changed conditions, aid under this Agreement is no longer consistent with the national interests of the United States of America.

ARTICLE XI

This Agreement shall become effective with the formal notification to the Government of the United States of America that the Korean National Assembly has consented to this Agreement. It shall remain in force until three (3) months after the day on which either Government shall have given to the other notice of intention to terminate.

This Agreement may be amended at any time by agreement between the two Governments.

ARTICLE XII

This Agreement shall be registered with the United Nations. Done in duplicate, in the English and Korean languages at Seoul, Korea, this 10th day of December 1948. The English and Korean texts shall have equal force, but in the case of divergence, the English text shall prevail.

For the Government of the United States of America:

JOHN J. MUCCIO

For the Government of the Republic of Korea:

LEE BUM SUK
KIM DO YUN

3. *Transfer of Korean aid program to the ECA*

Executive Order 102006-A of January 5, 1949. (This document is classified and is therefore not reproduced here.)

4. *Statement on the record of assistance*

Committee on Foreign Affairs, House Report No. 1571 (81st Cong.) (excerpt):

The first-year segment of a 3-year program of economic assistance, as contemplated in H. R. 5330, was never carried out. Instead, the Congress legislated the program, if it might be called a program in view of the circumstances, a piece at a time. The Korean aid program was snarled in part by the lack of statutory authorization and in part by the general impasse regarding appropriations.

First, on June 30, 1949, there was enacted Public Law 154. This enabled the Korean program to be carried along on the basis of operations in the fiscal year 1949. Then, on August 1, 1949, Public Law 196 was enacted. It continued the above formula for an additional 15 days. Under these two provisions, the sum of \$17,500,000 was made available for the South Korean program. No further appropriations were made for the Korea program for almost 2 months—until October 10, 1949. Then Public Law 343 was enacted, making \$30,000,000 available for the period July 1, to October 15, 1949. This provided that the funds appropriated by Public Law 154 and Public Law 196 should be charged to this appropriation. Finally, on October 28, 1949, another \$30,000,000 was appropriated by Public Law 430 for use during the period October 15, 1949, to February 15, 1950.

The program for South Korea has received a total of \$60,000,000 for 7½ months, rather than the contemplated \$93,750,000 which would have been the share if the original program had been put into effect. Moreover, the money was made available in small and irregular portions. This added to the difficulties of the capital-installation program. Actually the program received \$17,500,000 for 6 weeks; then nothing for 6 weeks; then \$12,500,000 for 6 weeks; then nothing for 10 weeks; then \$30,000,000 for the 10 fallow weeks and for the next 9 weeks.

5. *Appropriation acts making funds available for economic assistance*

Public Law 154, Eighty-first Congress:

JOINT RESOLUTION Making temporary appropriations for the fiscal year 1950, and for other purposes

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) there are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, such amounts as may be necessary to permit departments, agencies, corporations, or other organizational units in any branch of the Government for which appropriations, funds, or other authority (including limitations, restrictions, or permissive provisions) would be made available for use or application in the fiscal year 1950 by any appropriation Act (such Act not being law on July 1, 1949), to carry out their projects or activities until the approval of the applicable appropriation Act, to the extent and in the manner which would be provided for in appropriations, funds, or other authority granted by such Act: *Provided*, That in any case where the amount to be made available or the authority to be granted under any such Act as passed by the House of Repre-

representatives is different from the amount to be made available or the authority to be granted under such Act as passed by the Senate, the pertinent project or activity shall be carried out under whichever amount is lesser or whichever authority is more restrictive: *Provided further*, That in any case where an item is included in an appropriation Act which has been passed by only one House, or where an item is included in only one version of an Act passed by both Houses, for a project or activity for which funds were provided by Congress for the fiscal year 1949, such project or activity shall be carried on under the appropriation, funds, or authority granted by the one House, but in no event at a rate higher than that provided for the fiscal year 1949.

(b) There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, such amounts as may be necessary to permit departments, agencies, corporations, or other organizational units in any branch of the Government to carry out projects or activities for which funds were provided by Congress for the fiscal year 1949, and for which a Budget estimate for the fiscal year 1950 was transmitted to the Congress prior to July 1, 1949, but for which no provision is contained in any bill pending in Congress on July 1, 1949, at the rate provided for under any corresponding appropriation for the fiscal year 1949 or the Budget estimate for 1950, whichever is smaller; except that in the case of activities (other than those of the Treasury Department) transferred to the General Services Administration by H. R. 4754 (Eighty-first Congress) when enacted into law, there are hereby appropriated such amounts as may be necessary to carry out such activities to the extent and in the manner which would be provided for in Budget estimates transmitted to the Congress for the fiscal year 1950.

(c) Appropriations and funds made available, and authority granted, pursuant to this joint resolution shall be determined under the terms hereof by reference to the status of the pertinent appropriation Acts and Budget estimates on July 1, 1949, and shall continue to be available in the amount and in the manner so determined until (1) enactment into law of the applicable appropriation Act, or (2) the date both Houses shall have acted and failed to make an appropriation, or (3) July 31, 1949, whichever first occurs.

(d) Expenditures from appropriations or funds made available pursuant to this joint resolution shall be charged to any applicable appropriation or fund when the bill in which it is contained is enacted into law.

Approved June 30, 1949.

Public Law 196, Eighty-first Congress:

JOINT RESOLUTION Amending an Act making temporary appropriations for the fiscal year 1950, and for other purposes

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 154 (Eighty-first Congress), making temporary appropriations for the fiscal year 1950, and for other purposes, is hereby amended by striking out, in section (c) thereof, "July 31, 1949" and inserting in lieu thereof "August 15, 1949".

Approved August 1, 1949.

Public Law 343, Eighty-first Congress, the Third Deficiency Appropriation Act, 1949 (excerpt):

AN ACT Making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1949, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations for the fiscal year ending June 30, 1949, and for other purposes, namely:

FUNDS APPROPRIATED TO THE PRESIDENT

ASSISTANCE TO THE REPUBLIC OF KOREA

For expenses necessary to continue assistance to the Republic of Korea during the period July 1 to October 15, 1949, at the same rate and under the same terms and conditions as in the fiscal year 1949, pending the enactment of legislation

outlining the terms and conditions under which further assistance is to be rendered, \$30,000,000, of which not to exceed \$375,000 shall be available for administrative expenses: *Provided*, That all obligations incurred during the period between August 15, 1949, and the date of enactment of this Act in anticipation of such appropriation and authority are hereby ratified and confirmed if in accordance with the terms thereof: *Provided further*, That the funds appropriated pursuant to the joint resolution of June 30, 1949 (Public Law 154), as amended by the joint resolution of August 1, 1949 (Public Law 196), for assistance to the Republic of Korea, shall be charged to this appropriation.

* * * * *
SEC. 302. This Act may be cited as the "Third Deficiency Appropriation Act, 1949."

Approved October 10, 1949.

Public Law 430, Eighty-first Congress, the Second Supplemental Appropriation Act, 1950 (excerpts):

AN ACT Making supplemental appropriations for the fiscal year ending June 30, 1950, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations for the fiscal year ending June 30, 1950, and for other purposes, namely:

ASSISTANCE TO THE REPUBLIC OF KOREA

For expenses necessary to continue assistance to the Republic of Korea during the period October 15, 1949, to February 15, 1950, at the same rate and under the same terms and conditions as in the fiscal year 1949, pending the enactment of legislation outlining the terms and conditions under which further assistance is to be rendered, \$30,000,000: *Provided*, That all obligations incurred during the period between October 15, 1949, and the date of enactment of this Act in anticipation of such appropriation and authority are hereby ratified and confirmed if in accordance with the terms thereof: *Provided further*, That this appropriation shall be consolidated and merged with the appropriation for economic assistance to the Republic of Korea made by Public Law 343, approved October 10, 1949, and such consolidated appropriation may be used during the period October 15, 1949, to February 15, 1950: *Provided further*, That not to exceed \$675,000 of such consolidated appropriation shall be available for administrative expenses during such period.

* * * * *
SEC. 403. This Act may be cited as the "Second Supplemental Appropriation Act, 1950."

Approved October 28, 1949.

Public Law 583, Eighty-first Congress, the Deficiency Appropriation Act of 1950 (excerpts):

AN ACT Making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1950, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations for the fiscal year ending June 30, 1950, and for other purposes, namely:

CHAPTER XI

FUNDS APPROPRIATED TO THE PRESIDENT

ASSISTANCE TO THE REPUBLIC OF KOREA

For expenses necessary to provide assistance to the Republic of Korea pursuant to the Far Eastern Economic Assistance Act of 1950 (Public Law 447, approved February 14, 1950), including expenses of attendance at meetings concerned with

the purposes of this appropriation; payment of tort claims pursuant to law (28 U. S. C. 2672); health service programs as authorized by law (5 U. S. C. 150); transportation of privately owned automobiles; hire of passenger motor vehicles and aircraft; exchange of funds without regard to section 3651 of the Revised Statutes; and loss by exchange; \$50,000,000: *Provided*, That the appropriation established under this head in the Second Supplemental Appropriation Act, 1950, shall be consolidated and merged with this appropriation and such consolidated appropriation shall be available through June 30, 1950: *Provided further*, That not to exceed \$1,500,000 of such consolidated appropriation shall be available for administrative expenses during the fiscal year 1950.

* * * * *
 SEC. 1202. * * * This Act may be cited as the "Deficiency Appropriation Act, 1950."

Approved June 29, 1950.

6. Authorizing legislation for economic assistance to Korea

H. R. 5330, a bill to promote world peace and the general welfare, national interest, and foreign policy of the United States by providing aid to the Republic of Korea.

Committee on Foreign Affairs, Legislative Calendar (excerpt):

June 8, 1949.—Considered in open session before introduction.
 June 9, 1949.—Considered in executive session before introduction.
 June 14, 1949.—Considered in open session before introduction.
 June 15, 1949.—Open session meeting, in part, before introduction.
 June 16, 1949.—Considered in executive session before introduction.
 June 17, 1949.—Considered in executive session before introduction.
 June 20, 1949.—Considered in executive session before introduction.
 June 21, 1949.—Considered in executive session before introduction.
 June 22, 1949.—Considered in executive session before introduction.
 June 23, 1949.—Considered in executive session before introduction.
 June 24, 1949.—Bill introduced and considered in executive session.
 June 28, 1949.—Considered in executive session.
 June 29, 1949.—Considered in executive session.
 June 30, 1949.—Considered in executive session and ordered reported.
 July 1, 1949.—Reported. House Report No. 962.
 July 27, 1949.—Meeting of Rules Committee on request for rule.
 August 15, 1949.—Considered by Rules Committee in executive session.
 September 27, 1949.—Considered by Rules Committee in executive session. Rule granted. H. Res. 368, House Report No. 1344.
 January 19, 1950.—Rule adopted in House. Considered under rule and rejected by vote of 192 to 191. (For further action see S. 2319.)

S. 2319 (Public Law 447, 81st Cong.), a bill to promote world peace and the general welfare, national interest, and foreign policy of the United States by providing aid to the Republic of Korea.

Committee on Foreign Affairs, Legislative Calendar (excerpt):

July 22, 1949.—Reported in Senate. Senate Report No. 748.
 October 12, 1949.—Passed Senate.
 January 20, 1950.—Referred to Foreign Affairs Committee.
 January 30, 1950.—Open session meeting—in part.
 January 31, 1950.—Considered in executive session and ordered favorably reported.
 February 1, 1950.—Reported. House Report No. 1571. Meeting of Rules Committee on request for rule. Rule granted. H. Res. 458, House Report 1573.
 February 7, 1950.—General debate on floor.
 February 9, 1950.—Read for amendment in House, committee amendments adopted and passed.
 February 10, 1950.—Senate concurs in House amendments.
 February 14, 1950.—Approved. Public Law 447.

Public Law 447, Eighty-first Congress, the Far Eastern Economic Assistance Act of 1950:

AN ACT To provide economic assistance to certain areas of the Far East

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Far Eastern Economic Assistance Act of 1950".

SEC. 2. To enable the President until June 30, 1950, to obligate funds heretofore appropriated for assistance in certain areas of China, section 12 of Public Law 47, Eighty-first Congress, is amended by striking out "February 15, 1950" and inserting in lieu thereof "June 30, 1950".

SEC. 3. (a) The Administrator for Economic Cooperation is hereby authorized to furnish assistance to the Republic of Korea in conformity with—

(1) the provisions of the Economic Cooperation Act of 1948, as amended, wherever such provisions are applicable and not inconsistent with the intent and purposes of this section 3; and

(2) the agreement on aid between the United States of America and the Republic of Korea signed December 10, 1948, or any supplementary or succeeding agreement which shall not substantially alter the basic obligations of either party.

(b) Notwithstanding the provisions of any other law, the Administrator shall immediately terminate aid under this section in the event of the formation in the Republic of Korea of a coalition government which includes one or more members of the Communist Party or of the party now in control of the government of northern Korea.

(c) Notwithstanding the provisions of any other law, the Administrator is authorized to make available to the Republic of Korea merchant vessels of tonnage not in excess of two thousand five hundred gross-tons each, in a number not to exceed ten at any one time, with a stipulation that such vessels shall be operated only in east Asian waters and must be returned forthwith upon demand of the Administrator and in any event not later than June 30, 1951. Any agency of the United States Government owning or operating any such vessel is authorized to make such vessel available to the Administrator for the purposes of this section upon his application, notwithstanding the provisions of any other law and without reimbursement by the Administrator, and title to any such vessel so supplied shall remain in the United States Government.

(d) In order to carry out the provisions of this section 3, there is hereby authorized to be appropriated to the President, in addition to sums already appropriated not to exceed \$60,000,000 for the fiscal year ending June 30, 1950.

(e) Notwithstanding the provisions of any other law, until such time as an appropriation shall be made pursuant to subsection (d) of this section, the Reconstruction Finance Corporation is authorized and directed to make advances not to exceed in the aggregate \$30,000,000 to carry out the provisions of this section, in such manner, at such times, and in such amounts as the Administrator shall request, and no interest shall be charged on advances made by the Treasury to the Reconstruction Finance Corporation for this purpose. The Reconstruction Finance Corporation shall be repaid without interest for advances made by it hereunder, from funds made available for the purposes of this section 3.

SEC. 4. The authorization for appropriations in this Act is limited to the period ending June 30, 1950, in order that any subsequent authorizations may be separately passed on, and is not to be construed as an express or implied commitment to provide further authorizations or appropriations.

Approved February 14, 1950.

Public Law 535, Eighty-first Congress, the Foreign Economic Assistance Act of 1950 (excerpt):

FAR EASTERN ECONOMIC ASSISTANCE ACT OF 1950

SEC. 107. (a) Section 3 (c) of the Far Eastern Economic Assistance Act of 1950 is amended by striking out "June 30, 1951" and inserting in lieu thereof "June 30, 1952".

(b) Section 3 (d) of such Act is amended by striking out the period at the end and inserting in lieu thereof a comma and the following: "and \$100,000,000 for the fiscal year ending June 30, 1951."

(c) Section 4 of such Act is amended by striking out "June 30, 1950" and inserting in lieu thereof "June 30, 1951".

B. ANALYSIS OF ECONOMIC AID TO KOREA

Committee on Foreign Affairs, Staff Memorandum of June 27, 1950:

(a) The following table shows in round figures a summary of economic aid made available or authorized as of this date:

GARIOA funds administered by Army ¹	\$212, 000, 000	
Fiscal year 1946.....	\$6, 000, 000	
Fiscal year 1947.....	93, 000, 000	
Fiscal year 1948.....	113, 000, 000	
	212, 000, 000	
GARIOA funds administered by ECA ²		144, 000, 000
Fiscal year 1949.....	\$144, 000, 000	
(a) Supplies in pipeline pro- cured by Army, transferred to ECA.....	\$114, 000, 000	
(b) Cash turned over to ECA.....	30, 000, 000	
	144, 000, 000	
Total GARIOA funds.....	356, 000, 000	
Funds administered by ECA ³ under other acts.....		110, 000, 000
Fiscal year 1950.....	\$110, 000, 000 ⁴	
Total funds appropriated, spent, available and being spent.....	466, 000, 000	
Funds authorized but not yet appropriated ⁵	100, 000, 000	
Fiscal year 1951 authorization.....	\$100, 000, 000	
Grand total.....	566, 000, 000	

(b) Of the \$90,000,000 made available as of June 26 for fiscal year 1950 before the additional funds from the deficiency bill become available, the following is a roughly estimated breakdown:

Not contracted for.....	\$15, 000, 000
Contracted for.....	75, 000, 000
Of this amount:	
(a) Arrived in Korea.....	\$40-45, 000, 000
(b) In pipeline.....	30-35, 000, 000

The \$20,000,000 to be made available by the deficiency bill would normally have been obligated in accordance with fiscal 1950 program plans. In view of the crisis, however, ECA has already made plans—over the weekend—to use these funds on a flexible basis adapted to the exigencies of the situation. As for the \$15,000,000, still available from the original \$90,000,000 of fiscal 1950 funds, ECA is now deciding whether to “deobligate” it and use it with the newly available \$20,000,000 for emergency purposes.

(c) The fiscal year 1950 funds may therefore be recapitulated as follows:

Total made available.....	\$110, 000, 000
Appropriated.....	\$60, 000, 000
Advanced by RFC (repaid from additional funds made available in June 1950).....	30, 000, 000
Additional appropriation.....	20, 000, 000
	110, 000, 000

¹ The emphasis of this program during the 3 years was relief and rehabilitation, chiefly food, supplies, etc., for the civil population.

² Executive order, ECA assumed responsibility for Korean aid operations on Jan. 1, 1949.

³ The chief emphasis of the fiscal 1950 program is capital investment, development, etc.

⁴ This is a net amount. \$60,000,000 was appropriated and \$30,000,000 was made available by an authorized advance of \$30,000,000 from the RFC, making a total of \$90,000,000. An additional amount of \$50,000,000 is contained in the Deficiency Act of 1950, Public Law 583, June 29, 1950. Of the sum made available in the deficiency act, \$30,000,000 will be used to repay the RFC advance, leaving a net of \$20,000,000 for further operations, and a total of \$110,000,000 for fiscal 1950.

⁵ The \$100,000,000 authorized has been requested. The Senate Appropriations Committee has recommended \$90,000,000 as an amendment to H. R. 7786, the “omnibus” appropriation bill now before the Senate.

Obligations:

Obligated from the first \$90,000,000 made avail- able.....	\$75, 000, 000	\$75, 000, 000
As yet unobligated:		
Balance of the first \$90,000,000.....	15, 000, 000	
Net new funds made available since June 27, 1950.....	20, 000, 000	35, 000, 000
Goods in pipeline.....	\$30-35, 000, 000	
Goods arrived in Korea.....	40-45, 000, 000	

(d) The fiscal year 1950 funds amounting to \$110,000,000 (net) were granted by the following laws:

1. Third Deficiency Appropriation Act (Public Law 343, 81st Cong.) (funds appropriated for period July 1 to Oct. 15, 1949; \$17,500,000 appropriated by Public Law 154 and Public Law 196 to be charged against this)..... \$30, 000, 000
2. Second Supplemental Appropriation Act (Public Law 430, 81st Cong.; funds for Oct. 15 to Feb. 15, 1950)..... 30, 000, 000
3. Deficiency Appropriation Act of 1950 (Public Law 583, 81st Cong.) (under authority of Far Eastern Economic Assistance Act of 1950, Public Law 447, 81st Cong.)..... 50, 000, 000

Total.....¹ 110, 000, 000

¹ In addition to funds appropriated under Third Deficiency and Second Supplemental Acts, ECA borrowed \$30,000,000 from RFC. Of the \$50,000,000 last made available, the RFC loan will be repaid, leaving a net of \$20,000,000 and a total of \$110,000,000.

C. MILITARY ASSISTANCE TO KOREA¹

1. The policies governing military assistance

Military assistance to Korea may be divided into two parts: (a) that furnished during fiscal year 1950 by the transfer of equipment upon withdrawal of the United States occupation forces, and (b) that furnished under the Mutual Defense Assistance Act of 1949. All of the assistance, however, was predicated upon definite policies. The Korean military force was to be an internal security force. Its equipment was to be such as would permit the development of a well-trained force that could preserve internal security, prevent border raids and incursions north of the thirty-eighth parallel, and, as a by-product, deter armed attack or other aggression by the North Korean forces.

2. Assistance during fiscal year 1950 not under the Mutual Defense Assistance Act of 1949

When it was decided to withdraw the United States forces it was realized the Koreans would need security forces, and the Government was given 40,000 Japanese rifles together with available stocks of ammunition for use by the security forces.

When the United States occupation forces were withdrawn from the Republic of Korea in July of 1949, they left behind them military and naval equipment which was transferred to the southern Korean security forces under the Surplus Property Act through the Office of Foreign Liquidation. This equipment had originally cost the United States approximately \$56,000,000 and had a 1949 replacement value of about \$110,000,000. The Ground Force equipment was primarily divisional in character, and was sufficient for the proper equipment of a security force of 50,000 men, in accordance with the policies stated above.

¹ Pars. 1, 2, and 3 are based on information supplied by Department of Defense and Department of Defense Press Branch Fact Sheet No. 136-505 of July 6, 1950.

This equipment turned over to the Korean Government forces included more than 100,000 small arms (including rifles, pistols, and machine guns) and approximately 50,000,000 rounds of ammunition; more than 2,000 rocket launchers, 2.36" (bazookas) and over 40,000 rounds of bazooka ammunition; more than 4,900 vehicles of all types; and a large number of 37-millimeter and 57-millimeter antitank guns, 105-millimeter howitzers, 60- and 80-millimeter mortars, together with over 700,000 rounds of ammunition for these weapons.

In addition to the Ground Force equipment, 79 vessels mainly of United States Navy types, including Yard Mine Sweepers (YMS), Landing Craft Medium (LCM), Landing Craft Infantry (LCI), and picket boats, together with about \$150,000 worth of spare parts, were transferred at the same time.

Subsequent to the withdrawal of United States forces and to supplement individual and organizational equipment provided the Koreans through the Office of Foreign Liquidation Commission at the time of withdrawal, individual organizational equipment for 15,000 troops was transferred from United States stocks in Japan to the South Koreans by the United States during the first quarter of fiscal 1950. The estimated original cost of this military equipment was slightly under \$1,000,000, and the estimated replacement cost \$1,500,000.

3. Assistance rendered under Public Law 329

The fiscal year 1950 program for military assistance to Korea was included within the \$27,640,000 appropriated in October 1949 (Public Law 430, 81st Cong.) under Title III of the Mutual Defense Assistance Act of 1949 (Public Law 329) for Iran, Korea, and the Philippines. The program for Korea was based on the policy of the administration to provide equipment for the existing Korean forces to enable them—

(a) To preserve internal security;

(b) To prevent border raids and incursions from north of the thirty-eighth parallel; and, as a byproduct;

(c) To deter armed attack or other aggression by the forces from North Korea.

Much of the equipment was to maintain and supplement the equipment turned over by the Army when the occupation forces left in July 1949.

The military-aid policy under MDAP did not provide for a Korean air force. However, an air detachment of liaison planes was authorized, these having been included in the equipment transferred when the occupation forces withdrew.

The amount of MDAP aid allotted to the Republic of Korea has not been publicly disclosed. No deliveries of any consequence have been made as yet, although substantial deliveries are scheduled for the first quarter of fiscal year 1951 and at an increasing rate thereafter. The reasons for the lack of deliveries are these:

(a) In light of the priority assigned to Korea by the Joint Chiefs of Staff, and the policy on which Korean aid was based, the major portion of equipment scheduled in the fiscal-year-1950 program was unavailable from excess or war-reserve stocks and had to come from commercial sources under new procurement contracts.

(b) Such equipment as was scheduled to come from Department of Defense stocks had to be reactivated.

(c) Considerable time was necessarily taken up in getting the program started initially. Appropriations were not made available until October 28, 1949; the bilateral agreement with Korea was not signed until January 26, 1950; the program was not approved until March 29, 1950, because of necessary delay to await results of an MDAP survey team's discussions with Korean military authorities.

As a result of the armed invasion from North Korea, equipment and ammunition immediately needed to enable the Republic of Korea to defend itself in active warfare are now being rushed from stocks of the United States Far Eastern Command in Japan. These will necessarily have to be replenished from stocks in the zone of the interior.

In addition to grant aid as indicated above, equipment in the approximate amount of \$253,000 has been transferred to the Republic of Korea under the reimbursable aid provisions of Public Law 329, section 408 (e), at no cost to the United States. This equipment comprised naval guns and ammunition and aircraft armament.

4. Legislation providing military assistance

Public Law 329, Eighty-first Congress, the Mutual Defense Assistance Act of 1949 (excerpt):

TITLE III

OTHER ASSISTANCE

SEC. 301. The President, whenever the furnishing of such assistance will further the purposes and policies of this Act, is authorized to furnish military assistance as provided in this Act to Iran, the Republic of Korea, and the Republic of the Philippines.

SEC. 302. There are hereby authorized to be appropriated to the President for the period through June 30, 1950, out of any moneys in the Treasury not otherwise appropriated, for carrying out the provisions and accomplishing the purposes of section 301, not to exceed \$27,640,000.

* * * * *
SEC. 408. * * * * *
* * * * *

(c) Whenever he determines that such action is essential for the effective carrying out of the purposes of this Act, the President may from time to time utilize not to exceed in the aggregate 5 per centum of the amounts made available for the purposes of any title of this Act for the purposes of any other title. Whenever the President makes any such determination, he shall forthwith notify the Committee on Foreign Relations of the Senate, the Committees on Armed Services of the Senate and of the House of Representatives, and the Committee on Foreign Affairs of the House of Representatives.

* * * * *
(c) The President may, from time to time, in the interest of achieving standardization of military equipment and in order to provide procurement assistance without cost to the United States transfer, or enter into contracts for the procurement for transfer of, equipment, materials or services to nations designated in title I, II, or III of this Act, or to a nation which has joined with the United States in a collective defense and regional arrangement: *Provided*, That, prior to any such transfer or the execution of any such contracts, any such nation shall have made available to the United States the full cost, actual or estimated, of such equipment, materials, or services, and shall have agreed to make available forthwith upon request any additional sums that may become due under such contracts.

Public Law 430, Eighty-first Congress, the Second Supplemental Appropriation Act, 1950 (excerpt):

FUNDS APPROPRIATED TO THE PRESIDENT

MUTUAL DEFENSE ASSISTANCE

For expenses necessary to enable the President to carry out the provisions of the Mutual Defense Assistance Act of 1949 for the period through June 30, 1950, \$814,010,000, of which (a) \$500,000,000 shall be available, in accordance with section 102, for carrying out the provisions of title I, including expenses, as authorized by section 408 (b), of administering the provisions of said Act and the Act of May 22, 1947 (61 Stat. 103), as amended (in addition to amounts heretofore appropriated for such expenses under the latter Act); (b) \$211,370,000 shall be available in accordance with title II for carrying out the provisions of the Act of May 22, 1947, as amended; and (c) \$102,640,000 shall be available for carrying out the provisions of title III, including \$27,640,000 as authorized by section 302 and \$75,000,000 as authorized by section 303. In addition to the foregoing appropriation, the President is hereby specifically authorized, in accordance with section 103, to enter into contracts for carrying out the provisions of title I in amounts not exceeding in the aggregate \$500,000,000 during the period ending June 30, 1950.

5. *Military Assistance Agreement between United States and Republic of Korea, January 26, 1950*

PREAMBLE

The Governments of the United States and of the Republic of Korea:

Desiring to foster international peace and security, within the framework of the Charter of the United Nations, through measures which will further the ability of nations dedicated to the purposes and principles of the Charter to develop effective measures for self-defense in support of those purposes and principles; and without prejudice to continue exertion of maximum efforts to obtain agreements to provide the United Nations with armed forces as provided by its Charter, and to obtain agreement among member nations upon universal regulation and reduction of armaments under adequate and dependable guarantee against violation;

Recognizing that measures to eliminate insecurity caused by fear of aggression will enhance the progress of economic development;

Considering that, in furtherance of these principles, the Government of the United States has enacted the Mutual Defense Assistance Act of 1949 providing for the furnishing of military assistance by the United States of America to the Republic of Korea; and

Desiring to set forth the understandings which govern the furnishing of assistance by the Government of the United States under the Mutual Defense Assistance Act of 1949, and the receipt of such assistance by the Republic of Korea;

Have agreed as follows:

ARTICLE I

1. Each Government, consistently with the principle that economic recovery is essential to international peace and security and must be given clear priority, will make or continue to make available to the other, and to other Governments, such equipment, materials, services, or other military assistance as the Government furnishing such assistance may authorize and in accordance with such terms and conditions as it may agree. The furnishing of any such assistance as may be authorized by either party hereto shall be consistent with the Charter of the United Nations. Such assistance as may be made available by the United States of America pursuant to this Agreement will be furnished under the provisions, and subject to all of the terms, conditions and termination provisions, of the Mutual Defense Assistance Act of 1949, and such other applicable United States laws as may hereafter come into effect. The two Governments will, from time to time,

negotiate detailed arrangements necessary to carry out the provisions of this paragraph.

2. The Government of the Republic of Korea undertakes to make effective use of assistance received pursuant to paragraph 1 of this Article for the purposes for which such assistance was furnished, and that Government will not, without the prior consent of the Government of the United States, devote assistance so furnished to purposes other than those for which it was furnished.

3. The Government of the Republic of Korea undertakes not to transfer to any person not an officer or agent of such Government, or to any other nation, title to or possession of any equipment, materials, or services, pursuant to paragraph 1, without the prior consent of the Government of the United States.

ARTICLE II

In the event that Article VIII of the Economic Cooperation Agreement between the Government of the Republic of Korea and the Government of the United States, signed on December 10, 1948, at Seoul, Korea, shall cease to be in force prior to the termination of this Agreement, the Government of the Republic of Korea will, for so long as this Agreement remains in force, facilitate the production and transfer to the Government of the United States, for such period of time, in such quantities, and upon such terms and conditions as may be agreed upon, of raw and semiprocessed materials required by the United States of America as a result of deficiencies or potential deficiencies in its own resources, and which may be available in Korea. Arrangements for such transfers shall give due regard to reasonable requirements for domestic use and commercial export of Korea.

ARTICLE III

1. Each Government will take appropriate measures consistent with security to keep the public informed of operations under this Agreement.

2. Each Government will take such security measures as may be agreed between the two Governments in order to prevent the disclosure or compromise of classified military articles, services, or information furnished by the other Government pursuant to this Agreement.

ARTICLE IV

The two Governments will, upon request of either of them, negotiate appropriate arrangements between them respecting responsibility for patent or similar claims based on the use of devices, processes, technological information, or other forms of property protected by law in connection with equipment, materials, or services furnished pursuant to this Agreement. In such negotiations, consideration shall be given to including an undertaking whereby each Government will assume the responsibility for all such claims of its nationals and such claims arising in its jurisdiction of nationals of any country not a party to this Agreement.

ARTICLE V

The Government of the Republic of Korea will, except as otherwise agreed to, grant duty-free treatment and exemption from internal taxation upon importation or exportation of products, property, materials, or equipment imported into its territory in connection with this Agreement.

ARTICLE VI

1. The two Governments will, upon the request of either of them, consult regarding any matter relating to the application of this Agreement or to operations or arrangements carried out pursuant to this Agreement.

2. The Government of the Republic of Korea will accord, to duly authorized United States representatives, facilities freely and fully to observe the utilization of assistance furnished pursuant to this Agreement.

ARTICLE VII

The two Governments recognize their mutual interest, consistent with mutual security and recovery objectives, in effective controls over the export of war-potential materials, equipment, and, insofar as practicable, technical data; and the two Governments will consult with a view to taking measures for the accomplishment of these ends.

ARTICLE VIII

1. This Agreement shall enter into force upon signature and will continue in force until three months after the receipt by either party of written notice of the intention of the other party to terminate it. This Agreement shall be submitted to the Korean National Assembly for ratification.

2. This Agreement shall be registered with the Secretary-General of the United Nations in compliance with the provisions of Article 102 of the Charter of the United Nations.

Done in duplicate, in the English and Korean languages, at Seoul, Korea, on this 26th day of January 1950. The English and Korean texts shall have equal force, but in case of divergence, the English text shall prevail.

6. *Agreement between United States and Republic of Korea, January 26, 1950, establishing the United States Military Advisory Group*

PREAMBLE

In conformity with the request of the Government of the Republic of Korea to the Government of the United States, the President of the United States has authorized the establishment of the United States Military Advisory Group to the Republic of Korea (hereinafter referred to as the Group), under the terms and conditions specified below:

ARTICLE I

The purpose of the Group will be to develop the security forces of the Republic of Korea within the limitations of the Korean economy by advising and assisting the Government of the Republic of Korea in the organization, administration and training of such forces, including the Army, Coast Guard and the National Civil Police Force, and by insuring the effective utilization of any United States military assistance by those forces. The Group will consist of such number of military and civilian personnel of the Government of the United States as may be agreed upon by the two Governments. The number of Department of Defense personnel in the Group, however, shall not exceed without the mutual agreement of the two Governments, five hundred (500) officers and men. It is understood that the selection of men and officers for the Korean Security Forces will be decided by the Government of the Republic of Korea.

ARTICLE II

This Agreement may be terminated at any time:

(1) By either Government, provided that six months' written notice is given to the other Government;

(2) By recall of the Group when either Government deems such recall to be in its public interest and shall have so notified the other Government without necessity of compliance with provision (1) of this Article. However, termination of this Agreement by recall does not relieve the Government of the Republic of Korea from its obligations arising under this Agreement during such time, not exceeding three months; reasonably necessary to permit the Group to terminate its functions and physically depart from Korea.

ARTICLE III

The functions of the Group shall be to provide such advice and assistance to the Government of the Republic of Korea on military and related matters as may be necessary to accomplish the purposes set forth in Article I of this Agreement. The Group shall extend advice and assistance to such components of the Korean Security Forces as may be agreed upon by the two Governments.

ARTICLE IV

The Group and its dependents will be considered as a part of the Embassy of the United States in the Republic of Korea for the purposes of enjoying the privileges and immunities accorded to the Embassy and its personnel of comparable rank.

ARTICLE V

No member of the Group shall assume or cause to be assumed duties as a result of which he will be responsible to the Government of the Republic of Korea.

ARTICLE VI

All members of the Group shall be on active duty and shall be paid regularly authorized pay and allowances by the Government of the United States, plus a special allowance to compensate for increased cost of living. Such compensation for this special allowance shall be paid by the Government of the Republic of Korea in Korean currency. The special allowance shall be based upon a scale agreed upon by the Governments of the United States and the Republic of Korea, shall be revised periodically and shall be applicable for the entire period each member of the Group resides in Korea on duty with the Group.

ARTICLE VII

The Government of the Republic of Korea will grant exemption from customs duties on materials, equipment, supplies, and goods imported for the official use of the Group or the personal use of the members thereof or their families only. Such materials, equipment, supplies, and goods will not be subject to any Korean excise, consumption or other tax, duty, or impost, including export taxes in the event of reshipment to the United States from Korea.

ARTICLE VIII

(a) The Government of the Republic of Korea shall furnish from time to time to one designated representative of the American Embassy in Korea sufficient Korean currency to purchase local supplies (excluding foodstuffs), equipment, and services necessary to maintain the Group, its personnel and their families, including, but not restricted to, currency necessary to repair and maintain living quarters for the Group and their families and buildings and office space for the official business of the Group and such costs of indigenous services and costs of transportation as are provided in Articles VIII (b) and IX of this Agreement.

(b) The Government of the Republic of Korea will pay in Korean currency expenses incurred by members of the Group for travel in the Republic of Korea on official business of the Group.

(c) The Government of the Republic of Korea will provide without charge to the Group or to the Government of the United States suitable living quarters for personnel of the Group and their families and suitable buildings and office space for use in the conduct of the official business of the Group. Public utilities and fuel necessary to maintain the living quarters, buildings and office space, will also be furnished without charge to the Government of the United States for the use of the Group. All living and office quarters will conform, insofar as possible, to the standards prescribed by the United States Military Services for similar quarters. It shall be understood that the Government of the Republic of Korea will not be responsible for the payment of the cost of construction of new buildings unless the concurrence of the Minister of National Defense of the Republic of Korea is obtained prior to the incurring of such expenses.

ARTICLE IX

Costs of indigenous services required by the Group, including compensation of locally employed interpreters, clerks, laborers and other personnel, whose rate of compensation shall be determined from time to time between a representative of the Government of the Republic of Korea and a representative of the American Embassy in Korea, except personal servants, and including costs of transportation within Korea of supplies and equipment required by the Group and its members will be borne by the Government of the Republic of Korea. Official postal services, including free franking privileges and tax stamps required by the Group for the accomplishment of its mission will be provided without cost by the Government of the Republic of Korea.

ARTICLE X

The Government of the Republic of Korea will provide suitable medical attention to members of the Group and their families in places where United States medical personnel and facilities are not available. The Government of the Republic of Korea will, upon request, evacuate seriously ill members of the Group or their families to places in Korea where United States medical facilities may be available.

ARTICLE XI

All communications between the Government of the Republic of Korea and the Group relating to policy will be directed through the United States Ambassa-

dor to Korea. The Group may deal directly with officials of the Government of the Republic of Korea on matters of a purely military nature as may be authorized by the Chief of the Group.

ARTICLE XII

Disclosures and exchanges of classified military information to or between the Government of the United States and the Government of the Republic of Korea will only be made subject to the mutual understanding that the information will be safeguarded in accordance with the requirements of the military security classification established thereon by the originating Government, and that no disclosure by the recipient Government of such information to a third Government or to unauthorized personnel will be made without specific approval of the originating Government.

ARTICLE XIII

This Agreement shall be registered with the Secretariat of the United Nations in compliance with the provisions of Article 102 of the Charter of the United Nations.

ARTICLE XIV

This Agreement shall enter into force upon signature and shall be considered as having become effective as of July 1, 1949; it being understood this Agreement will be submitted for ratification to the Korean National Assembly.

D. ESTIMATE OF TOTAL ASSISTANCE TO KOREA, INCLUDING ECONOMIC ASSISTANCE AUTHORIZED BUT NOT YET APPROPRIATED

Economic assistance made available—	
GARIOA funds, fiscal years 1946 through 1949.....	\$356,000,000
ECA funds, fiscal year 1950.....	110,000,000
Total.....	\$466,000,000
Military assistance made available—	
Turned over under Surplus Property Act by OFLC.....	² \$56,000,000
Additional equipment turned over subsequent to withdrawal of United States Forces.....	¹ 1,000,000
Total.....	57,000,000
Total economic and military assistance made available.....	523,000,000
Economic aid authorized by Public Law 535 (Foreign Economic Assistance Act of 1950) but not yet appropriated.....	100,000,000
Grand total.....	623,000,000

¹ Does not include amount allocated to Korea under title III of Public Law 329. This figure has not been disclosed. Also does not include approximately \$263,000 of naval guns and ammunition and aircraft armament purchased by Korea at no cost to the United States under reimbursable aid provisions of Public Law 329.

² This figure is the original acquisition cost; replacement cost at 1949 figures is estimated to be \$110,000,000.

³ This figure is original acquisition cost; replacement cost at 1949 figures is estimated to be \$1,500,000.

III. THE PRESENT CRISIS

A. THE PRELIMINARY PHASE

1. Previous armed clashes between north Korea and the Republic of Korea

Committee on Foreign Affairs, House Report No. 1571, (81st Cong.) (excerpt):

At the time of the withdrawal of United States forces, some 7 months ago, many persons predicted the immediate dissolution and defeat of the Republic of Korea. For a time it appeared that these pessimistic predictions would be borne out. On August 4, 1949, forces from North Korea launched a large-scale invasion

of the Ongjin Peninsula, which juts below the thirty-eighth parallel in the north-west corner of the area of the Republic of Korea. After initial advance and heavy fighting this assault was repulsed. On October 14 the offense against the South Korean forces in the Ongjin Peninsula was renewed. Following several days of severe fighting, however, the offensive was again turned back.

The situation along the border (as of February 1, 1950) remains essentially as reported by the United Nations Commission on Korea in August 1949:

"There is much military posturing on both sides of the parallel. This holds a serious danger of provoking open military conflict. Military conflict in Korea would mean the most barbarous civil war. The U. S. S. R. * * * lends countenance to northern leaders in bellicose utterances and in a refusal to consider ways of adjusting existing differences on any plane of relations between north and south. In this connection, note should be taken of the fact that the North Korean regime has recently concluded a treaty with the U. S. S. R. It is reported that an agreement for military aid has been concluded between North Korea and the Chinese Communist forces in Manchuria."

A dispatch to the New York Times from Seoul, dated January 14, 1950, notes that the border at the thirty-eighth parallel still bristles with guns and that Communist guerrilla forces are active at some points below that parallel. The fact remains, however, that up to now the territorial integrity of the Republic of Korea below the thirty-eighth parallel has been maintained. This is in no wise a prophecy of what might happen in the future.

2. Events leading up to invasion

Report from the UN Temporary Commission on Korea (New York Times, June 29, 1950):

TEXT OF REPORT ON KOREA

LAKE SUCCESS, June 28—(Following is the text of a report from the United Nations Commission on Korea, dated June 26, on events leading up to the invasion of Southern Korea on June 25 (asterisks indicate words garbled in transmission).):

The commission submits the following summary report on background events preceding June 25 outbreak of hostilities:

1. For the past 2 years the North Korean regime has by violently abusive propaganda, by threatening gestures along the thirty-eighth parallel, and by encouraging and supporting subversive activities in the territory of the Republic of Korea pursued tactics designed to weaken and destroy the Government of the Republic of Korea established under the auspices of the United Nations Temporary Commission on Korea and recognized by the General Assembly. During the same period the United Nations Commission on Korea has been the target for repeated propaganda broadcasts which denied its legality, dubbed it futile, and subjected its individual members to abuse.

This campaign has been relentlessly pursued during the past 8 months while the economy of the young republic remains shaky and the deliberations of the first national assembly have been frequently stormy and critical of the administration. There have been distinct signs of improvement in recent months in both economic and political stability of the country.

In early April the Korean Army and police climaxed a winter offensive against northern-supported guerrillas operating in South Korea by smashing two guerrilla battalions totaling some 600 men soon after their crossing of the parallel. At the same time internal security and domestic morale have been strengthened by suppression of subversive elements.

2. Although the North Korean regime by its radio, propaganda, and support of subversive elements endeavored to prevent the holding of effective general elections on May 30, these elections which were observed by the Commission were on the whole successfully conducted and in an atmosphere of law and order.

ALL PARTIES PARTICIPATED

3. This new assembly succeeded the republic's first national assembly, which was elected in May 1948, under the supervision of UNTCOK [United Nations Temporary Commission on Korea]. Unlike the 1948 elections, which middle-of-the-road parties boycotted for fear that elections in only half Korea would make permanent the artificial barrier at the thirty-eighth parallel, all parties except the underground Communist participated in 1950 elections, although the two largest parties in the previous assembly, the pro-Government and the

opposition both suffered heavy losses and the most significant gains were made by those moderate elements which had boycotted the 1948 elections.

The new assembly with some 130 independents out of a total 210 members convened on June 19, 1950, in a hopeful atmosphere conducive to continued progress in the building of an effective representative government in an economically healthy state. The initial sessions have indicated determination to tackle the administration in a critical spirit for its numerous shortcomings.

4. At the beginning of June the North Korean regime's Pyongyang radio gave the widest publicity to an article calling for intensification of measures aimed at unifying Korea and on June 3 a communiqué stated that the signing by 5,300,000 northerners of an appeal for peace and unification meant that a renewed struggle for national unification was beginning.

5. On June 7 radio Pyongyang began to broadcast at repeated intervals a letter of appeal from the Democratic Front for attainment of unification of fatherland to all democratic political parties and social organizations in Korea proposing elections throughout Korea following the meeting of a proposed consultative council.

6. The tone of the appeal indicated an ostensible change in the north's previous attitude in spite of such conditions as the exclusion from the council, as traitors, of nine top leaders in the South Korean Government, and the statement that UNCOK [United Nations Commission on Korea] would not be permitted to interfere in the task of unification, included among the addressees. UNCOK sent a representative across the parallel to receive the text on June 10 and convey personally to three northern representatives the commission's desire for peaceful unification.

REPRESENTATIVES SEIZED

7. The three northern representatives came south next day carrying copies for all but a few of the leading parties and political personalities of the Republic. They were immediately placed under detention by the South Korean authorities who have since tried to induce them to switch sides by showing the facts in the South. The southern action of detaining "envoys of peace" has been denounced violently by the northern radio. At a hearing the Commission was assured by all three of their good treatment by southern authorities, of their sincere belief in the good intentions of the northern regime though admitting their eyes had been opened through direct observation to numerous northern misconceptions of facts on political personalities of the Republic.

8. * * * received all traitors, including Premier Ki Il Sung if elected, with open arms and give the due positions if they repented and resolved to devote themselves to establishing a sound basis for the Republic of Korea.

9. Subsequently the * * * letter was replaced by another plan for peaceful unification prepared by the Presidium of the People's Supreme Assembly of the northern regime. This contemplated a procedure which involved the convening of the North and South Assemblies into a single legislative assembly but was accompanied by objectionable conditions similar to those of earlier appeal.

10. Both appeals have been denounced by the South Korean press, political parties, and leaders as sheer propaganda. An apparent intention of these appeals was to split the unity prevailing in the South Korean National Assembly by encouraging those who had opposed the 1948 elections to think there was a real possibility of peaceful unification by negotiation.

11. Meanwhile, the Commission had agreed to mediate if its good offices were acceptable to both parties in an exchange of important political prisoners originally suggested by the North. On June 10 Commission made clear its unwillingness to jeopardize exchange in any way although North Korea rejected on June 20 proposed Commission role. Arrangements for exchange were still pending at time of invasion.

12. In the light of the evidently increasing strength of the Republic of Korea in recent months and the utterly unexpected invasion on June 25 the radio propaganda offensive calling for early unification by peaceful means seems to have been intended solely for its screening effect.

13. Gen. Kim Il Sung in radio broadcast this morning at 0930 hours reiterated the North Korean claim first made at 1335 hours that South Korea having rejected every northern proposal for peaceful unification had crowned its iniquity by launching an invasion force across the parallel in the sector of Haeju, thus precipitating North Korean counter-attacks for which it would have to assume the consequences.

14. In the same broadcast the Premier called for a struggle to the * * * in order to secure unification and punish "traitors," calling for mass risings and sabotage in South Korea.

The Commission has no evidence to justify in any respect the northern allegations. All the evidence continues to point to a calculated coordinated attack prepared and launched with secrecy.

B. THE INVASION OF JUNE 1950: GOVERNMENTAL ACTION

1. Statement by United States representative to the United Nations on June 25, 1950

At 4 o'clock in the morning Sunday, June 25, Korean time, armed forces from North Korea commenced an unprovoked assault against the territory of the Republic of Korea. This assault was launched by ground forces along the thirty-eighth parallel, in the Ongjin, Kaesong, and Chunshon sectors, and by amphibious landings on the east coast in the vicinity of Jangmung. In addition, North Korean aircraft have attacked and strafed the Kimp'o airport in the outskirts of the capital city of Seoul.

Under the circumstances I have described, this wholly illegal and unprovoked attack by the North Korean forces, in the view of my Government, constitutes a breach of the peace and an act of aggression.

This is clearly a threat to international peace and security. As such, it is of grave concern to my Government. It is a threat which must inevitably be of grave concern to the governments of all peace- and freedom-loving nations.

A full-scale attack is now going forward in Korea. It is an invasion upon a state which the United Nations itself, by action of its General Assembly, has brought into being. It is armed aggression against a government elected under United Nations supervision.

Such an attack strikes at the fundamental purposes of the United Nations Charter. Such an attack openly defies the interest and authority of the United Nations. Such an attack, therefore, concerns the vital interest which all the members of the United Nations have in the organization.

The history of the Korean problem in the United Nations is well known to you. At this critical hour I will not review it in detail. But let me recall only a few milestones in the development of the Korean situation.

A Joint Commission of the United States and the Soviet Union for 2 years sought unsuccessfully to agree on ways and means of bringing to Korea the independence which she assumed would automatically come when Japan was defeated. This 2-year deadlock prevented 38,000,000 people in Korea from getting the independence which it was agreed was their right.

My Government, thereupon, sought to hold a four-power conference at which China and the United Kingdom would join the United States and the Soviet Union to seek agreement on the independence of Korea. The Soviet Union rejected that proposal.

The United States then asked the General Assembly to consider the problem. The Soviet Union opposed that suggestion. The General Assembly by resolution of November 14, 1947, created the United Nations Temporary Commission on Korea. By that resolution the General Assembly recommended the holding of elections not later than the 31st of March 1948, to choose representatives with whom the commission might consult regarding the prompt attainment of freedom and independence of the Korean people. These elected representatives would constitute a National Assembly and establish a National Government of Korea.

The General Assembly further recommended that upon the establishment of a National Government, that Government should in consultation with the Commission constitute its own national security forces, and to dissolve all military or semi-military formations not included therein. The General Assembly recommended that the National Government should take over the functions of government from the military command and from the civilian authorities of North and South Korea, and arrange with the occupying powers for the complete withdrawal from Korea of the armed forces as early as practicable and if possible within 90 days.

Elections were held in South Korea and the Commission did observe them. A Government in South Korea was set up as a result of the elections observed by the Commission. The Commission was unable to enter North Korea because of the attitude of the Soviet Union.

The Temporary Commission in its report to the third session of the General Assembly stated that not all the objectives set forth for it had been fully accomplished and that, in particular, unification of Korea had not yet been achieved.

Notwithstanding the frustrations and difficulties which the Temporary Commission had experienced in Korea, the General Assembly at its third session continued the Commission's existence and requested it to go on with its efforts to bring North and South Korea together.

One aspect of the resolution adopted by the third session of the General Assembly should, I feel, be particularly emphasized. The General Assembly declared that a lawful government had been established in Korea as a result of the elections observed by the Commission and declared further that this was the only lawful government in Korea. This is a most significant fact.

The General Assembly declared further that the Government of Korea was based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the United Nations Commission.

In the light of this declaration, my Government on January 1, 1949, extended recognition to the Government of the Republic of Korea, and more than 30 states have since that time also accorded recognition to that Government.

The United Nations Commission worked toward the United Nations objective of the withdrawal of occupation forces from Korea, the removal of the barriers between the regions of the North and South, and the unification of that country under a representative government freely determined by its people.

In 1949, as in 1948, the Commission's efforts to obtain access to North Korea which included both direct intercourse with the northern authorities and endeavors to negotiate through the Government of the U. S. S. R. were fruitless. The Commission was unable to make progress either toward the unification of Korea or toward the reduction of barriers between the Republic of Korea and the northern authorities. The Commission reported to the General Assembly that the border of the thirty-eighth parallel was becoming a sea of increasingly frequent exchanges of fire and armed raids, and that this constituted a serious barrier to friendly intercourse among the people of Korea.

The Commission observed the withdrawal of United States forces, which was completed on June 19, 1949. Although it signified its readiness to verify the part of the withdrawal of Soviet occupation forces from North Korea, the Commission received no response to its message to the U. S. S. R. and therefore could take no action.

At the fourth session, the General Assembly again directed the Commission to seek to facilitate the removal of barriers to economic, social, and other friendly intercourse caused by the division of Korea. The General Assembly also authorized the Commission on October 21, 1949, in its discretion, to appoint observers and utilize the services and good offices of persons whether or not representatives of the Commission. The United Nations Commission in Korea is presently in Seoul and we have now received its latest report.

Mr. President, I have tabled a draft resolution which notes the Security Council's grave concern at the invasion of the Republic of Korea by the armed forces of North Korea. This draft resolution calls upon the authorities in the North to cease hostilities and to withdraw armed forces to the border along the thirty-eighth parallel.

The draft resolution requests that the United Nations Commission on Korea observe the withdrawal of the North Korean forces to the thirty-eighth parallel and keep the Security Council informed on the implementation and execution of the resolution. The draft resolution also calls upon all members of the United Nations to render every assistance to the United Nations in the carrying out of this resolution and to refrain from giving assistance to the North Korean authorities.

2. The first United Nations Security Council Resolution—June 25, 1950

Resolution concerning the complaint of aggression upon the Republic of Korea, adopted at the Four hundred and seventy-third meeting of the Security Council on June 25, 1950:

The Security Council

Recalling the finding of the General Assembly in its resolution of 21 October 1949 that the Government of the Republic of Korea is a lawfully established government "having effective control and jurisdiction over that part of Korea where the United Nations Temporary Commission on Korea was able to

observe and consult and in which the great majority of the people of Korea reside; and that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such Government in Korea";

Mindful of the concern expressed by the General Assembly in its resolutions of 12 December 1948 and 21 October 1949 of the consequences which might follow unless Member States refrained from acts derogatory to the results sought to be achieved by the United Nations in bringing about the complete independence and unity of Korea; and the concern expressed that the situation described by the United Nations Commission on Korea in its report menaces the safety and well being of the Republic of Korea and of the people of Korea, and might lead to open military conflict there;

Noting with grave concern the armed attack upon the Republic of Korea by forces from North Korea,

Determines that this action constitutes a breach of the peace,

I. Calls for the immediate cessation of hostilities; and

Calls upon the authorities of North Korea to withdraw forthwith their armed forces to the thirty-eighth parallel;

II. Requests the United Nations Commission on Korea

(a) To communicate its fully considered recommendations on the situation with the least possible delay;

(b) To observe the withdrawal of the North Korean forces to the thirty-eighth parallel; and

(c) To keep the Security Council informed on the execution of this resolution;

III. Calls upon all Members to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities.

3. Reports from UN Temporary Commission on Korea

Received by UN June 26, 1950 (New York Times, June 27, 1950):

North Korean advances have created dangerous situation with possibilities of rapid deterioration. Impossible estimate situation which exist tomorrow in Seoul. In view commission's past experience and existing situation commission convinced North Korea will not heed Council resolution nor accept UNCOK good offices. Suggest have Council give consideration either invitation both parties agree on neutral mediator either to negotiate peace or requesting member governments undertake immediate mediation. Commission decided stand by in Seoul. Danger is that critical operations now in progress may end in matter of days and question of cease fire and withdrawal North Korean forces suggested Council resolution prove academic.

Commission informed adoption United States-sponsored Security Council resolution. It had contemplated action this direction and expresses unanimous gratification at Security Council move. Commission will be glad undertake task given by Council but likes to point out that its efforts to contact North during last 18 months met only with negative response.

Commission met this morning 1000 hours and considered latest reports on hostilities and results direct observation along parallel by UNCOK military observers ending 48 hours before hostilities began. Commission's present view on basis this evidence is, first, that judging from actual progress of operations northern regime is carrying out well-planned, concerted and full-scale invasion of South Korea, second, that South Korean forces were deployed on wholly defensive basis in all sectors of the parallel, and third, that they were taken completely by surprise as they had no reason to believe from intelligence sources that invasion was imminent. Commission is following events and will report further developments.

4. Statement by the President of the United States, June 27, 1950

In Korea the Government forces, which were armed to prevent border raids and to preserve internal security, were attacked by invading forces from North Korea. The Security Council of the United Nations called upon the invading troops to cease hostilities and to withdraw to the thirty-eighth parallel. This

they have not done, but on the contrary have pressed the attack. The Security Council called upon all members of the United Nations to render every assistance to the United Nations in the execution of this resolution. In these circumstances I have ordered United States air and sea forces to give the Korean Government troops cover and support.

The attack upon Korea makes it plain beyond all doubt that communism has passed beyond the use of subversion to conquer independent nations and will now use armed invasion and war. It has defied the orders of the Security Council of the United Nations issued to preserve international peace and security. In these circumstances the occupation of Formosa by Communist forces would be a direct threat to the security of the Pacific area and to United States forces performing their lawful and necessary functions in that area.

Accordingly I have ordered the Seventh Fleet to prevent any attack on Formosa. As a corollary of this action I am calling upon the Chinese Government on Formosa to cease all air and sea operations against the mainland. The Seventh Fleet will see that this is done. The determination of the future status of Formosa must await the restoration of security in the Pacific, a peace settlement with Japan, or consideration by the United Nations.

I have also directed that United States forces in the Philippines be strengthened and that military assistance to the Philippine Government be accelerated.

I have similarly directed acceleration in the furnishing of military assistance to the forces of France and the associated States in Indochina and the dispatch of a military mission to provide close working relations with those forces.

I know that all members of the United Nations will consider carefully the consequences of this latest aggression in Korea in defiance of the Charter of the United Nations. A return to the rule of force in international affairs would have far-reaching effects. The United States will continue to uphold the rule of law.

I have instructed Ambassador Austin, as the representative of the United States to the Security Council, to report these steps to the Council.

5. Soviet Reaction to President's statement

Pravda editorial of June 28, 1950, regarding President's statement of June 27, 1950 (New York Times, June 29, 1950):

On June 27 President Truman of the United States of America issued a special statement on Korea.

The events in Korea, which have occupied the center of attention of world public opinion, reveal with all clarity that the imperialist warmongers will not stop half way in pursuit of their objects. As is known, on June 25 the provocative actions of troops of the puppet government of South Korea, directed against the Korean People's Democratic Republic, unleashed military operations on the territory of Korea. In reply to this, security detachments of troops of the Korean People's Democratic Republic undertook active measures and, carrying out their Government's orders, went over to the counteroffensive, transferring military operations to the territory south of the thirty-eighth parallel.

UNITY PROPOSAL CITED

The Government of the Korean People's Democratic Republic has been able repeatedly to demonstrate its consistency in defense of the interests of the Korean people, their democratic developments, their independence, their patriotic aspirations for unity. Even at the beginning of this month, the single United Democratic Front and the Presidium of the Supreme National Assembly of Korea in Pyongyang, expressing the will of the Korean people, came forward with a proposal to carry out the peaceful unification of the country.

The South Korean clique of Syngman Rhee answered this proposal on June 25 by beginning internecine, fratricidal war. The Syngman Rhee clique has taken the path of military adventure. It relied in advance on military aid from its overseas masters.

The aggressive plans of its protectors are now beginning to be disclosed.

AGGRESSION LAID TO UNITED STATES

As is clear from the afore-mentioned statement by Truman, he has instructed the Air and Naval Forces of the United States to give armed assistance to the Korean people. At the same time the American President has instructed the American Seventh Fleet to "prevent an attack on Formosa," which is an order for the actual

occupation by American armed forces of part of the territory of China. This order signifies that the Government of the United States of America has undertaken a direct act of aggression against the Korean People's Democratic Republic and against the People's Republic of China.

Truman's statement and actions, unprecedented in international relations of the postwar period, constitute further evidence that the American ruling circles no longer confine themselves to the preparations of aggression, but have gone over to direct acts of aggression. But have they gone too far? [The Associated Press correspondent in Moscow translated this question as: "Have they not, however, gone too far?"] The American Government with its characteristic unceremoniousness as regards international law, is grossly trampling on the United Nations Charter, acting as though the United Nations Organization did not exist at all.

UNITED STATES AUTHORITY QUESTIONED

The question arises, Who authorized the American Government to take this step? In bringing its Armed Forces into action, did the United States Government reach agreement on its policy with the United Nations Organization, about their loyalty to which Truman and Acheson are so vociferous? Where and when did the Security Council take a decision freeing the hands of the United States of America in the acts of direct aggression undertaken by it?

As is known, neither the United Nations Organization or any other international body have authorized the Government of the United States of America to undertake these actions with regard to Korea and China which Truman announced yesterday.

In undertaking its openly aggressive act the American Government evidently set itself the aim of confronting the United Nations Organization with a fait accompli.

6. Statement by United States representative to the United Nations on June 27, 1950

The United Nations finds itself confronted today with the gravest crisis in its existence.

Forty-eight hours ago the Security Council, in an emergency session, determined that the armed invasion of the Republic of Korea by armed forces from northern Korea constituted a breach of the peace. Accordingly, the Security Council called for a cessation of hostilities forthwith and the withdrawal by the northern Korean authorities of their armed forces to the thirty-eighth parallel. The Security Council also requested the United Nations Commission on Korea to observe the withdrawal and to report. Finally, the Security Council called upon all members to render every assistance to the United Nations in the execution of the resolution and to refrain from giving assistance to the North Korean authorities.

The decision of the Security Council has been broadcast to the Korean authorities and is known to them. We now have before us the report of the United Nations Commission for Korea which confirms our worst fears. It is clear that the authorities in North Korea have completely disregarded and flouted the decision of the Security Council. The armed invasion of the Republic of Korea continues. The North Korean authorities have even called upon the established Government of the Republic to surrender.

It is hard to imagine a more glaring example of disregard for the United Nations and for all the principles which it represents.

The most important provisions of the Charter are those outlawing aggressive war. It is precisely these provisions which the North Korea authorities have violated.

It is the plain duty of the Security Council to invoke stringent sanctions to restore international peace.

The Republic of Korea has appealed to the United Nations for protection. I am happy and proud to report that the United States is prepared as a loyal member of the United Nations to furnish assistance to the Republic of Korea.

I have tabled a resolution which I ask the Council to consider favorably as the next step to restore world peace.

That resolution is as follows:

"The Security Council,

"Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,

"Having called for an immediate cessation of hostilities, and

"Having called upon the authorities of North Korea to withdraw forthwith their armed forces to the Thirty-eighth Parallel, and

"Having noted from the report of the United Nations Commission for Korea that the authorities in North Korea have neither ceased hostilities nor withdrawn their armed forces to the Thirty-eighth Parallel, and that urgent military measures are required to restore international peace and security, and

"Having noted the appeal from the Republic of Korea to the United Nations for immediate and effective steps to secure peace and security.

"Recommends that the members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."

This is the logical consequence of the resolution concerning the complaint of aggression upon the Republic of Korea adopted at the four hundred and seventy-third meeting of the Security Council on June 25, 1950, and the subsequent events recited in the preamble of this resolution. That resolution of June 25 called upon all members to render every assistance to the United Nations in the execution of this resolution, and to refrain from giving assistance to the North Korean authorities. This new resolution is the logical next step. Its significance is affected by the violation of the former resolution, the continuation of aggression, and the urgent military measures required.

I wish now to read the statement which the President of the United States made today on this critical situation.

(See 4 above.)

"The keynote of the resolution and my statement and the significant characteristic of the action taken by the President is support of the United Nations purposes and principles—in a word 'peace.'"

7. The Second United Nations Security Council Resolution—June 27, 1950

Resolution concerning the complaint of aggression upon the Republic of Korea, adopted at the four hundred and seventy-fourth meeting of the Security Council, on June 27, 1950:

The Security Council,

Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,

Having called for an immediate cessation of hostilities, and

Having called upon the authorities of North Korea to withdraw forthwith their armed forces to the 38th parallel, and

Having noted from the report of the United Nations Commission for Korea that the authorities in North Korea have neither ceased hostilities nor withdrawn their armed forces to the 38th parallel and that urgent military measures are required to restore international peace and security, and

Having noted the appeal from the Republic of Korea to the United Nations for immediate and effective steps to secure peace and security,

Recommends that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area.

8. United States note of June 27, 1950, and Soviet reply

Department of State Press Release No. 701, June 29, 1950:

The American Embassy at Moscow on June 27, 1950, communicated with the Soviet Foreign Office in regard to the invasion of the Republic of Korea by North Korean armed forces.

The Embassy called to the attention of the Soviet Foreign Office the fact that forces of the North Korean regime had crossed the thirty-eighth parallel and had invaded in force the territory of the Republic of Korea at several points. It was also pointed out that the refusal of the representative of the Soviet Union to attend the Security Council meeting in New York despite the clear threat to the peace and despite the obligations of a Council member under the United Nations Charter required the Government of the United States to bring this matter directly to the attention of the Government of the U. S. S. R.

The Embassy concluded by calling attention to the universally known close relations between the Soviet Union and the North Korean regime, and stated that the United States Government was asking assurances that the Soviet Union

would disavow responsibility for this unwarranted and unprovoked attack and that it would use its influence with the authorities of North Korea to withdraw their invading forces at once.

Ambassador Alan G. Kirk today was read the following statement by Deputy Soviet Foreign Minister Andrei Gromyko:

"In connection with the statement of the Government of the United States of America, transmitted by you on June 27, the Soviet Government has instructed me to state the following:

"1. In accordance with facts verified by the Soviet Government, the events taking place in Korea were provoked by an attack by forces of the South Korean authorities on border regions of North Korea. Therefore the responsibility for these events rests upon the South Korean authorities and upon those who stand behind their back.

"2. As is known, the Soviet Government withdrew its troops from Korea earlier than the Government of the United States and thereby confirmed its traditional principle of noninterference in the internal affairs of other states. And now as well the Soviet Government adheres to the principle of the impermissibility of interference by foreign powers in the internal affairs of Korea.

"3. It is not true that the Soviet Government refused to participate in meetings of the Security Council. In spite of its full willingness, the Soviet Government has not been able to take part in the meetings of the Security Council inasmuch as, because of the position of the Government of the United States, China, a permanent member of the Security Council, has not been admitted to the Council which has made it impossible for the Security Council to take decisions having legal force."

9. Legality of United Nations Security Council Action on Korea

Department of State press release No. 702, June 30, 1950:

SOVIET ALLEGATION OF ILLEGALITY OF UNITED NATIONS SECURITY COUNCIL ACTION WITH RESPECT TO KOREA

In its reply to the United Nations and to the United States, the U. S. S. R. alleges that the action of the Security Council with respect to Korea was illegal since the action taken did not have the concurring votes of all the permanent members. In its reply of June 29 to the United States communication of June 27 asking the U. S. S. R. to use its influence with the North Korean authorities to cease hostilities, the U. S. S. R. made the same point and contended further that the action of the Council was illegal because the representative of China participating in this action was not the representative of the Peiping regime.

With respect to Article 27 of the Charter dealing with Security Council voting, it is provided that substantive questions be decided by an affirmative vote of seven members including the concurring votes of the permanent members.

By a long series of precedents, however, dating back to 1946, the practice has been established whereby abstention by permanent members of the Council does not constitute a veto.

In short, prior to the Soviet allegations, every member of the United Nations, including the U. S. S. R., accepted as legal and binding decisions of the Security Council made without the concurrence, as expressed through an affirmative vote, of all permanent members of the Council.

As to the Soviet claim concerning the Chinese vote, the rules of procedure of the Security Council provide the machinery for the seating of an accredited representative of the Security Council. No affirmative action has been taken which, by any stretch of the imagination, could give force to the contention of the U. S. S. R. that a representative of the Peiping regime should be regarded as the representative of China on the Security Council. The credentials of the representative of the National Government of China were approved by the Council and the Soviet attempt at a later date to withdraw this approval was defeated. Therefore, the vote of the Nationalist representative on June 25 and 27 was the official vote of China.

A list of some of the more important precedents involving action by the Security Council on substantive matters taken without the concurrence of an affirmative vote by the Soviet Union follow:

Palestine case

On April 16, 1948, the Soviet Union abstained on a resolution which called for a truce in Palestine.

On May 22, 1948, the Soviet Union abstained on a resolution for a cease fire in Palestine.

On July 15, 1948, the Soviet Union abstained on a resolution ordering a cease fire in Palestine and giving instructions to the mediator there.

On November 4, 1948, the Soviet Union abstained on a resolution calling upon all governments concerned to withdraw beyond positions they held in Palestine on October 14, 1948.

In none of these instances has the Soviet Union challenged the legality of the action taken by the Security Council.

Kashmir case

On January 17, 1948, the Soviet Union abstained on a resolution calling upon the parties concerned to avoid actions aggravating the situation.

On January 20, 1948, the Soviet Union abstained on a resolution for setting up a UN Commission for India and Pakistan and which gave that Commission broad terms of reference.

On April 21, 1948, the Soviet Union abstained on a resolution expanding the terms of reference of the UN Commission for India and Pakistan and which set the terms for bringing about a cease fire and the conditions for the holding of a plebiscite.

On June 3, 1948, the Soviet Union abstained on a resolution which affirmed previous resolution and ordered the UN Commission to proceed to the area.

In none of these instances has the Soviet Union challenged the legality of the action taken by the Security Council.

Indonesian case

On December 24, 1948, the Soviet Union abstained on a resolution calling upon the parties to cease hostilities and ordering the release of Indonesian officials. In that case the French also abstained.

On January 28, 1949, the Soviet Union abstained on a number of paragraphs of a resolution setting up the UN Commission for Indonesia with wide powers.

In none of these instances has the Soviet Union challenged the legality of the action taken by the Security Council.

Furthermore the Soviet Union has never questioned the legality of action taken by the Security Council in which it voted with the majority but on which other permanent members of the Council abstained.

This has occurred in at least three substantive decisions:

1. In the action of the Council on December 28, 1948, in which a resolution was passed calling on the Netherlands to set free political prisoners in Indonesia (a resolution incidentally introduced by the representative of China). France and the United Kingdom abstained on this resolution.

2. In the action of the Council on March 4, 1949, recommending to the General Assembly that Israel be admitted to UN membership. The United Kingdom abstained on this resolution.

3. In the action of the Council on March 5, 1948, recommending consultation of the permanent members of the Council in connection with the Palestine situation. The United Kingdom abstained on this resolution.

The voluntary absence of a permanent member from the Security Council is clearly analogous to abstention.

Furthermore article 28 of the Charter provides that the Security Council shall be so organized as to be able to function continuously. This injunction is defeated if the absence of a representative of a permanent member is construed to have the effect of preventing all substantive action by the Council.

No one of the 10 members of the Council participating in the meetings of June 25 and June 27 raised any question regarding the legality of the action—not even the member who dissented on June 27.

10. Statement of President of the United States of June 30, 1950, on further military action in Korea

At a meeting with congressional leaders at the White House this morning, the President, together with the Secretary of Defense, the Secretary of State, and the Joint Chiefs of Staff, reviewed with them the latest developments of the situation in Korea.

The congressional leaders were given a full review of the intensified military activities.

In keeping with the United Nations Security Council's request for support to the Republic of Korea in repelling the North Korean invaders and restoring peace in Korea, the President announced that he had authorized the United States Air Force to conduct missions on specific military targets in Northern Korea whenever militarily necessary, and had ordered a naval blockade of the entire Korean coast.

General MacArthur has been authorized to use certain supporting ground units.

11. North Korean protest to United Nations, July 2, 1950

United Nations press release PM/1771:

I have the honor to request you to bring to the notice of all members of United Nations the declaration made by me on the instructions of the Government of the Korean People's Democratic Republic on July 1, 1950.

In reply to the declaration of the Foreign Minister of the Korean People's Democratic Republic of June 27, the President of the United States, Mr. Truman, declared that he had ordered the air and naval forces of the United States to intervene in the military operations in Korea on the side of the South Korean puppet regime, which has unleashed civil war in our country at the behest of the American imperialists.

On June 30, Mr. Truman announced that American land forces had been sent to South Korea. American aircraft are brutally bombing our peaceful population and flying over Pyongyang and other points in North Korea and the liberated cities of South Korea, attacking units of the People's army with the purpose of hindering their victorious advance southward. The policy pursued by the American imperialists of enslaving the Korean people and turning Korea into a colony of the United States has now developed into open armed intervention against the Korean People's Democratic Republic.

American imperialists have long dreamed of establishing their domination in the Far East. Previously, however, they had to reckon with the imperialistic interests of Great Britain, Japan, and other powers and expand their position in the Far East by making deals with those powers at the cost of enslaving the peoples of Asia. The Korean people will not forget in particular the fact that in 1905 the United States, with a view to reinforcing their domination over the Philippines, negotiated a treacherous deal with Japan and joined in setting up a Japanese protectorate over Korea.

After the Second World War, which resulted in the defeat of Japan and the weakening of Great Britain, American imperialists decided to occupy their place in the countries of the Far East, endeavoring to transform the Pacific Ocean into an American sea and the peoples of the Pacific Ocean countries into the slaves of American monopoly. The strengthening of the forces of the democratic camp, however, the advance of the national liberal movement in the countries of Asia, and particularly the great victory won by the Chinese people, utterly destroyed the base designs of the American imperialists. The Korean people has personally experienced the whole weight of the colonialist policy of American imperialists. Having rid itself of the hateful yoke of the Japanese, it again finds itself threatened with enslavement.

The American imperialists, in their anxiety to keep a grip on South Korea, stubbornly resisted the unification of the Korean people. They disrupted the formation of a single democratic government based on the Moscow decision of the Foreign Ministers of the U. S. S. R., U. S. A., and U. K. They refused to remove their troops from Korea before they had transformed southern Korea into their own colony with the assistance of the puppet government of Syngman Rhee created by them. It is now clear to every Korean that, even after the withdrawal of American troops, South Korea was governed by the American imperialists. It is they who, together with the Syngman Rhee clique, bear full responsibility for the crimes of the military police regime which they have set up in South Korea, for the executions and murders of tens of thousands of the sons of the Korean people destroyed by the Syngman Rhee clique on the orders of the American masters, for the tortures inflicted on hundreds of thousands of patriots thrown into prison and brutally tortured, for all the sufferings of the people of South Korea. But they did not succeed in enslaving the Korean people, the main hindrance to this being the democratic regime established in North Korea.

North Korea has become a powerful base for the fight of the Korean people for unity, independence, and freedom. Its successes in peaceful reconstruction,

which have shown the superiority of democracy as compared with the antipopular military and police regime of South Korea, have inspired the Korean people to fight against the efforts of American imperialists to reduce Korea to a colony, have convinced the people of ultimate victory.

That is why the American imperialists and their South Korean lackeys, in their hatred of the Korean People's Democratic Republic, have long been cherishing plans to throttle it by military force. They obstructed the realization of the proposals for the peaceful unification of Korea, which were frequently put forward by the democratic parties and social organizations and also by the Government of the People's Democratic Republic.

With the support of the United States, the government of Syngman Rhee has for 2 years past openly prepared for an attack on the north, boasting that its army could occupy Pyongyang in a single day, and that it was merely awaiting the order to advance, having secured the promise of military support from the United States of America. At the behest of its American masters, the Syngman Rhee government on June 25, began civil war in Korea.

In provoking this war the American imperialists intended by means of armed intervention to destroy the Korean Democratic Republic and take possession of all Korea. Civil war in Korea was also necessary to the American imperialists in order to create a pretext for aggression against China and Vietnam also, to throttle the national liberation movement of the peoples of the Orient.

The United States is trying to cover its intervention in Korea with the name of the United Nations, but everyone knows that the American imperialists have placed the United Nations before a fait accompli by undertaking armed intervention; it calculates that it will succeed by means of the votes of countries dependent on the United States of America, using the name of the United Nations to cover any unlawful action whatsoever, even after it has been perpetrated.

The American-dictated resolution of the Security Council based on one-sided, fabricated information, is invalid and contrary to the United Nations Charter, since it was adopted without the participation of representatives of the government of the Korean People's Democratic Republic and also without the participation of representatives of two great powers, permanent members of the Security Council, the U. S. S. R. and the Chinese People's Republic.

Members of the Security Council who voted in favor of this resolution have once again shown that they are prepared to put their signatures to any document dictated to them by the United States, regardless of the rights and interests of the peoples.

In this connection, it is worthy of remark that the pro-American majority in the United Nations, which has now shown such a feverish readiness to save the bankrupt Syngman Rhee regime, ignored the repeated applications of the Korean People's Democratic Republic and social organizations of Korea made in U. N. organs regarding the atrocities and military provocation committed by the Syngman Rhee regime. It also ignored numerous requests made by Korean social organizations with concrete proposals for the peaceful unification of Korea, thus encouraging the adventurist actions of the United States of America and their South Korean vassals to stir up civil war in Korea.

The American imperialists and their South Korean protégés committed a desperate mistake in unleashing civil war in Korea. The troops of Syngman Rhee have met with fitting resistance and under the blows of the People's Army, which has counterattacked, are fleeing in disorder to the south. The gallant People's Army, in defense of the freedom and independence of the Korean people, is continuing to pursue the enemy. In the military operations of the past week, the People's Army cleared the enemy out of a large area of the southern half of the republic and liberated Seoul, the national capital.

The population is everywhere welcoming its army, which has liberated it from the terrors of the Syngman Rhee regime, and it is giving it active assistance in the liberation of the country. The heroic partisans in South Korea have carried out military operations on the enemy's communications and have cut the main railway line from the harbor of Pusan; in collaboration with the insurgent population they have freed a number of towns in South Korea. The flight of the Syngman Rhee army and the popular rising in its rear are further evidence of the rottenness and failure of the antipopular regime of the South Korean puppets of the United States of America.

The complete bankruptcy of the Syngman Rhee regime has today become obvious. Seeing the collapse of their plans for the colonization of Korea, the Ameri-

can imperialists are reinforcing their armed intervention against the Korean people. They want to drown the freedom of Korea in the blood of its patriots, but they will not frighten the freedom-loving Korean people.

In reply to the barefaced aggression of the United States, the Korean people will gather even more closely under the banner of the Korean People's Democratic Republic and strengthen their holy war for the freedom, unity, and independence of their native land. The Government of the Korean People's Democratic Republic and the whole Korean Nation resolutely protest against American armed intervention in Korea, against the barbarous bombardments of Korean towns and villages, against the inhuman slaughter of peaceful citizens.

We are convinced that all honorable people in the world will indignantly condemn the aggression of the American imperialists against the freedom-loving people of Korea.

We are certain that our just cause will meet with warm sympathy in the hearts of all people.

12. *The third United Nations Security Council resolution—July 7, 1950* (a) *Text of resolution (UN Document S/1588):*

The Security Council, having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace, having recommended that members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area,

(1) *Welcomes* the prompt and vigorous support which governments and peoples of the United Nations have given to its resolutions of 25 and 27 June 1950 to assist the Republic of Korea in defending itself against armed attack and thus to restore international peace and security in the area;

(2) *Notes* that members of the United Nations have transmitted to the United Nations offers of assistance for the Republic of Korea;

(3) *Recommends* that all members providing military forces and other assistance pursuant to the aforesaid Security Council resolutions make such forces and other assistance available to a unified command under the United States;

(4) *Requests* the United States to designate the commander of such forces;

(5) *Authorizes* the unified command at its discretion to use the United Nations flag in the course of operations against North Korean forces concurrently with the flags of the various nations participating.

(6) *Requests* the United States to provide the Security Council with reports, as appropriate, on the course of action taken under the unified command.

(b) *The vote:*

There were seven votes for the resolution, none against, with three abstentions.

Voting for the resolution were: United States, the United Kingdom, France, China, Cuba, Ecuador, and Norway.

The countries abstaining were: Egypt, India, and Yugoslavia.

The Soviet Union was absent.

(c) *Excerpts from verbatim record of Security Council meeting, July 7, 1950 (UN Document S/PV476):*

The President of the Security Council, Mr. Sunde of Norway:

Events have moved swiftly in Korea since our last meeting. What some of us hoped would be a short and decisive police action has turned into a pitched battle of unforeseeable duration. For the time being the ruthless and brutal aggressor seems to be reaping all the fruits which naturally redound to the attacking party with the advantages of surprise and careful planning. But the Republic of Korea is no longer alone in its fight for liberty and freedom. Assistance is being rushed to the war theater, pursuant to the Security Council resolution, by plane and ship and rail. And the bent and broken line of resistance is slowly stiffening with the stamina and courage of American boys who hardly dreamed 14 days ago that they were to be the first to fight for the ideals and principles of the United Nations. With them in the air and on the sea are the first contingents of British, Australian, New Zealand, and Netherlands forces, and offers of other kinds of assistance are pouring in from member states. * * *

Sir Gladwyn Jebb, United Kingdom:

It is clear to all concerned that a unified command is essential if confusion is to be avoided, and paragraph 3, therefore, provides for such a unified command. Had the Charter come fully into force and had the agreement provided for in article 43 of the Charter been concluded, we should, of course, have proceeded differently, and the action to be taken by the Security Council to repel the armed attack would no doubt have been founded on article 42. As it is, however, we can naturally only act under article 39, which enables the Security Council to recommend what measures should be taken to restore international peace and security. The necessary recommendations were duly made in the resolution of June 25 and 27, but in the nature of things they could only be recommendations to individual members of the United Nations. It could not therefore be the United Nations or the Security Council who themselves would appoint a United Nations commander. All the Security Council can do is to recommend that one of its members should designate the commander of the forces which individual members have now made available. This, therefore, is done in paragraph 4, and there will, I imagine, be no question but that it is for the United States to assume the duty of such a designation. * * *

(NOTE.—Paragraph references above are to the resolution.)

Mr. Chauvel, France:

On receiving notice of the launching of an attack southward from the thirty-eighth parallel by the North Korean forces, the Council, on June 25 last, called for the immediate cessation of hostilities, ordered the North Korean authorities to withdraw their troops, and called upon member states to cooperate fully with the United Nations in implementing the resolution it had adopted.

As the North Korean authorities completely disregarded that resolution and as the situation on the spot threatened to deteriorate rapidly, the United States Government, in reply to the invitation of the Council, and making use of the special facilities at its disposal took, on June 27, the first steps immediately necessary to give effect to the will of the Council.

The same day the Council made its position clear by recommending that members of the United Nations furnish such assistance to the Republic of Korea as might be necessary to repel the armed attack and to restore international peace and security in the area.

Since then, and at the same time as organization was being improvised on the spot, offers of assistance were received from many quarters.

The time has come to impart to the whole situation a form which will duly show, on the one hand, the moral authority of the United Nations, on the other hand certain specific responsibilities, and the relation between the two.

The form of words submitted to the Council was essentially a statement of the principle of a unified command under which the various national contingents involved in this affair would be regrouped; a request to the United States Government to designate a commander in chief; authority to that commander in chief to use the United Nations flag; and a request to the United States Government to provide the Security Council with reports on the development of operations.

* * * * *

I should like to take this opportunity offered to my delegation today to pay tribute to the spontaneous and generous support which the action of the Security Council has called forth from the states members of the United Nations. In this trial before us no contribution could be more valuable than this lofty manifestation of the collective conscience.

I should also like to repeat here how much the political sagacity and swift decision of the United States Government, and the speed with which it has intervened in support of our decisions, have been appreciated by my Government and by French public opinion. The peoples of France, and indeed of the whole world, could not at such a difficult time have had greater encouragement.

Finally, I should like to express the anxious and deep sympathy with which, I am sure, all those present here who took part in either of the two wars follow the efforts of those young men from every part of the United States who are at this moment facing danger in the common cause. We have met their elders in different parts of the world; we have lived side by side with them through difficult times. Their lot stirs in us those memories, awakens our deepest feelings, and we hope that they feel supported in their undertaking, as they should be and indeed are, by the power of the free world, by the will of the free world, and by the hope that is also ours of opening the way to true peace.

Mr. Tsiang, China:

* * * Today is July 7. In 1937, on July 7, the Japanese began their war of aggression against China. On that occasion, unfortunately, the fire was not put out at the start. The League of Nations failed to come to the aid of my country. It failed to uphold the principles of the Covenant. I am sure I need not go into the consequences of that act of omission. Much of the suffering of the world can be traced to that failure. We have had to pay a heavy price, and we are continuing to pay a heavy price for that failure on the part of the League of Nations.

Fortunately, today, the aggression against the Republic of Korea has been met with determination by the United Nations. * * * I am convinced that the sacrifices made now will, in the long run, save the peoples of the world much heavier sacrifices in future years and decades. It is, therefore, only right that the Security Council should carry further the course of action it began on June 25 and 27.

Mr. Alvarez, Cuba:

* * * I should like to say that my Government, which feels grave concern at the attack on international peace and security perpetrated by the authorities of northern Korea, agreed at a meeting of its Council of Ministers held on June 29, to offer all the assistance necessary to repel the attack on world peace and the authority of the United Nations; we shall therefore afford our full support to the decisions adopted by the Organization in defense of its basic principles and in order to prevent new attacks against peace.

My delegation has observed with great satisfaction the position taken by a large majority of the members of the United Nations in immediately supporting the action recommended by the Security Council and making known their willingness to provide the necessary assistance in the form finally agreed upon by this body.

The attitude adopted by the Great Powers, which even at the cost of great sacrifice are taking heroic action to maintain the integrity of the United Nations, is an encouragement to the small nations which have also offered their warmest support to the decisions of the Security Council.

The Cuban delegation takes this opportunity of placing on record its disagreement with the interpretation given by the Soviet Union in its communication to the Secretary General regarding the legality of the decisions taken by the Security Council on June 25 and 27, since it is an established practice in the Council, and one that the Soviet Union has accepted on many occasions, that the abstention of a permanent member from the decisions adopted by the Council does not constitute a veto.

In connection with the draft resolution before us, the Cuban delegation considers that for obvious reasons the unified command of the collective action of the United Nations should be under the auspices of the United States of America.

My delegation applauds the effective action taken by the United States from the beginning of the aggression against the Korean Republic, in defense of the cause of the United Nations, which is the cause of peace, freedom, and the independence of peoples.

Mr. Chang, Republic of Korea:

* * * On June 25 and 27, I was privileged to be seated at this Council table to make reports on the unprovoked attacks from the Northern Korean Communists against the Republic of Korea, and to make an urgent appeal to the members of the United Nations to take effective measures to repulse the armed attack. The Security Council, to the great happiness of my Government and my people, and with dispatch and fortitude adopted a resolution submitted by the United States, not only to repel the armed attack, but also to restore peace and security in that area. Today I wish to express the heartfelt thanks of my Government and my people to the Security Council, and to the friendly members of the United Nations for their bold and united action to repel the cold-blooded and unprovoked armed attack against the peaceful people of Korea.

Mr. Austin, United States of America:

I wish to associate the United States of America with those gallant members of the United Nations who have commended so warmly the men and women of all countries, including my own, for the dedication of their lives, if necessary, for

the great principles of peace, principles which occupy the attention of the whole world on account of this dastardly outbreak in a small spot, but in a place where it can have an effect that is world-wide. It can have an effect, also, in the realm of morality, in the realm of great principles, and in the realm of freedom. The issue of freedom or slavery is involved in what appears, on its face, to be a small matter.

During the course of the discussion here the question has been implied, although not expressly asked, whether the United States of America would accept the responsibilities and bear the heavy burdens that are involved in this resolution. Of course the United States will do so. Of course the United States has considered in advance this resolution, and of course the United States could not author this resolution because of the big and special responsibilities that it imposes upon the United States. We are grateful indeed that we could be excused from doing that, and that so great and friendly nations as the United Kingdom and France should become the sponsors of this vital resolution.

We have already accepted the responsibilities of this resolution. In spirit if not in word, this resolution has been in effect since the very first resolution adopted in response to the call for help from Korea. Letters are on file from nations that have offered their specific contributions of men and material. The very language of those offers has established a precedent and a record which is the solid foundation of the language in this resolution. For example, I shall refer to the communication from Sir Terrence Shone, Document S/1515, dated June 29, 1950, relating to the appearance in the House of Commons of the Prime Minister of the United Kingdom of Great Britain and Northern Ireland on June 28, the first day after the adoption of the second Security Council resolution. Note the language of this and compare it with the language of the resolution just adopted by the Security Council:

"The House will wish to know what action His Majesty's Government is taking in pursuance of the resolution of the Security Council passed yesterday calling on all members of the United Nations to furnish assistance to the Republic of Korea. We have decided to support the United States action in Korea by immediately placing our Naval forces in Japanese waters at the disposal of the United States authorities to operate on behalf of the Security Council in support of South Korea. Orders to this effect have already been sent to the Naval Commander in Chief on the spot. Notification of this action is being made to the Security Council, the United States Government, the Government of South Korea, and all Commonwealth Governments."

I shall not take the time of the Council to go through other communications containing the same language. The Council will note that the individual contributor had the vision to see the necessity of having a unified command where so many members were participating and cooperating together, and named the country.

When we voted for the resolution contained in Document S/1587, we welcomed the prompt and vigorous support of these governments, we pointed out the limited area of the resolution, and we pointed to the resolutions of June 25 and 27. * * *

The United States accepts the responsibility and makes the sacrifice that is involved in carrying out these principles of the United Nations. * * *

(d) Statement by the President of the United States, July 8, 1950:

The Security Council of the United Nations in its resolution of July 7, 1950, has recommended that all members providing military forces and other assistance pursuant to the Security Council resolutions of June 25 and 27, make such forces and other assistance available to a unified command under the United States.

The Security Council resolution also requests that the United States designate the commander of such forces, and authorizes the unified command at its discretion to use the United Nations flag in the course of operations against the North Korean forces concurrently with the flags of the various nations participating.

I am responding to the recommendation of the Security Council and have designated Gen. Douglas MacArthur as the commanding general of the military forces which the members of the United Nations place under the unified command of the United States pursuant to the United Nations' assistance to the Republic of Korea in repelling the unprovoked armed attack against it.

I am directing General MacArthur, pursuant to the Security Council resolution, to use the United Nations flag in the course of operations against the North Korean forces concurrently with the flags of the various nations participating.

13. Tabulation of replies to United Nations on Security Council action on Korea

(a) Support of Council action:

Latin-American states:

Argentina
Bolivia
Brazil
Chile
Colombia
Costa Rica
Cuba
Dominican Republic
Ecuador
El Salvador
Guatemala
Haiti
Honduras
Mexico
Nicaragua
Panama
Paraguay
Peru
Uruguay
Venezuela

Europe and British Commonwealth:

Australia
Belgium
Canada
Denmark

Europe and British Commonwealth—

Continued.
France
Iceland
Luxembourg
Netherlands
New Zealand
Norway
Sweden
Union of South Africa
United Kingdom

Near and middle eastern states:

Greece
India
Iran
Pakistan
Turkey
Israel
Ethiopia
Afghanistan
Lebanon
Burma

Far eastern states:

China
Thailand
Philippines

(b) Rejection of Council action as illegal:

The following states have rejected as "illegal" the Security Council action on Korea in their replies to the Secretary General: U. S. S. R., Czechoslovakia, Poland, North Korea.

(c) Failure to reply to UN communication on Korea:

The following states have not yet replied to the Secretary General's communication on Korea:

European states:

Byelorussia
Ukraine
Yugoslavia

Near and middle eastern states:

Egypt
Iraq
Liberia
Syria

(NOTE.—As a member of the Security Council, Yugoslavia voted against the resolution of June 27; Egypt, as a Security Council member, did not participate in the vote on the resolution of June 27.)

(d) Council of the Organization of American States:

The Council of the OAS has adopted a resolution declaring "its firm adherence to the decisions of the competent organs of the United Nations."

(e) Offer of military assistance:

Military assistance has been offered by the United Kingdom, New Zealand, Australia, Canada, China, and the Netherlands.

(f) Individual replies:

1. Latin-American states

Argentina.—Affirms its resolute support of the United Nations (S/1533).² Reaffirms readiness to comply to extent of its ability with international agreements it has signed (S/1568).

² References are to the UN document number.

Bolivia.—Will comply with Security Council resolution (S/1544).

Brazil.—Is prepared to meet, within the means at its disposal, the responsibilities contemplated in article 49 of the Charter (S/1525).

Chile.—Firmly supports Security Council resolutions; "for the present will cooperate by ensuring regular and adequate supplies of copper, saltpeter, and other strategic materials to countries responsible for operations" (S/1556).

Colombia.—Is prepared to cooperate with the Security Council in the manner which the course of international events may render necessary for the purpose of giving effect to the resolutions whereby the Security Council provided that the Republic of Korea should receive the assistance necessary to restore peace and to repel the unlawful aggression upon it (S/1541); assistance "will depend on course of events and means available to Colombia" (S/1561).

Costa Rica.—Endorses and supports Security Council resolutions and is prepared to assist as far as possible but can do little in view of the fact that the Costa Rican Constitution forbids an army and since the economy of Costa Rica is "very limited" (S/1558).

Cuba.—Offer any assistance necessary "to repel the attack against world peace and against the authority of the supreme international organizations." Complete adherence to any UN decisions (S/1574).

Dominican Republic.—Is in complete agreement with resolutions of Security Council on Korea. So far as its resources permit * * * will give every assistance in maintaining the independence and peace of the Republic of Korea (S/1528).

Ecuador.—Supports and "is prepared within the limits of its resources to assist in reestablishing" the order disturbed in Korea (S/1560).

El Salvador.—Resolutely supports Security Council decision (S/1534). Is studying what assistance it can render (S/1577).

Guatemala.—Agrees with measures adopted by Security Council and will lend all possible cooperation (S/1581).

Haiti.—Gives "full and entire approval to the Security Council resolutions"; is at disposal of Secretary-General "for any cooperation * * * for moral support" (S/1552 and S/1559).

Honduras.—Is prepared to furnish such cooperation as is within its power with view to restoration of peace in Korea (S/1536).

Mexico.—Will faithfully fulfill the obligations incumbent upon it as a member of the UN (S/1537).

Nicaragua.—Reiterates its decision to cooperate with UN in maintenance of peace (S/1544). Is prepared to assist with food-stuffs within the limits of its resources and with raw materials such as rubber. Is also prepared when deemed advisable to cooperate by contributing personnel (S/1573).

Panama.—Will observe regulations adopted by Security Council and will give fullest possible cooperation in restoring international peace and security (S/1540).

Paraguay.—Will support measures to be taken by the UN for the protection of peace (S/1582).

Peru.—"Is prepared to concert its action with other members to furnish such assistance as may be necessary to restore peace" (S/1557).

Uruguay.—Will resolutely support measures adopted by UN (S/1516). Is prepared to furnish fullest support within its power. Feels that most effective type of assistance should be suggested

bearing in mind character of our resources and geographic position (S/1569).

Venezuela.—Supports resolution of June 27 * * * and remains firmly resolved to fulfill obligations deriving from its membership in UN (S/1535).

2. Europe and British Commonwealth

Australia.—Australian Government has decided to place two naval vessels at the disposal of the United States authorities on behalf of the Security Council in support of the Republic of Korea. Has decided to place at the service of the UN through the American authorities the RAAF fighter squadron now stationed in Japan (S/1574 and S/1530).

Belgium.—Resolutions adopted by Security Council meet with full approval of Belgian Government. Will grant every useful assistance in its power to comply with the recommendation contained in resolution of June 27. Is ready to render such assistance as it may be called upon to furnish, in accordance with Security Council resolution (S/1519 and S/1542).

Canada.—Naval units to be moved into western Pacific waters where they might be of assistance to the UN and Korea if such assistance were required (S/1538).

Denmark.—Danish Government is able to offer assistance consisting of medicaments (certain drugs listed) at its expense (S/1572).

France.—Consider that it is the duty of France and of all members to comply with Security Council's recommendations concerning assistance to the Republic of Korea. Since, however, it has for more than 3 years been engaged in a bitter struggle for a similar cause in the same quarter of the globe it would be unable, without prejudice to the efforts of the countries which it is supporting, to detach forces of any size for the operations initiated with a view to reestablishment of peace. Is nevertheless considering what measures it can undertake to comply with the many obligations incumbent upon it in pursuance of the UN appeal.

Iceland.—Fully agrees with Security Council action but for obvious reasons will not be able to furnish military or economic assistance (S/1567).

Italy.—Has indicated general support for the Security Council action.

Luxembourg.—Supports; will respect and fulfill Charter obligations (S/1549).

Netherlands.—Now considering relinquishment of sea forces for participation in the necessary measures to be taken in Korea (S/1526). Has instructed destroyer to join other maritime forces in Korean waters (S/1570).

New Zealand.—Is prepared to make available units of the Royal New Zealand Navy should this form of assistance be required and is at present in consultation with United Kingdom on this matter (S/1522).

Norway.—Is prepared to take such measures as may be found desirable in order to assist the South Korean Government. In this connection, suggests the possibility that Norwegian tonnage might be offered for transportation purposes (S/1576).

Sweden.—Expresses full agreement with the determination of the Security Council resolutions. States that "no diplomatic, com-

mercial, or maritime relations exist between Sweden and North Korea. The Swedish Government, who has not the possibility to make any armed forces available for this purpose, will continue to consider the question of rendering assistance in other forms as may be found necessary" (S/1564).

Union of South Africa.—Noted with satisfaction the resolution of the Security Council. Would be prepared in consultation with Great Britain and the other Dominions to give the most careful and sympathetic consideration to any appeal for assistance in dire need received either from the UN or those western countries who associate themselves with the Security Council resolution and are most directly concerned (S/1543).

United Kingdom.—Supports United States action by immediately placing naval forces in Japanese waters at the disposal of the United States authorities to operate on behalf of the Security Council in support of South Korea (S/1515).

3. Far eastern states

Burma.—Supports the stand taken by the Security Council in regard to Korea at meetings of the 25th and 27th June 1950. "My Government very much regrets, however, that they are not in a position to render any effective assistance" (S/1590).

China.—On taking steps furnish such assistance as within its power to Republic of Korea (S/1521); offers to the UN 3 divisions of troops, 20 C-46 air transports, and a moderate amount of naval escort if UN should decide to transport the troops by sea (S/1562).

Philippines.—Is prepared to contribute, as called upon, such amounts of copra, coconut oil, soap, rice, and anticholera typhoid dysentery vaccine; also smallpox virus that may help facilitate the implementation of the resolution.

Thailand.—Firmly behind Council in its resolutions and is prepared to support any action which UN may take and will consider and extend such assistance as is possible within its capability to Republic of Korea. In this connection, Thailand, being agricultural country, will be glad if required to assist Republic at once in matter of food-stuffs such as rice (S/1547).

Republic of Korea.—Government of the Republic of Korea expresses gratitude for Security Council action and for promptness and vigor with which UN members have acted to repel aggression and restore peace in Korea. Korean Government will unflinchingly carry on the struggle with all the resources at its command and calls upon its people to renew their resistance to the aggressor (S/1571).

4. Near and middle eastern states

Afghanistan.—Confirms the resolutions of the Security Council adopted on the 25th and 27th of June, but due to existing anxieties about the unsettled position in Pushtunistan, wishes to be excused from giving any help to the Korean Republic (S/1589).

Ethiopia.—Fully supports and accepts Security Council recommendation; is withdrawing all assistance to North Korea and endorses the efforts of states in better immediate position to render assistance to the Republic of Korea (S/1555).

Greece.—Is ready to contribute to UN efforts within such limits as her well-known present circumstances would permit. "We are instructing our permanent delegate at Lake Success to keep in touch

with Your Excellency on the matter" (S/1546). Has decided to institute an embargo on all Greek exports to the North Korean area (S/1578).

India.—Voted in favor of first Security Council resolution and also accepts second Security Council resolution. "This decision of the Government of India does not, however, involve any modification of their foreign policy" (S/1520).

Iran.—Strongly confirms and supports Security Council resolutions. Sincerely hopes that peace and security will soon prevail in Republic of Korea (S/1566).

Israel.—Supports Security Council and hopes UN will continue endeavors to align all the Great Powers in a common effort for safeguarding world peace (S/1553).

Lebanon.—Notes the Security Council decision of June 25 and affirms desire to support any action decided to strengthen world peace within framework of UN. Feels it its duty to express the hope that all UN decisions, already taken or to be taken in the future, will be applied in conformity with the principles of right and justice. Will in all cases refrain from rendering any assistance whatsoever to any aggressor.

Pakistan.—Will give full support to measures proposed in the Security Council resolutions to stop hostilities (S/1539).

Saudi Arabia.—Took notice of the Security Council resolution of June 27 (S/1577).

Turkey.—Is ready to fulfill any requirements requested by the Security Council and to get in touch with the Security Council on the matter (S/1552).

Yemen.—Have noted resolutions passed by Security Council at meeting held on June 25 re Korean situation (S/1551).

IV. MEMORANDUM OF JULY 3, 1950, PREPARED BY THE DEPARTMENT OF STATE ON THE AUTHORITY OF THE PRESIDENT TO REPEL THE ATTACK IN KOREA

The memorandum is as follows:

This memorandum is directed to the authority of the President to order the Armed Forces of the United States to repel the aggressive attack on the Republic of Korea.

As explained by Secretary Acheson to the press on June 28, as soon as word of the attack on Korea was received in Washington, it was the view of the President and of all of his advisers that the first responsibility of the Government of the United States was to report the attack to the United Nations.

Accordingly, in the middle of the night of Saturday, June 24, 1950, Ambassador Gross, the United Nations Deputy Representative at the Security Council of the United Nations, notified Mr. Trygve Lie, the Secretary General of the United Nations, that armed forces from North Korea had commenced an unprovoked assault against the territory of the Republic of Korea.

A meeting of the Security Council was immediately called on Sunday, June 25, at the request of the United States. The Council at that meeting adopted a resolution, presented by the United States, calling on the North Korean authorities to cease hostilities and to withdraw their armed forces to the thirty-eighth parallel (which separates North Korea and the Republic of Korea). The resolution also requested the United Nations Commission on Korea to observe such withdrawal and to keep the Security Council informed on the execution of the resolution. Finally it called on all members to render every assistance to the United Nations in the execution of the resolution and to refrain from assisting the North Korean authorities.

A report from the United Nations Commission for Korea received on June 26 indicated that the Security Council resolution had been completely disregarded by North Korea and that the armed invasion of the Republic of Korea was continuing.

The President, accordingly on June 27, 1950, made an announcement pointing out that communism had defied the orders of the Security Council issued to preserve international peace and security and stating that he had therefore ordered United States air and sea forces to give the Korean Government troops cover and support. Since the occupation of Formosa by Communist forces would directly threaten the security of the Pacific area and United States forces there, he also ordered the Seventh Fleet to prevent any attack on Formosa. Further, he directed that United States forces in the Philippines be strengthened, that military assistance to the Philippine Government be accelerated as well as military assistance to the French forces and those of the associated states in Indochina, and that a military mission be dispatched to provide close-working relations with the forces in Indochina. The President stated that he knew that all members of the United Nations would consider carefully the consequences of this latest aggression in Korea in defiance of the United Nations Charter, and he instructed Ambassador Austin, the United States Representative to the Security Council, to report the steps he had taken to the Council.

This Ambassador Austin did on the afternoon of June 27, saying that he was happy and proud to report that the United States was prepared as a loyal member of the United Nations to furnish assistance to the Republic of Korea. He presented to the Council a draft resolution which inter alia noted the appeal from the Republic of Korea to the United Nations for immediate and effective steps to secure peace and security and recommended that United Nations members furnish such assistance to the Republic as might be necessary to repel the armed attack and restore international peace and security. The resolution was forthwith adopted by the Security Council at the same meeting on June 27.

Secretary Acheson at his news conference on June 28 emphasized that the actions of the United States had been taken in support of the United Nations. "After June 25," he said "all action in Korea has been under the aegis of the United Nations."

The President, as Commander in Chief of the Armed Forces of the United States, has full control over the use thereof. He also has authority to conduct the foreign relations of the United States. Since the beginning of United States history, he has upon numerous occasions utilized these powers in sending armed forces abroad. The preservation of the United Nations for the maintenance of peace is a cardinal interest of the United States. Both traditional international law and article 39 of the United Nations Charter and the resolution pursuant thereto authorize the United States to repel the armed aggression against the Republic of Korea.

The President's control over the Armed Forces of the United States is based on article 2, section 2 of the Constitution, which provides that he "shall be Commander in Chief of the Army and Navy of the United States."

In *United States v. Sweeney*, the Supreme Court said that the object of this provision was "evidently to vest in the President the supreme command over all the military forces—such supreme and undivided command as would be necessary to the prosecution of a successful war" (157 U. S. (1895) 281, 284).

That the President's power to send the Armed Forces outside the country is not dependent on congressional authority has been repeatedly emphasized by numerous writers.

For example, ex-President William Howard Taft wrote:

"The President is made Commander in Chief of the Army and Navy by the Constitution evidently for the purpose of enabling him to defend the country against invasion, to suppress insurrection, and to take care that the laws be faithfully executed. If Congress were to attempt to prevent his use of the Army for any of these purposes, the action would be void. * * * Again, in the carrying on of war as Commander in Chief, it is he who is to determine the movements of the Army and of the Navy. Congress could not take away from him that discretion and place it beyond his control in any of his subordinates, nor could they themselves, as the people of Athens attempted to, carry on campaigns by votes in the market place" (Our Chief Magistrate and His Powers, 1916, pp. 128-129).

Professor Willoughby writes:

"As to his constitutional power to send United States forces outside the country in time of peace when this is deemed by him necessary or expedient as a means of preserving or advancing the foreign interests or relations of the United States,

there would seem to be equally little doubt, although it has been contended by some that the exercise of this discretion can be limited by congressional statute. That Congress has this right to limit or to forbid the sending of United States forces outside of the country in time of peace has been asserted by so eminent an authority as ex-Secretary Root. It would seem to the author, however, that the President, under his powers as Commander in Chief of the Army and Navy, and his general control of the foreign relations of the United States, has this discretionary right constitutionally vested in him, and, therefore, not subject to congressional control. Especially, since the argument of the court in *Myers v. United States* with reference to the general character of the executive power vested in the President, and, apparently, the authority impliedly vested in him by reason of his obligation to take care that the laws be faithfully executed, it is reasonable to predict that, should the question be presented to it, the Supreme Court will so hold. Of course, if this sending is in pursuance of express provisions of a treaty, or for the execution of treaty provisions, the sending could not reasonably be subject to constitutional objection" (the Constitutional Law of the United States, 1929, vol. III, p. 1567).

In an address delivered before the American Bar Association in 1917 on the War Powers Under the Constitution, Mr. Hughes stated that "There is no limitation upon the authority of Congress to create an army and it is for the President as Commander in Chief to direct the campaign of that Army wherever he may think they should be carried on." He referred to a statement by Chief Justice Taney in *Fleming v. Page* (9 How. 615) in which the Chief Justice said that as Commander in Chief the President "is authorized to direct the movements of the naval and military forces placed by law at his command" (S. Doc. 105, 65th Cong., -- sess., p. 7).

At the time the approval of the Treaty of Versailles was under consideration in the Senate, there was under discussion a reservation to article 10, presented by Senator Lodge, to the effect that "Congress * * * under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States." Senator Walsh, of Montana, stated in debate on November 10, 1919, that the statement was a recital of "What is asserted to be a principle of constitutional law." He said that if— " * * * any declaration of that character should ever be made by the Senate of the United States, it would be singularly unfortunate. It is not true. It is not sound. It is fraught with the most momentous consequences, and may involve disasters the extent of which it is hardly possible to conceive.

"The whole course of our history has been a refutation of such a declaration, namely, that the President of the United States, the Chief Executive of the United States, the Commander in Chief of the Army of the United States, has no power to employ the land or naval forces without any express authorization upon the part of Congress. Since the beginning of our Government, our Navy has been sent over the seven seas and to every port in the world. Was there ever any congressional act authorizing the President to do anything of that kind?"

He stated that our Navy travels the sea "in order to safeguard and protect the rights of American citizens in foreign lands. Who can doubt that the President has no authority thus to utilize the naval and land forces of the United States?"

Mr. Borah stated:

"I agree fully with the legal or constitutional proposition which the Senator states, and I hope this [reservation] will be stricken out. It is an act of supererogation to put it in. It does not amount to anything. It is a recital which is not true. It cannot change the Constitution, and it ought not to be there. * * * It would simply be vain and futile and, if I may say so, with due respect to those who drew it, the doing of an inconsequential thing" (58 Congressional Record, pt. 8, p. 8195, Nov. 10, 1919, 66th Cong., 1st sess.).

Not only is the President Commander in Chief of the Army and Navy, but he is also charged with the duty of conducting the foreign relations of the United States and in this field he "alone has the power to speak or listen as a representative of the Nation" (*United States v. Curtiss-Wright Export Corp., et al.*, (299 U. S. (1936) 304, 319)).

Obviously there are situations in which the powers of the President as Commander in Chief and his power to conduct the foreign relations of this country complement each other.

The basic interest of the United States is international peace and security. The United States has throughout its history, upon orders of the Commander in Chief to the Armed Forces, and without congressional authorization, acted to

prevent violent and unlawful acts in other States from depriving the United States and its nationals of the benefits of such peace and security. It has taken such action both unilaterally and in concert with others. A tabulation of 85 instances of the use of American Armed Forces without a declaration of war was incorporated in the Congressional Record for July 10, 1941 (appendix A). See also the appendix to the pamphlet by James Grafton Rogers entitled "World Policing and the Constitution" published in 1945 by the World Peace Foundation.

It is important to analyze the purposes for which the President as Commander in Chief has authorized the despatch of American troops abroad. In many instances, of course, the Armed Forces have been used to protect specific American lives and property. In other cases, however, United States forces have been used in the broad interests of American foreign policy, and their use could be characterized as participation in international policy action.

The traditional power of the President to use the Armed Forces of the United States without consulting the Congress was referred to in debates in the Senate in 1945. Senator Connally remarked:

"The historical instances in which the President has directed armed forces to go to other countries have not been confined to domestic or internal instances at all." Senator Millikin pointed out that "in many cases the President has sent troops into a foreign country to protect our foreign policy * * * notably in Central and South America." "That was done," he continued, "in order to keep foreign countries out of there—was not aimed at protecting any particular American citizen. It was aimed at protecting our foreign policy." To his remark that he presumed that by the Charter of the United Nations we had laid down a foreign policy which we could protect, Senator Connally replied that that was "absolutely correct." He added:

"I was trying to indicate that fact by reading the list of instances of intervention on our part in order to keep another government out of territory in this hemisphere. That was a question of carrying out our international policy, and not a question involving the protection of some American citizen or American property at the moment." (Congressional Record, 79th Cong., 1st sess., vol. 91, pt. 8, November 26, 1945, p. 10967.)

During the Boxer Rebellion in China in 1900-1901 the President sent about 5,000 troops to join with British, Russian, German, French, and Japanese troops to relieve the siege of the foreign quarters in Peking and reestablish the treaty status. This was done without express congressional authority. In defining United States policy at the time Secretary of State Hay said:

"* * * The purpose of the President is, as it has been heretofore, to act concurrently with the other powers; first, in opening up communication with Peking and rescuing the American officials, missionaries, and other Americans who are in danger; secondly, in affording all possible protection everywhere in China to American life and property; thirdly, in guarding and protecting all legitimate American interests; and, fourthly, in aiding to prevent a spread of the disorders to the other provinces of the Empire and a recurrence of such disasters. It is, of course, too early to forecast the means of attaining this last result; but the policy of the Government of the United States is to seek a solution which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly powers by treaty and international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese Empire." (V Moore's Digest of International Law, p. 482. See also Taft, op. cit. pp. 114-115; Rogers, op. cit. pp. 58-62.)

After the opening up of Japan to foreigners in the 1850's through the conclusion of commercial treaties between Japan and certain western powers, antiforeign disturbances occurred. In 1863 the American Legation was burned following previous attacks on the British Legation. The commander of the U. S. S. *Wyoming* was instructed to use all necessary force for the safety of the legation or of Americans residing in Japan. Secretary of State Seward said that the prime objects of the United States were: "First, to deserve and win the confidence of the Japanese Government and people, if possible, with a view to the common interest of all the treaty powers; secondly, to sustain and cooperate with the legations of these powers, in good faith, so as to render their efforts to the same end effective." (V Moore's Digest of International Law, pp. 747-748.)

In 1864 the Mikado, not recognizing the treaties with the western powers, closed the straits of Shimonoseki. At the request of the Tycoon's Government (opposed to the Mikado) American, British, French, and Netherlands forces in a joint operation opened the straits by force. The object of the western powers

was the enforcement of treaty rights, with the approval of the government that granted them. (V Moore's Digest, p. 750; S. Ex. Doc. 58, 41 Cong. 2d sess.)

Again in 1868 a detachment of Japanese troops assaulted foreign residents in the streets of Hiogo. One of the crew of the *Oneida* was seriously wounded. The safety of the foreign population being threatened, naval forces of the treaty powers made a joint landing and adopted measures to protect the foreign settlement. (Report of the Secretary of the Navy, 1868, p. XI.)

Former Assistant Secretary of State James Grafton Rogers has characterized these uses of force as "international police action," saying: "They amounted to executive use of the Armed Forces to establish our own and the world's scheme of international order. Two American Presidents used men, ships and guns on a large and expensive scale." (World Policing and the Constitution, published by the World Peace Foundation, 1945, pp. 66, 67.)

In 1888 and 1889 civil war took place in Samoa, where the United States, Great Britain, and Germany had certain respective treaty rights for the maintenance of naval depots. German forces were landed, and the German Government invited the United States to join in an effort to restore calm and quiet in the islands in the interest of all the treaty powers. The commander of the United States naval forces in the Pacific was instructed by the Secretary of the Navy that the United States was willing to cooperate in restoring order "on the basis of the full preservation of American treaty rights and Samoan authority, as recognized and agreed to by Germany, Great Britain, and the United States." He was to extend full protection and defense to American citizens and property, to protest the displacement of the native government by Germany as violating the positive agreement and understanding between the treaty powers, but to inform the British and German Governments of his readiness to cooperate in causing all treaty rights to be respected and in restoring peace and order on the basis of the recognition of the Samoan right to independence. (I Moore's Digest of International Law, pp. 545-546.)

On July 7, 1941, the President sent to the Congress a message announcing that as Commander in Chief he had ordered the Navy to take all necessary steps to insure the safety of communications between Iceland and the United States as well as on the seas between the United States and all other strategic outposts and that American troops had been sent to Iceland in defense of that country. The United States, he said, could not permit "the occupation by Germany of strategic outposts in the Atlantic to be used as air or naval bases for eventual attack against the Western Hemisphere." For the same reason, he said, substantial forces of the United States had been sent to the bases acquired from Great Britain in Trinidad and British Guiana in the south to forestall any pincers movement undertaken by Germany against the Western Hemisphere (Congressional Record, 77th Cong., 1st sess., vol. 87, pt. 6, July 7, 1941, p. 5868).

Thus, even before the ratification of the United Nations Charter, the President had used the Armed Forces of the United States without consulting the Congress for the purpose of protecting the foreign policy of the United States. The ratification of the United Nations Charter was, of course, a landmark in the development of American foreign policy. As noted above, Senator Connally and Senator Millikin agreed that the President was entitled to use armed forces in protection of the foreign policy represented by the Charter. This view was also expressed in the Senate debates in connection with the ratification of the Charter. For example, Senator Wiley made the following pertinent statement:

"It is my understanding, according to the testimony given before the Foreign Relations Committee of the Senate, that the terms 'agreement or agreements' as used in article 43 are synonymous with the word 'treaty.' On the other hand, I recognize that Congress might well interpret them as agreements brought about by the action of the Executive and ratified by a joint resolution of both Houses. These agreements would provide for a police force and the specific responsibility of each nation. But outside of these agreements, there is the power in our Executive to preserve the peace, to see that the 'supreme laws' are faithfully executed. When we become a party to this charter, and define our responsibilities by the agreement or agreements, there can be no question of the power of the Executive to carry out our commitments in relation to international policing. His constitutional power, however, is in no manner impaired" (Congressional Record, 79th Cong., 1st sess., vol. 91, July 27, 1945, p. 8127-8128).

An even fuller exposition of the point was made by Senator Austin, who stated: "Mr. President, I am one of those lawyers in the United States who believe that the general powers of the President—not merely the war powers of the

President but the general authority of the President—are commensurate with the obligation which is imposed upon him as President, that he take care that the laws are faithfully executed. That means that he shall take all the care that is required to see that the laws are faithfully executed.

"Of course, there are other specific references in the Constitution which show that he has authority to employ armed forces when necessary to carry out specific things named in the Constitution; but the great over-all and general authority arises from his obligation that he take care that the laws are faithfully executed. That has been true throughout our history, and the Chief Executive has taken care, and has sent the armed forces of the United States, without any act of Congress preceding their sending, on a great many occasions. I have three different compilations of those occasions. One of them runs as high as 150 times; another of them 72 times, and so forth. It makes a difference whether we consider the maneuvers which were merely shows of force as combined in the exercise of this authority—as I do—or whether we limit the count to those cases in which the armed forces have actually entered upon the territory of a peaceful neighbor. But there is no doubt in my mind of his obligation and authority to employ all the force that is necessary to enforce the laws.

"It may be asked, How does a threat to international security and peace violate the laws of the United States? Perhaps, Mr. President, it would not have violated the laws of the United States previous to the obligations set forth in this treaty. Perhaps we have never before recognized as being true the fundamental doctrine with which I opened my remarks. But we are doing so now. We recognize that a breach of the peace anywhere on earth which threatens the security and peace of the world is an attack upon us; and after this treaty is accepted by 29 nations, that will be the express law of the world. It will be the law of nations, because, according to its express terms, it will bind those who are nonmembers, as well as members, and it will be the law of the United States, because we shall have adopted it in a treaty. Indeed, it will be above the ordinary statutes of the United States, because it will be on a par with the Constitution, which provides that treaties made pursuant thereto shall be the supreme law of the land.

"So I have no doubt of the authority of the President in the past, and his authority in the future, to enforce peace. I am bound to say that I feel that the President is the officer under our Constitution in whom there is exclusively vested the responsibility for maintenance of peace." (Congressional Record, 79th Cong., 1st sess., vol. 91, July 26, 1945, pp. 8064-8065.)

Action contrary to the Charter of the United Nations is action against the interests of the United States. Preservation of peace under the Charter is a cornerstone of American foreign policy. President Truman said in his inaugural address in 1949:

"In the coming years, our program for peace and freedom will emphasize four major courses of action.

"First, we will continue to give unfaltering support to the United Nations and related agencies, and we will continue to search for ways to strengthen their authority and increase their effectiveness."

In the Korean situation, the resolution of the Security Council of June 25 determined, under article 39 of the Charter, that the action of the North Koreans constituted a breach of the peace and called upon "the authorities in North Korea (a) to cease hostilities forthwith; and (b) to withdraw their armed forces to the thirty-eight parallel." It also called upon "all members to render every assistance to the United Nations in the execution of this resolution." This is an application of the principles set forth in article 2, paragraph 5, of the Charter, which states: "All members shall give the United Nations every assistance in any action which it takes in accordance with the present Charter * * *." The Security Council resolution of June 27, passed after the North Korean authorities had disregarded the June 25 resolution, recommended "that members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area." This recommendation was also made under the authority of article 39 of the Charter.

The President's action seeks to accomplish the objectives of both resolutions. The continued defiance of the United Nations by the North Korean authorities would have meant that the United Nations would have ceased to exist as a serious instrumentality for the maintenance of international peace. The continued

existence of the United Nations as an effective international organization is a paramount United States interest. The defiance of the United Nations is in clear violation of the Charter of the United Nations and of the resolutions adopted by the Security Council of the United Nations to bring about a settlement of the problem. It is a threat to international peace and security, a threat to the peace and security of the United States and to the security of United States forces in the Pacific.

These interests of the United States are interests which the President as Commander in Chief can protect by the employment of the Armed Forces of the United States without a declaration of war. It was they which the President's order of June 27 did protect. This order was within his authority as Commander in Chief.

APPENDIX

[Excerpt from Congressional Record of July 10, 1941, pp. 5930-5931]

USE OF LAND AND NAVAL FORCES OF THE UNITED STATES FOR PROTECTION PURPOSES

The United States has used its land and naval forces in foreign territories during peacetime on many occasions during the past hundred years. They have been landed, *inter alia*, for the protection of American citizens and American territory, as in the instance of the Spanish Floridas in 1817; for the protection of American citizens located in disturbed areas; for the suppression of piracy; for meting out punishment (in an early day) to lawless bands who had murdered American citizens; for the suppression of local riots and the preservation of order; for the purpose of securing the payment of indemnity; and to prevent massacre.

Although there may have been earlier instances, the first instance that has been drawn to my attention of the landing of United States troops occurred in 1812 when President Monroe sent forces to expel freebooters who had taken possession in the name of the Governments of Buenos Aires and Venezuela of Amelia Island, off the coast of Florida. Although the island belonged to Spain the measure was not taken in concert with the Spanish Government or the local authorities of Florida. I find that as late as 1932 American forces were sent to Shanghai owing to the Sino-Japanese conflict as a measure of protection for the lives and property of American citizens in that area.

A list of various landings of American forces and the occasions therefor follows:

Place	Year	Purpose
1. Amelia Island	1812	To protect Spanish island from foreign invasion or control.
2. Spanish Florida.....	1814	To expel the British.
3. Cuba	1823	To pursue and break up an establishment of pirates.
4. Puerto Rico	1824	To atone for insult to the flag and procure apology.
5. Falkland Islands.....	1831	To procure the release of certain vessels and their crews.
6. Island of Sumatra.....	1832	To punish natives for attack and seizure of American ship and murder of crew.
7. Fiji Islands.....	1840	To punish natives for an attack upon Americans.
8. Samoa	1841	To punish natives for the murder of a white man.
9. Island of Johanna.....	1851	To collect indemnity (display of force).
10. Japan	1853-54	To procure a commercial treaty.
11. China.....	1854	American and British forces acted jointly during civil war in China to protect American and British nationals.
12. Greytown.....	1854	To protect American property rights.
13. Fiji Islands.....	1855	To protect American life.
14. Uruguay.....	1855	To protect American consulate and American life and property.
15. China.....	1856	To prevent injury to American interests.
16. Egypt.....	1858	To secure protection of American citizens.
17. Uruguay.....	1858	To protect life and property of foreign residents; action taken at request of regular Government in conjunction with forces of other powers.
18. Fiji Islands.....	1858	To punish natives for murder of two Americans.
19. China.....	1859	To restore order in Shanghai.
20. Kisembo, Africa.....	1860	To prevent destruction of American property.
21. Panama.....	1860	To restore order during insurrection.
22. Japan.....	1863	To obtain redress for an unwarranted attack upon an American vessel.
23. Do.....	1864	To open the Straits of Shimonoseki in conjunction with other powers; action taken at request of the Tycoon's Government.
24. Formosa.....	1867	To punish natives who had murdered the crew of a wrecked American bark.
25. Japan.....	1868	To protect American interests during local hostilities.
26. Uruguay.....	1868	To protect American interests at request of local authorities.
27. Korea.....	1871	To capture Korean forts after a surveying party which had been granted permission to make certain surveys and soundings in the interest of science and commerce had been treacherously attacked.

Place	Year	Purpose
28. Honolulu	1874	To suppress riotous proceedings at request of local authorities.
29. Mexico	1876	To preserve order, pending arrival of regular Government forces after evacuation of revolutionists.
30. Egypt	1882	To suppress riots and protect American interests.
31. Korea	1888	To protect American residents.
32. Samoa	1888	To establish a stable government; joint action by United States, Great Britain, and Germany.
33. Haiti	1888	To obtain the release of an American merchant vessel captured by a Haitian war vessel.
34. Navassa Island	1891	To protect American life and property.
35. Chile	1891	To protect American consulate at Valparaiso.
36. Hawaii	1893	To protect life and property at the time of the deposition of the Queen.
37. Brazil	1893	To protect American commerce in Brazilian waters during a revolt of the Brazilian Navy; it was reported that the insurgents had the assistance of certain European powers.
38. Korea	1894	To protect the American Legation.
39. Samoa	1899	To assist in settling controversy over succession to Samoan throne.
40. Nicaragua	1899	To protect life and property, upon petition of foreign merchants during insurrection.
41. China	1900	To protect life and property at time of Boxer uprising.
42. Dominican Republic	1903	To protect American interests.
43. Do	1903	To protect American lives and property and to prevent fighting within certain area.
44. Honduras	1907	To protect American consulate and American interests during hostilities between Honduras and Nicaragua.
45. Nicaragua	1910	To protect American life and property during revolution; to prevent the bombardment of Bluefields.
46. Honduras	1910-11	To protect American interests during revolutionary disturbances.
47. China	1911	To protect the consulate and property of American citizens of Foochow.
48. Do	1911	To protect American consulate and American citizens at Chinkiang.
49. Do	1911	To increase the guard of the American Legation at Peking.
50. Do	1912	To keep open the railroad from Peking to the sea.
51. Do	1912	To extend protection.
52. China, Swatow	1912	To save a woman and some children and conduct them to safety.
53. Cuba	1912	To quell uprising; to protect American life and property.
54. Honduras	1912	To protect an American-owned railroad.
55. Nicaragua	1912-13	To protect American property, at request of Government of Nicaragua.
56. Dominican Republic	1912-14	To protect Dominican customshouses, in conformity with the provisions of the treaty of 1907.
57. China, Chapei	1913	To prevent disorder and give protection.
58. China, Shanghai	1913	For protection.
59. Paris	1914	To act as a guard for the American Embassy.
60. Mexico, Veracruz	1914	To enforce demands for amends for affronts and indignities to an officer of the U. S. S. <i>Dolphin</i> and the crew of the whaleboat of the <i>Dolphin</i> .
61. Haiti	1914 and 1915	To protect American life and property during disturbed conditions.
62. China, Nanking	1916	To quell a riot.
63. Mexico	1916-17	To pursue Villa after his invasion of American territory.
64. Dominican Republic	1916-24	To suppress revolution; to establish military government.
65. Cuba	1917-19	To protect American consulate and American lives and property during insurrection and banditti fighting.
66. China, Chungking	1918	For protection during a political crisis.
67. Honduras	1919	To cooperate with the forces of Honduras in maintaining order in a neutral zone.
68. Panama	1919	To extend protection, at request of Panamanian Government.
69. China, Kiukiang	1920	To restore order during riot.
70. China, Youchow	1920	To guard American property.
71. Guatemala	1920	To protect the American Legation during local fighting.
72. Smyrna	1922	To protect American life and property during the advance of Turkish forces on that city.
73. China, Tungehow	1922	To protect against possible violence by retreating Fengtien forces.
74. China, Foochow	1922	To protect American nationals.
75. China, Masu Island	1923	To protect Americans against brigandage.
76. Honduras	1924	To protect American life and property during unsettled conditions; intermittent landing of forces.
77. Do	1925	To protect American property.
78. Panama	1925	To extend protection during unsettled conditions, at request of Panamanian Government.
79. Nicaragua	1926	To protect life and property during revolution.
80. China, Hankow	1927	To protect lives and interests of Americans during mob-riot disturbances.
81. China, Shanghai	1927	To protect American lives and property.
82. China, Nanking	1927	To afford protection against looting and general disorder.
83. China, Chinkiang	1927	To extinguish fire on American property caused by gunfire.
84. China, Canton	1927	To aid in evacuation.
85. China, Shanghai	1932	To strengthen forces at Shanghai, as a measure of protection for the lives and property of American nationals.

V. KOREA

CHRONOLOGY OF SIGNIFICANT EVENTS, JULY 1, 1949, TO JUNE 30, 1950

July 1, 1949: Korean Military Advisory Group (KMAG) established.

August 4, 1949: North Korean forces launch a new and large-scale invasion of the Ongjin Peninsula, but are repulsed after heavy fighting.

August 6, 1949: Generalissimo Chiang Kai-shek arrives in Korea for talks with President Rhee on projected Pacific Pact.

August 9, 1949: North Korean radio calls for revolt against the government of Syngman Rhee in South Korea.

August 23, 1949: The Republic of Korea is formally admitted to membership in the World Health Organization as its sixty-fifth member.

September: The "Democratic People's Republic of Korea" fails to hold the all-Korea election called for in the manifesto issued on June 28, 1949, by the Communist-dominated Democratic Front for the attainment of unification of the fatherland. No explanation is given for the failure to carry out previously announced plans.

September 9-20, 1949: Extremely heavy guerrilla warfare commences across thirty-eighth parallel; heavy casualties are reported on both sides.

September 22, 1949: Steamship *Kimball Smith* defects to Chinnampo, North Korea, with ECA employees Willis and Meschter held captive by crew.

September 28, 1949: The United States Congress passes the Mutual Defense Assistance Act, which authorizes expenditure of \$27,000,000 for military aid to Iran, the Philippines, and the Republic of Korea.

October 2, 1949: The United States presents to the Soviet Foreign Office a note requesting that the U. S. S. R. assist in determining the location of the missing ship and ECA officials and facilitate their return.

Two hundred and forty-nine guerrillas are executed on Cheju Island with approval of President Rhee as a result of riots earlier in year. Those executed include 1 officer and 20 enlisted men of Ninth Regiment, formerly stationed on Cheju.

October 6, 1949: "Democratic People's Republic of Korea" recognizes the People's Republic of China.

October 10, 1949: The President signed Public Law 343, the third deficiency bill appropriating \$30,000,000 for economic assistance to the Republic of Korea during the period July 1-October 15, 1949, and covering sums appropriated by Public Law 154 of June 30, 1949, which permitted spending on the basis of the annual budget estimate for 1 month ending July 30, 1949, and Public Law 196 approved August 1, 1949, permitting the continuation of spending on the same basis until August 16, 1949.

October 12, 1949: S. 2319 authorizing an appropriation of \$120,000,000 for economic assistance to the Republic of Korea passed by the Senate.

October 14, 1949: The U. S. S. R. rejects the request made in the American note of October 2, stating that the matter is within the province of the "Democratic People's Republic of Korea."

The Foreign Minister of the "Democratic People's Republic of Korea" sends a letter to the Secretary General of the UN challenging

the legality of UN activity in Korea and expressing determination to drive the UN Commission out of Korea.

North Korean forces begin a new offensive on the Ongjin Peninsula, and severe fighting continues for several days.

October 22, 1949: The UN General Assembly decides to continue the UN Commission on Korea (UNCOK) and to charge it to investigate developments "which might lead to or otherwise involve military conflict in Korea."

The Economic Commission for Asia and the Far East (ECAFE) admits the Republic of Korea as an associate member and rejects the application of the "Democratic People's Republic of Korea."

October 25, 1949: The Home Minister of the Republic of Korea announces that "SKLP (South Korea Labor Party) Extermination Week" will begin on November 1; those who wish to repent and join the National Guidance Alliance (an organization for converted ex-Communists) are urged to do so before that date.

October 28, 1949: The President of the United States signs Public Law 430, second supplemental appropriation bill, appropriating another \$30,000,000 for economic aid to the Republic of Korea during the period October 15, 1949, to February 15, 1950.

October 29, 1949: The United States presents to the U. S. S. R. a second note concerning the Steamship *Kimball Smith* and the two American officials of the Economic Cooperation Administration held in northern Korea.

November 7, 1949: The "Democratic People's Republic of Korea" recognizes the (East) German Democratic Republic.

November 14, 1949: The U. S. S. R., replying to the American note of October 29, agrees to inform the North Korean authorities, through the Soviet Ambassador in Pyongyang, of the United States request for information.

November 15, 1949: In a radio broadcast, the "Democratic People's Republic of Korea" acknowledges for the first time the presence of the two American officials in northern Korea and states that the authorities in the north are willing to turn them over to the American Government.

November 23, 1949: The Republic of Korea is admitted to membership in the UN Food and Agriculture Organization.

November 24-25, 1949: Village people's committees are elected in North Korea.

November 26, 1949: The new Secretary General of the UN Commission on Korea and other staff members arrive in Seoul.

December 3, 1949: Township people's committees are elected in North Korea.

December 11, 1949: Meschter and Willis, the two American officials of the Economic Cooperation Administration held in North Korea since September 22, are turned over to a representative of the American Embassy at the thirty-eighth parallel.

December 14, 1949: Kim Il Sung, Premier of the "Democratic People's Republic," and party leave North Korea for Moscow to participate in the celebration of Stalin's seventieth birthday.

December 17, 1949: Republic of Korea approved program discussed with them by MDAP Survey Team.

December 26, 1949: MDAP Survey Team arrives in Republic of Korea. Chung Paek, prominent and long-time Communist arrested

in South Korea in late November on his return from North Korea, denounces the North Korean regime and pledges his allegiance to the Republic, lending prominence to the National Guidance Alliance and the South Korea "Voluntary Surrender Week."

January 12, 1950: Ambassador Philip Jessup speaks before the National Assembly of the Republic of Korea.

January 18, 1950: UN International Children's Emergency Fund (UNICEF) announces plans for a \$550,000 child welfare program in Korea; Dr. Clarence W. MacCharles, of Canada, is named director.

January 19, 1950: H. R. 5330 authorizing the appropriation of \$120,000,000 for economic assistance to the Republic of Korea defeated in the House of Representatives by a vote of 192-191.

January 26, 1950: The military defense assistance program and Korea Military Advisory Group (KMAG) agreements are signed.

February 8, 1950: The UN Economic and Social Council (ECOSOC) at Lake Success endorses the Republic of Korea's application by membership in the United Nations Educational, Scientific, and Cultural Organization (UNESCO).

February 9, 1950: S. 2319 authorizing the appropriation of \$120,000,000 for economic assistance to the Republic of Korea for fiscal year 1950 with an amendment extending aid to China passed by the House of Representatives.

February 10, 1950: S. 2319, as amended by the House, passed by the Senate; President Rhee hands foreign correspondents message of gratitude for passage of the aid bill.

February 14, 1950: President Rhee, accompanied by Foreign Minister, Director of Office of Public Information (OPI), Deputy Chief of Staff of Korean Army, and staff, departs for Tokyo for consultation.

February 15, 1950: Korea requests spare parts and ammunition for 10 AT6 planes, and State Department allocates money to Defense Department.

February 17, 1950: The World Health Organization grants the Republic of Korea \$750,000 for public health program for fiscal year 1950.

February 24, 1950: The Republic of Korea signs a contract with Japan for export of 100,000 metric tons of rice to Japan at \$142 per ton.

February 27, 1950: President Truman transmits to the United States Congress requests for appropriation of \$60,000,000 for aid to the Republic of Korea for fiscal year 1950 and for the authorization of \$100,000,000 for economic assistance for fiscal year 1951.

March 3, 1950: Headquarters of the Special Army-Police Joint Search Organ in South Korea announces arrest of 196-man "destruction party" led by Ch'oe Yung Ch'oo. The party allegedly was taking orders from the North Korean Vice Minister of Internal Security in order to stage a revolt in March.

March 4, 1950: The Secretary General of the UN announces that, in compliance with a request from the UN Commission on Korea, eight observers are being sent to Korea to observe clashes along the 38th parallel.

March 15, 1950: Korean program submitted by Department of Defense to Department of State.

March 20, 1950: KMAG agreement ratified by Korean legislature.

March 29, 1950: Korean military aid program approved by State Department.

March 30, 1950: The South Korea Assembly ratifies the Korea Military Advisory Group and military defense-assistance program agreement by a vote of 90 to 1.

March 31, 1950: The United States House of Representatives passes H. R. 7797, authorizing the appropriation of \$100,000,000 for aid to the Republic of Korea during fiscal year 1951.

April 3, 1950: Korean Ambassador in Washington (John M. Chang) is handed United States aide-memoire regarding financial situation in Korea and ECA assistance.

April 4, 1950: United States Ambassador to Korea (John J. Muccio) hands United States aide-memoire to President Rhee. Ambassador Muccio is subsequently recalled for consultation regarding financial situation in Korea.

April 11, 1950: South Koreans request armament and ammunition for PC boats (sec. 408 (e) MDA Act).

April 19, 1950: The Office of Public Information of the Republic of Korea announces that a general election for members of the National Assembly is to be held on May 30.

April 20, 1950: Air Force directed to supply machine guns, spare parts, and ammunition to South Korea under section 408 (e) of the MDA Act on patrol craft sailing from west coast in May 1950.

April 24, 1950: The Foreign Minister of the Republic of Korea invites the United Nations Commission on Korea to observe general elections in the Republic. Allocation made by Department of State to Defense Department of funds to carry out supply action by Air Force.

April 28, 1950: Fulbright agreement between United States and Korea (ROK) is signed.

May 5, 1950: Senate passed S. 3304, authorizing the appropriation of 100 million dollars for economic assistance to the Republic of Korea.

May 15, 1950: State Department authorizes additional Army and Coast Guard military assistance to South Korea.

May 18, 1950: House and Senate conferees agreed on H. R. 7797.

May 23, 1950: H. R. 7797 as reported by conference passed by House. Allocation by State Department to Defense Department of funds to carry out supply action.

May 25, 1950: H. R. 7797 as reported by conference passed by Senate. Joint Chiefs of Staff directed to program the additional Army and Coast Guard items authorized May 15, 1950.

May 30, 1950: National Assembly elections are held in the Republic of Korea. About 90 percent of the electorate votes, and the established political parties, including both the supporters of and the opposition to President Rhee, retain only a small percentage of their Assembly membership; over 65 percent of the seats go to independents.

June 5, 1950: President approves Foreign Economic Assistance Act of 1950 (Public Law 535), including authorization of \$100,000,000 economic aid to Korea.

June 7, 1950: The North Korea regime proposes a general all-Korea election on August 5, a meeting of a Supreme Korean Assembly on August 15, and the holding of a preliminary Joint North-South

Conference near the thirty-eighth parallel. The proposal specifically forbids the participation of members of the UN Commission on Korea, President Rhee, Lee Bum Suk, and other so-called national traitors.

June 19, 1950: The new National Assembly of the Republic of Korea convenes for its first meeting. The final turn-over in Assembly membership is approximately 85 percent.

June 20, 1950: North Korea makes a second unification proposal, varying only slightly from original offer. This second proposal emanates from the North Korean Government directly rather than from the Democratic Front, the political instrument for unification propaganda.

June 25, 1950: The North Korea People's Army and border constabulary forces invade South Korea and launch amphibious landings, supported by air attacks on Seoul and other strategic locations. General MacArthur directed to send available MDAP equipment from stocks of the Far Eastern Command.

June 25, 1950: The United States sponsors resolution before UN Security Council that armed attack on Republic of Korea by forces from North Korea constitutes breach of the peace and calling for immediate cessation of hostilities. Resolution passes 9 to 0.

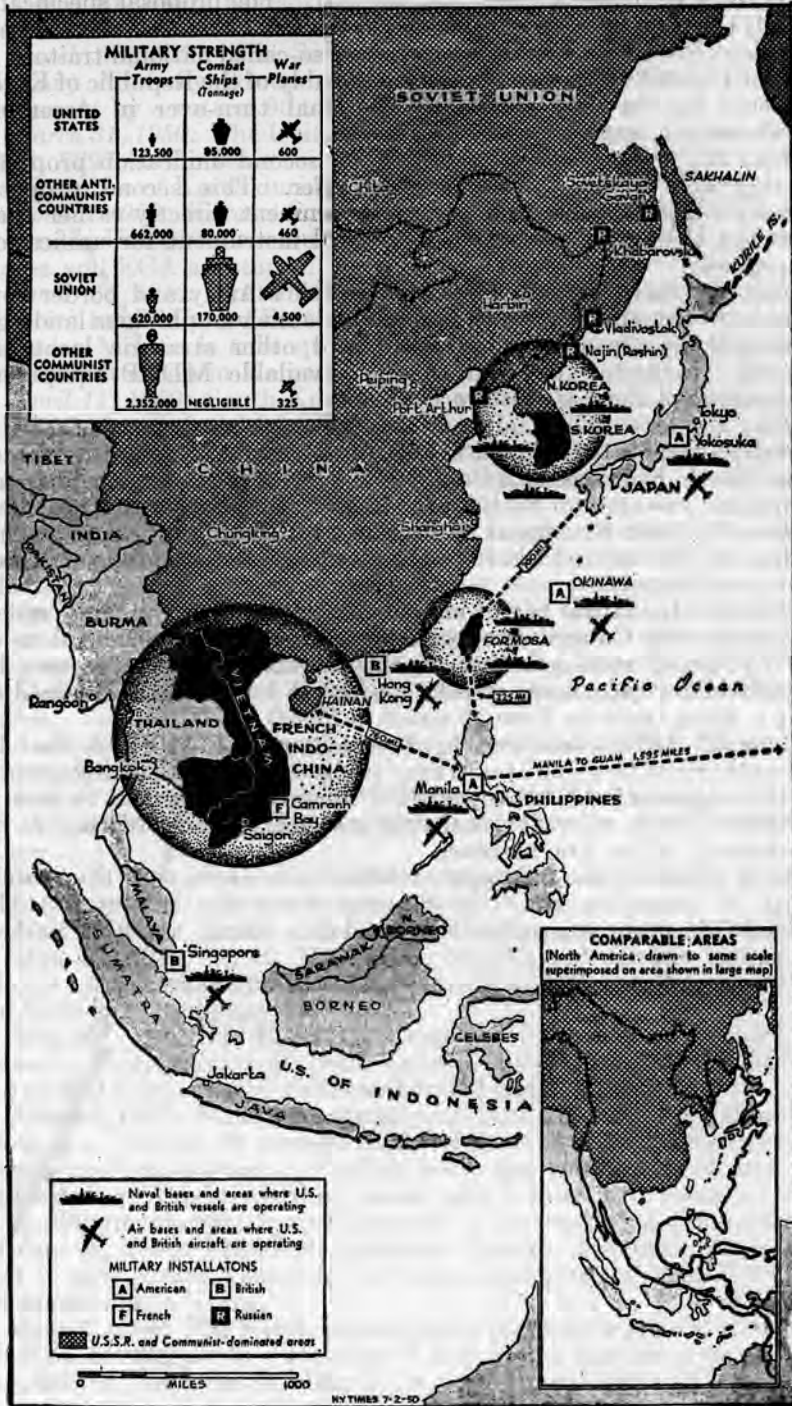
June 27, 1950: Statement by President of United States announcing he has ordered air and sea forces to give troops of Republic of Korea cover and support.

General MacArthur begins implementation of the President's order. UN Security Council resolution adopted, calling upon members of UN to furnish such assistance to the Republic of Korea as may be necessary to repel armed attack. Adopted 7 to 1 (later changed to 8 to 1, when India on June 29 voted in favor).

June 30, 1950: Statement by President of United States that he has authorized General MacArthur to use certain supporting ground units, authorizing USAF to conduct missions on specific targets in northern Korea wherever militarily necessary, and ordering naval blockade of entire Korean coast.

As of this date, the following countries have announced they would assist in enforcing the UN Security Council's resolutions: The United Kingdom, Australia, New Zealand, China, and the Netherlands.

Circles indicate three most critical areas for which President Truman ordered immediate support



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1st Session }

COMMITTEE PRINT

TROOPS ABROAD

POWERS OF THE PRESIDENT TO SEND THE ARMED FORCES OUTSIDE THE UNITED STATES

Prepared for the use of the joint committee made up
of the Committee on Foreign Relations and the
Committee on Armed Services of the Senate



FEBRUARY 28, 1951

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POWERS OF THE PRESIDENT
TO SEND THE ARMED FORCES
OUTSIDE THE UNITED STATES

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II

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FOREWORD

During recent public discussion, congressional debate, and hearings on Senate Resolution 8, relative to the implementation of the North Atlantic Treaty, questions have repeatedly been raised about the powers of the President to send Armed Forces outside the United States. In order that the Congress and the American people may have before them a careful review and analysis of the President's power from the Executive point of view, I asked the executive departments to prepare the study which follows. The publication of this study by the Committee on Foreign Relations and the Committee on Armed Services does not imply either the acceptance or the rejection of its conclusions which must rest on their own persuasive power.

TOM CONNALLY, *Chairman.*

FEBRUARY 28, 1951.

III

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(iv)

POWERS OF THE PRESIDENT TO SEND THE ARMED FORCES OUTSIDE THE UNITED STATES

I. THE QUESTION

It is contended that the President does not have the power at the present time to send the Armed Forces abroad in the interest of the United States, unless there is prior authorization by the Congress. This view has been widely asserted in recent months. (See 97 Congressional Record 58ff, January 5, 1951; 97 Congressional Record 531ff, January 22, 1951; S. Res. 8, 82d Cong., 1st sess., January 8, 1951; H. J. Res. 9, 82d Cong., 1st sess., January 3, 1951.)

It is the purpose of this memorandum to determine whether the President has the power to employ the Armed Forces of the United States abroad under present circumstances, with particular reference to Korea and the North Atlantic Treaty, and to discuss the extent of such power and the objectives for which it may be exercised.

II. SUMMARY OF CONCLUSIONS

A survey of the authorities leads to the following conclusions:

The President was acting lawfully and constitutionally in sending troops to Korea in response to the resolution of the United Nations. He will be acting lawfully and constitutionally if he sends troops to Europe to implement the North Atlantic Treaty.

The President's powers in this connection are derived from those portions of the Constitution which make him the Commander in Chief of the Army and the Navy of the United States, which give him special responsibilities in the field of foreign affairs and which impose upon him the duty to take care that the laws be faithfully executed (Constitution, art. II, sec. 2, clause 1; art. II, sec. 2, clause 2; art. II, sec. 3).

In addition to these specific grants of authority the courts have recognized that the President, as that branch of the Government vested with the "Executive power" (*ibid.*, art. II, sec. 1), has certain powers in the field of foreign affairs which are not conferred expressly by the Constitution but are derived from the fact that the United States is a sovereign nation, with rights and obligations under the law of nations. In the field of foreign affairs the courts have called the President the "sole organ of the Nation." (*U. S. v. Curtiss-Wright*, 299, U. S. 304, 318ff; see *Cunningham v. Neagle*, 135 (U. S. 1, 64 (1889).)

While the Congress has power to declare war, to raise and support Armies, to make rules for the Government and regulation of the land and naval forces, and other powers important and necessary to the conduct of foreign policy and to the defense of the United States (Constitution, art. I, sec. 8, clause 11; art. I, sec. 8, clause 12; art. I,

sec. 8, clause 13; art. I, sec. 8, clause 14), these powers are not to be so construed as to curb or cripple the powers of the President as Commander in Chief. (See *Swain v. U. S.*, 28 Court of Claims, pp. 173, 221.)

In time of war, the powers of the President as Commander in Chief are full and complete (*Flemming v. Page*, 9 How., p. 615 (1850)).

The power to declare war, which is vested in the Congress by the Constitution, does not impair the authority of the President, in the absence of a declaration of war, to do all that may be needful as Commander in Chief to repel invasion, to repress insurrection, and to use the Armed Forces for the defense of the United States (*The Prize Cases*, 2 Black 635, 666 ff.).

Since the Constitution was adopted there have been at least 125 incidents in which the President, without congressional authorization, and in the absence of a declaration of war, has ordered the Armed Forces to take action or maintain positions abroad. These incidents range from the war against the Barbary pirates in Jefferson's time, to the occupation of Iceland under President Franklin D. Roosevelt. In many instances of this character the President has acted in accordance with the general opinion of Congress or has sought congressional ratification later. Many such incidents, however, have not been referred to Congress at all.

While the most numerous class of these incidents is that involving the protection of American property or American citizens in foreign lands, many of them—such as the intervention in Texas in 1845 and in Mexico in 1917, the intervention in Panama in 1903-04, the dispatch of troops to Iceland in 1941—are not concerned with the interests of individual citizens but with the general defense of the United States or the protection of some national interest or some concern of American foreign policy.

In addition to this power to use the Armed Forces for the defense of the country and its foreign policy interests, the President has the authority and the duty to carry out treaties of the United States. Treaties, duly approved, are the law of the land and it becomes the President's duty to "take care that they be faithfully executed" as laws (Constitution, art. II, sec. 3; *Ware v. Hylton*, 3 Dall. 199 (1796); *U. S. v. Schooner Peggy*, 1 Cr. 103, 110 (1801)).

The President has discretion to decide what measures, within the sphere of his constitutional powers, shall be adopted to carry out the purpose of a treaty. (See *Ware v. Hylton* (*supra*), at p. 272; 5 Wheaton, appendix, note I, 26.) He does not depend on implementing legislation when the purpose of the treaty can be served by something that he has the power to do. (See Taft, W. H., *Our Chief Magistrate and His Powers*, 1916, pp. 85-88, 98-99.) The President can go beyond implementing legislation in order to carry out a treaty (Taft, *idem*, pp. 93-94; see also Works of Alexander Hamilton (J. C. Hamilton, edition) VII, 76 ff, *Charlton v. Kelly*, 229 U. S. 449, 473 (1912)).

In sending Armed Forces to carry out a treaty, the President does not have to have the statutory authorization of Congress. (See Taft, *op. cit.* p. 88; President Tyler, in Richardson J. E., *Messages and Papers of the Presidents*, IV, pp. 317-318.)

In the case of Korea, the President, by virtue of his powers as Commander in Chief, acted to carry out recommendations made by the Security Council in accordance with the Charter of the United Nations—a treaty to which the United States is a party. The United Nations Participation Act of 1945, which was adopted to implement this treaty, does not prohibit the President from acting as he did with respect to Korea.

It has been contended that section 6 of this act forbids the President to make Armed Forces available to the Security Council unless, in accordance with article 43 of the Charter, special agreements with respect to such forces have been entered into with the Security Council and approved by the Congress. As is well known, Russian opposition has prevented the making of any such agreements between the members of the United Nations and the Security Council.

Section 6 of the United Nations Participation Act, however, does not prevent the President, in the absence of such agreements, from sending troops to carry out recommendations of the Security Council. The language of the act does not, by its terms, attempt to interdict action which the President may take by virtue of his own power and responsibility in foreign affairs. If the act were construed to prohibit such action, it would nullify the intended purpose and effect of the treaty it is supposed to implement.

With respect to Europe, the President has authority to send troops there not only because of the defense needs of the United States, but also because of the purposes and objectives of the North Atlantic Treaty. The legislative history of the ratification of this treaty negates the thought that prior congressional authorization is necessary before troops can be sent to Europe. The Mutual Defense Assistance Act of 1949 implements the treaty with respect to the provision of equipment, material, and services, but contains no limitations upon the power of the President in other respects.

The magnitude of our present problems in world affairs makes it clear that whatever the respective constitutional powers of the President and the Congress may be, there is great need for close collaboration and cooperation. It will be impossible for the President to carry out for any long period of time the objectives of our foreign policy without appropriations and authorizing legislation of various kinds from the Congress. The circumstances of the present crisis make any debate over prerogatives and power essentially sterile, if not dangerous to the success of our foreign policy. Congressional approval has been sought and obtained with respect to the major elements of our foreign policy since 1945. This has not created any limitations on the powers of the President. It has created an atmosphere in which cooperation and collaboration on both sides are expected, and are, therefore, more necessary than ever before.

III. DISCUSSION

A. INTRODUCTORY

In approaching this field of constitutional law it should be noted that the Constitution does not clearly and explicitly define the respective powers of the President and the Congress in the field of military and foreign affairs. While the Constitution allocates certain large

powers in general terms to one or the other, it does not prevent conflicts between them. Such conflicts have been common in American history and of tremendous political and historical importance to the country. Over the years certain defined patterns of conduct have grown up based upon the actions taken by the President or the Congress. These acts are not precedents in the legal sense, but in this field of constitutional law they have great value in defining the meaning of the Constitution.

By the nature of things the courts have not been called upon to decide the major conflicts between the President and the Congress in this field. Such clashes seldom present justiciable issues. Where private rights have been involved, the courts have been very careful not to infringe upon the powers of either the President or the Congress. Where possible, they have side-stepped the issue. Where this has not been possible, they have acted almost without exception to affirm the views taken by the President as to the extent of his own authority.

It will not be possible, therefore, in this memorandum to cite judicial authority for some of the major propositions advanced. Some of these propositions rest upon the successful exercise of presidential power by past Presidents. Others are buttressed by commentators or writers in this field, including such founders of the country as Alexander Hamilton and John Marshall.

Illustrative incidents may be found throughout the entire range of American history since the Articles of Confederation, and this memorandum should not be regarded as an exhaustive treatment of historical examples or constitutional authorities, but only as a broad preliminary survey.

B. POWERS OF THE PRESIDENT AND THE CONGRESS

1. *Of the President*

The Constitution grants powers to the President which are relevant to his authority to send American troops abroad. Similarly, the Congress is endowed with constitutional powers affecting the Armed Forces and foreign affairs which have considerable bearing on the subject.

One of the widest powers conferred upon the President by the Constitution is the function of acting as Commander in Chief of the Army and Navy of the United States (Constitution, art. II, sec. 2, clause 1).

It is generally admitted that in time of war the President's powers as Commander in Chief are full and complete. As former Chief Justice Hughes has said:

The power to use an army is coextensive with the power to make war; and the army may be used wherever the war is carried on, here or elsewhere. There is no limitation upon the authority of Congress to create an army and it is for the President as Commander in Chief to direct the campaigns of that army wherever he may think they should be carried on. (Hughes, Chas. E., War Powers Under the Constitution, S. Doc. No. 105, 65th Cong., 1st sess. (1917)—an address delivered by former Justice Hughes before the American Bar Association.)

This plenary power as Commander in Chief in time of war has been emphasized by Chief Justice Taney in the following words:

As Commander in Chief he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the

manner he may deem most effectual to harass and conquer and subdue the enemy. He may invade the hostile country and subject it to the sovereignty and authority of the United States (*Fleming v. Page*, 9 How. p. 615 (1850)).

In time of peace the President is just as much Commander in Chief as he is in time of war. His power over the Armed Forces remains the same. But in time of peace the exercise of that power is directed, not at subduing an enemy, but at broader considerations of national policy in general. In particular, the peacetime functions of the Commander in Chief are related to our defense needs and to the responsibilities of the President in the field of foreign affairs.

The President has a preeminent power to conduct the foreign relations of the United States. This power is not explicitly defined by the Constitution, but is derived from various clauses.

The first of these is the treaty-making power authorizing the President—

by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators present concur (*ibid.* clause 2).

Also significant are the powers to appoint and receive ambassadors and ministers (*ibid.*, also sec. 3).

The broad nature of the authority derived from these functions is described by the Supreme Court in the following terms:

In this vast external realm (foreign affairs), with its important, complicated, delicate, and manifold problems, the President alone has the power to speak or listen as a representative of the Nation. He makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it. As (John) Marshall said in his great argument of March 7, 1800, in the House of Representatives, "the President is the sole organ of the Nation in its external relations, and its sole representative with foreign nations" (*Annals*, 6th Cong., col. 613). The Senate Committee on Foreign Relations at a very early day in our history (February 15, 1816) reported to the Senate, among other things, as follows:

"The President is the constitutional representative of the United States with regard to foreign nations. He manages our concerns with foreign nations and must necessarily be most competent to determine when, how, and upon what subjects negotiation may be urged with the greatest prospect of success. For his conduct he is responsible to the Constitution.

"The committee consider this responsibility the surest pledge for the faithful discharge of his duty. They think the interference of the Senate in the direction of foreign negotiations calculated to diminish that responsibility and thereby to impair the best security for the national safety. The nature of transactions with foreign nations, moreover, requires caution and unity of design, and their success frequently depends on secrecy and dispatch" (U. S. Senate, Reports, Committee on Foreign Relations, vol. 8, p. 24).

It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary, and exclusive power of the President as the sole organ of the Federal Government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution (*U. S. v. Curtiss-Wright Corporation*, 299 U. S. 304, 319-20 (1936)).

In addition the President's powers in the field of international affairs are enlarged by the constitutional injunction that "he shall take care that the laws be faithfully executed" (Constitution, art. II, sec. 3). This duty extends to executing treaties of the United States, which are the law of the land (*ibid.*, art. VI, clause 2), and may in certain cases involve the sending of troops abroad.

It is important to note that the Constitution treats the powers of the President very differently from those of Congress.

While the powers of Congress are expressly enumerated and limited, the powers of the President are outlined in very general terms. Professor Corwin says:

Article II is the most loosely drawn chapter of the Constitution (Corwin, E. S., *The President; Office and Powers*, 3d ed. 1948, p. 2).

The first sentence of article II states that—

The executive Power shall be vested in a President of the United States of America.

There has been much debate as to whether these words constitute a grant of power or whether they are merely a description of the functions of the President. Whatever the merits of this debate may be with respect to the domestic powers of the President, it is clear that the words in question have been construed to give the President wide powers in the field of foreign affairs. Chief Justice Marshall laid the proposition down in broad terms. He did this first in a speech made when he was a Member of the House of Representatives on March 7, 1800:

* * * The President is the sole organ of the Nation in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made on him.

He possesses the whole Executive power. He holds and directs the force of the Nation. Of consequence, any act to be performed by the force of the Nation is to be performed through him (5 Wheaton, appendix, note I, p. 26, cited above in the excerpt from the opinion of the Court in *U. S. v. Curtiss Wright*).

Marshall followed this up in *Marbury v. Madison*, when he delivered the opinion of the Court:

By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. * * * The subjects are political: they respect the Nation, not individual rights and, being entrusted to the Executive, the decision of the Executive is conclusive. The application of this remark will be perceived, by adverting to the act of Congress for establishing the Department of Foreign Affairs. This officer (the Secretary of State), as his duties were prescribed by that act, is to conform precisely to the will of the President: he is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examinable by the courts (*Marbury v. Madison*, 1 Cr. 137, 165-166 (1803)).

The bearing which these concepts have upon the authority of the President to send troops abroad will be discussed more fully below.

2. Of the Congress

The powers of the Congress which have a bearing on this subject are the power to declare war (Constitution, art. I, sec. 8, clause 11), the power to raise and support armies (ibid., clause 12), the power to provide and maintain a navy (ibid., clause 13), and the power to make rules "for the Government and regulation of land and naval forces" (ibid., clause 14).

Furthermore, the power of Congress to "lay and collect taxes" to "provide for the common defense" (ibid., clause 1)—the power of the purse—generally determines the size and character of the Armed Forces.

The Congress also has power, under article I, section 2, clause 18 of the Constitution, to make laws to carry into effect the treaty-making power, which is shared by the President with the Senate (ibid., art. II, sec. 2, clause 2).

From time to time these various powers have been appealed to as restricting, or as affording the Congress the power to restrict, the authority of the President with respect to sending troops abroad. Examples of historical conflicts between those powers and the powers of the President will be treated more fully below.

It is important to note that the provisions of the Constitution having to do with the State militia are not applicable to the present situation. Congress and the President both have powers with respect to the militia (ibid., art. I, sec. 8, clauses 15 and 16; art. II, sec. 2, clause 1), but it has been held that the Constitution prohibits the militia from being used outside the United States (29 Ops. Attorney General, 322; see Hughes, *Op. Cit.* pp. 6-7). Today, however, the Army of the United States, the Reserves, and the National Guard have taken the place of the old State militia system.

C. GROUNDS FOR PRESIDENTIAL ACTION IN SENDING TROOPS ABROAD

1. General constitutional limitations

While the Presidential powers mentioned above are very broad, they are, of course, not without limits. The President may not obviously use his power as Commander in Chief to overthrow the Constitution or destroy the laws of the United States. In *Ex parte Milligan* (4 Wall, 2 (1866)) the Supreme Court held that neither Congress nor the President, acting pursuant to their war powers, could abrogate the Bill of Rights, specifically the guarantees of grand-jury action and petit jury trial in the fifth and sixth amendments, in an area where the civil courts were in full operation.

Furthermore, it seems clear that the President may send troops abroad only in the interests of the United States or for the protection of the rights of its citizens.

2. Protection of United States citizens or their property abroad

In the absence of war or organized hostilities, and without congressional authorization, the President has frequently ordered the armed forces of the United States to protect United States citizens or their property abroad.

In one notable instance this authority was challenged in the courts. In 1854 Lieutenant Hollins, commanding the U. S. S. *Cyane*, bombarded the city of Greytown, Nicaragua, and burned most of it to the ground, in retaliation against a revolutionary government that had refused to make reparation for damage and violence done to citizens of the United States located there. The property destroyed by this bombardment included the belongings of one Durand, who upon his return to the United States sued Hollins for damages. Hollins demurred, pleading that he had acted pursuant to the orders of the President and the Secretary of the Navy. Mr. Justice Nelson of the Supreme Court, sitting as trial judge in the second circuit, decided for the defendant. The case did not reach the Supreme Court.

Several passages in the court's opinion are of interest. They have been cited by authoritative commentators, and clearly express accepted doctrines in this field.

As the executive head of the Nation, the President is made the only legitimate organ of the general Government, to open and carry on correspondence or negotiations with foreign nations, in matters concerning the interests of the country or of its citizens. It is to him, also, the citizens abroad must look for protection of person and of property, and for the faithful execution of the laws existing and intended for their protection. For this purpose, the whole executive power of the country is placed in his hands, under the Constitution, and the laws passed in pursuance thereof; and different departments of government have been organized, through which this power may be most conveniently executed, whether by negotiation or by force—a Department of State and a Department of the Navy.

Now as it respects the interposition of the Executive abroad, for the protection of the lives or property of the citizen, the duty must, of necessity, rest in the discretion of the President. Acts of lawless violence, or of threatened violence to the citizen or his property, cannot be anticipated and provided for; and the protection, to be effectual or of any avail, may, not infrequently require the most prompt and decided action. Under our system of government, the citizen abroad is as much entitled to protection as the citizen at home. The great object and duty of government is the protection of the lives, liberty, and property of the people composing it, whether abroad or at home; and any government failing in the accomplishment of the object, or the performance of the duty, is not worth preserving."

* * * The question whether it was the duty of the President to interpose for the protection of the citizens at Greytown against an irresponsible and marauding community that had established itself there, was a public political question, in which the government, as well as the citizens whose interests were involved, was concerned, and which belonged to the Executive to determine; and his decision is final and conclusive, and justified the defendant in the execution of his orders given through the Secretary of the Navy (*Durand v. Hollins*, 4 Blatch 451, 454-455; (1860) 8 Fed. Cas. 111, 112).

There have been, in all probability, at least 100 examples of Presidential action of this sort in which the protection and the interests of American citizens or American property abroad has been a factor. (For a complete list of all such incidents, see Rogers, J. G., *World Policing and the Constitution* (1945).) So common has this practice been that some people have been misled into thinking that the protection of American rights abroad is almost the only justification for the use of troops abroad in the absence of organized hostilities, and without the specific authority of Congress.

But this position is clearly erroneous.

3. Protection of the honor of the United States

The President is entitled, without the authority of Congress, to use the armed forces outside the United States for purposes more intangible than the protection of American citizens or American property. For example, in 1856, President Buchanan, without congressional authority, approved an attack of American war vessels upon the barrier forts of Canton, China, in order to avenge an alleged insult to the flag. (See Foster, *American Diplomacy in the Orient*, pp. 225-227, cited in Berdahl, C. A., *War Powers of the Executive in the United States* (1920), p. 51.)

Similarly, in April 1914, President Wilson ordered a force of sailors and marines to capture Vera Cruz in Mexico by way of reparation of Huerta's affront to the flag of the United States. This action was approved by Congress in a resolution adopted after Vera Cruz had been captured.

4. Expansion of foreign commerce

The President has also used the armed forces to open areas to the commerce of the United States as was done over a considerable period of years in Japan, from Commodore Perry's expedition in 1853 to the participation of the United States naval vessels in the international fleet which bombarded the Japanese town of Shimoneseiki in 1863. These various acts of force had no congressional authority. After the success of this intervention in Japan, the Senate ratified various treaties with that country.

Another instance of a similar nature having much the same objectives was the American participation in 1900 in an international expedition to Peking to put down the Boxer Uprising. President McKinley, without congressional authorization, ordered 5,000 American troops to take part in this expedition. Involved was the element of protecting American property and American citizens in China, but the ultimate objective of the expedition was broader. It was to bring about safety and peace in China, and protect rights established by treaties or by international law. (See note of Secretary of State Hay, July 3, 1900, cited in Foster, op. cit., p. 423.)

5. Defense of the United States

Such exercises of Presidential authority to protect the honor or the prestige of the United States are of less significance in the present situation than the incidents in which the President has used his power as Commander in Chief for the defense of the United States.

(a) *Doctrine of the prize cases.*—In *The Prize Cases* (2 Black 635, (1863)) the Supreme Court upheld the authority of the President to use the armed forces for the defense of the country without congressional authority. These cases arose out of steps taken by President Lincoln following his inauguration in 1861 and prior to the convening of Congress, to deal with the outbreak of the War Between the States. Among other acts taken by President Lincoln without congressional authority in this period was a blockade of the ports of the Confederate States. President Lincoln established this blockade by proclamation and enforced it with vessels of the United States Navy. Pursuant to this authority a number of merchant ships trying to run the blockade were captured, and their cargoes were confiscated. The owners of these cargoes sued in the Federal court to recover their value. Under international law, citizens of neutral countries may be punished for failure to respect a blockade established by one belligerent power against another in a war. Citizens of neutral countries are not, however, required to respect blockades established in time of peace or for other purposes than those of carrying on a war.

The plaintiffs, in *The Prize Cases* contended that the President could not lawfully establish a blockade of the southern ports because, at the time, there was no war between the Federal Government and the Confederate States. The Court held to the contrary, on the ground that the President was not only authorized but bound to resist hostile military forces, and that when he did the condition resulting was a war, whether Congress had declared war or not, and whether the war was a civil war or an international war.

Mr. Justice Grier, speaking for the Court, said:

The Constitution confers on the President the whole Executive power. He is bound to take care that the laws be faithfully executed. He is Commander in Chief of the Army and Navy of the United States and of the militia of the

several States when called into the actual service of the United States. He has no power to initiate or declare a war either against a foreign nation or a domestic State. But by the acts of Congress of February 28, 1795 * * * and 3d of March 1807 * * * he is authorized to call out the militia and use the military and naval forces of the United States in case of invasion by foreign nations, and to suppress insurrection against the government of a State or of the United States.

If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force, by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is nonetheless a war, although the declaration of it be "unilateral" (2 Black 635, 668 (1863)).

These cases established that the President, without congressional authorization, has all the authority necessary under the Constitution to use his powers for the defense of the United States in the event of an attack. If he may resist actual hostilities, it would seem to follow that he could anticipate the outbreak of hostilities and dispose the forces of the United States to meet such an outbreak. In effect, it would seem to be his duty to do so.

Our history shows this to be the case. In early days there were cases when the President sent troops into immediately adjacent territory, not as an act of war, and without the authorization of Congress, for the purpose of protecting the country. With the improvement of means of transportation and communication, the necessity of placing armed forces outside our borders for our protection has grown.

(b) *Sending troops to Florida (1818)*.—In 1818 the Indians in the South were receiving aid and support from the Territory of Florida, then a Spanish possession, in making raids upon settlements in our Southern States. The Spanish authorities failed to control the situation. President Monroe asserted his authority to send United States troops into Florida in pursuit of these Indians, and authorized Gen. Andrew Jackson to enter Florida for this purpose. General Jackson carried out his orders so well that he embarrassed President Monroe and his Cabinet, and was reprimanded for his conduct, but the authority of the President was not challenged. (See Berdahl, op. cit., pp. 65-66.)

(c) *Sending troops to Texas (1845)*.—In 1845 President Polk sent General Taylor and the American Army across the Nueces River in Texas. Texas, at that time, was not a part of the United States, although a treaty of annexation had been accepted by Texas and was then pending before the Senate. The area between the Nueces River and the Rio Grande was in dispute between Texas and Mexico. Mexican forces crossed the Rio Grande and attacked General Taylor's troops, thereby bringing on the Mexican War. This act of President Polk was vigorously attacked by various Members of Congress, including Senator Calhoun, but the Congress sustained the President, by adopting an act that recognized a state of war with Mexico.

This incident is also cited as an example of the power of the President to protect a territory in which the United States has an "inchoate interest." But whatever the status of the territory between the Nueces River and the Rio Grande at that time it was clearly not a part of the recognized area of the United States.

(d) *Sending troops to Latin-American countries*.—Under the Monroe Doctrine, American Presidents have taken a number of measures

to intervene in Latin-American countries and to send troops there for the purpose of protecting them against the intervention of foreign powers. These instances are usually not discussed as examples of the Presidential power to use the armed forces for the defense of the country. Yet it is clear that the Presidents themselves have often considered them in this light. President Grant's intervention in Santo Domingo (1869-71) is illustrative. Grant negotiated a treaty of annexation with Santo Domingo, which was rejected by the Senate. Nevertheless, he sent a strong naval force to that island with the statement that—

the Government of the United States is peculiarly interested in the exemption of the Dominican Republic both from internal commotions and from invasions from abroad.

A number of Senators attacked this action of the President and offered a resolution condemning it, but the resolution was laid on the table by a large majority. Professor Corwin in commenting on this incident remarked that it—

at least demonstrated the futility of attempting to confine the President's protective function to the mere duty of repelling invasion or immediate physical attack. (See Berdahl op. cit. pp. 48-49.)

(e) *Sending troops to Iceland (1941)*.—The most outstanding example, of course, of the President's power to send troops to outlying areas for the defense of the country was President Franklin D. Roosevelt's action in 1941 in sending American forces to Iceland.

This exercise of the Presidential power is very much in point. Like the situation in Korea, or that in Europe today, the government of the area involved invited the sending of our troops.

The Prime Minister of Iceland, speaking for his country as an "absolutely free and sovereign state" "entrusted" the protection of Iceland to the United States on certain conditions. President Roosevelt in his message to the Congress justified his action on the ground that this country could not permit Germany to occupy strategic outposts in the Atlantic as bases for eventual attack against the Western Hemisphere or against the steady flow of munitions to Britain, which, he said, was a matter of national policy clearly approved by the Congress in the Lend-Lease Act.

6. Execution of a treaty

(a) *The doctrine*.—The President's authority as Commander in Chief to send troops abroad may also be exercised in order to execute a treaty. This ground of action is particularly important in the present situation because the sending of troops to Korea and to Europe is appropriate to the carrying out of the purposes of two great treaties duly ratified by the Senate, namely the Charter of the United Nations and the North Atlantic Treaty.

It has been established from the beginning that the President must carry out a treaty as the law of the land. John Marshall, in his famous speech in the House of Representatives in 1800, laid the doctrine down very clearly. He said:

He [the President] is charged to execute the laws. A treaty is declared to be a law. He must then execute a treaty where he, and he alone, possesses the means of executing it (5 Wheaton, appendix, note I, 26).

This doctrine received judicial confirmation in *Ware v. Hylton* (3 Dall. 199 (1796)). This case stands for the proposition that a duly ratified treaty overrules or nullifies a conflicting act of a State legislature even without an explicit reference thereto. Each Justice of the Court gave a learned opinion in this case. Mr. Justice Iredell, in his opinion, stated that a treaty—

is valid and obligatory, in point of moral obligation, on all, as well on the legislative, executive, and judicial departments (so far as the authority of either extends, which in regard to the last, must, in this respect, be very limited), as on every individual of the Nation, unconnected officially with either; because it is a promise, in effect, by the whole Nation to another nation, and if not in fact complied with, unless there be valid reasons for noncompliance, the public faith is violated (*ibid.*, p. 272).

One of the powers which the President has to carry out the "moral obligation" of a treaty is his power as Commander in Chief. Where necessary he may use this power by sending troops abroad. The clearest example of this is, perhaps, the sending of troops to Cuba under the Platt amendment.

(b) *Under the Platt amendment.*—A treaty between the United States and Cuba, after the Spanish-American War, provided that—

The Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, and the maintenance of a government adequate for the protection of life, property, and individual liberty.

A revolution broke out in Cuba. President Roosevelt sent an American Army and Navy to Cuba to maintain law and order. William Howard Taft was then Secretary of War and he describes this incident as follows:

I advised the President that this treaty, pro tanto, extended the jurisdiction of the United States to maintain law and order over Cuba in case of threatened insurrection, and of danger of life, property, and individual liberty, and that under his duty to take care that the laws be executed this was "a law" and his power to see that it was executed was clear. Events followed quickly our investigation and recommendations, and I was obliged to ask for the Army and Navy by authority of President Roosevelt to institute a provisional government, which lasted nearly 2 years. It restored order and provided a fair-election law, conducted a fair election, and turned that government over to the officers elected under the constitution of Cuba. There were some mutterings by Senators that, under the Platt amendment, Congress only could decide to take action. However, the matter never reached the adoption of a resolution. Congress appropriated the money needed to meet the extraordinary military and naval expenditures required, and recognized the provisional government in Cuba in such a way as to make the course taken a precedent. (Taft, *op. cit.*, p. 88).

(c) *Under the treaty with Colombia.*—Another example is offered by President Cleveland's intervention in Panama in 1885. In a treaty of 1846 the Government of Colombia (then New Granada) had guaranteed to the United States that the right-of-way across the Isthmus of Panama should be open and free, and the United States in return had guaranteed to protect the neutrality of the Isthmus and the sovereignty of Colombia over it (Treaties, etc., S. Doc. No. 357, 61st Cong., 2d sess., vol. 1, p. 312). Civil war broke out in Colombia, and Cleveland sent troops to keep open the passage across the Isthmus. There was no congressional authorization for this act. President Cleveland explained to Congress that it was taken under the treaty and "in aid of the sovereignty of Colombia" (message to Congress, December 8, 1885. Richardson, *op. cit.* VIII (p. 326)).

In 1901, 1902, and 1903 President Theodore Roosevelt sent troops to Panama to protect this same treaty right.

(d) *Treaty need not be explicit.*—It should be noted that neither of these treaties by its terms explicitly required the United States to send troops. Nevertheless, the President, in his discretion, found that the purposes of the treaty could best be served, in the particular circumstances confronting him, by sending troops. In the international field, the President has the duty to carry out not only the letter but the spirit of the Nation's treaties. Otherwise, the foreign policy of the United States is likely to be frustrated.

The Supreme Court in the *Curtiss-Wright case* (209 U. S. 304) clearly laid down these principles of broad interpretation with respect to the exercise of Presidential authority in foreign affairs under Federal statutes. It said:

When the President is to be authorized by legislation to act in respect of a matter intended to affect a situation in foreign territory, the legislator properly bears in mind the important consideration that the form of the President's action—or, indeed, whether he shall act at all—may well depend, among other things, upon the nature of the confidential information which he has or may thereafter receive, or upon the effect which his action may have upon our foreign relations. This consideration, in connection with what we have already said on the subject, discloses the unwisdom of requiring Congress in this field of governmental power to lay down narrowly definite standards by which the President is to be governed. As this Court said in *Mackenzie v. Hare* (239 U. S. 299, 311), "As a Government, the United States is invested with all the attributes of sovereignty. As it has the character of nationality it has the powers of nationality, especially those which concern its relations and intercourse with other countries. We should hesitate long before limiting or embarrassing such powers" (*ibid.*, pp. 321, 322).

If this is the rule with respect to Presidential action in foreign affairs under a statute, it must a fortiori be the rule with respect to treaties, which are not only laws of this Government, but international obligations affecting foreign countries as well.

7. Occupation of a vanquished enemy nation

There is another class of circumstances in which the President is entitled to exercise his authority as Commander in Chief to send troops abroad, and that is to perform functions required or authorized by international law. The old law of nations or *ius gentium* has been drawn on by the courts in various cases to define the powers of our Government in international affairs. *The Prize Cases* offer one example.

The most outstanding instance of this type of case is the right of the President to use the Armed Forces to maintain the occupation of a conquered enemy.

There is no doubt that under international law the victorious belligerent may occupy the territory of the vanquished. Whether an occupation may continue after a treaty of peace depends on the terms of the treaty. In the past the purpose of continuing an occupation after the conclusion of a treaty has generally been to secure the payment of an indemnity (1 Oppenheim, *International Law*, par. 444, 527 (7th edition, Lauterpacht 1948)). But there does not appear to be any logical reason against continuing an occupation to enforce any reasonable treaty terms.

The courts have stated that the President can carry out this function of occupation by virtue of his powers as Commander in Chief.

In *Cross v. Harrison* (16 How. 164 (1853)), American forces under the direction of the President had successfully invaded an area including San Francisco, and the military and naval commander there had formed a civil government and imposed duties on imports. The Court said at page 190:

No one can doubt that these orders of the President, and the action of our Army and Navy commander in California, in conformity with them, was according to the law of arms and the right of conquest, or that they were operative until the ratification and exchange of a treaty of peace.

It appears always to have been assumed not only by the courts, but by the Congress as well, that the President can authorize the Armed Forces to carry out such an occupation. There is no direct statutory authority for the present occupations in Germany and Japan, although the Congress has acquiesced in, if not ratified, the Presidential action in occupying those areas, by various statutes (see 58 Stat. 593):

Appropriations for the Military Establishment for the fiscal year 1945 shall be available * * * for expenses in connection with the administration by the Army of occupied areas: * * *

Similar language is contained in Public Law 759, Eighty-first Congress, second session, paragraph 619. As examples of appropriations for civil functions "in connection with the government or occupation of certain foreign areas," see Public Law 327, Eighty-first Congress, first session, and Public Law 759, Eighty-first Congress, second session.

The following cases in the Supreme Court involved questions resulting from the successful wartime invasion of enemy territory by the United States at the direction of the President: *Cross v. Harrison*, supra; *Fleming v. Page* (9 How. 605 (U. S. 1850)); *Leitesdorfer v. Webb* (20 How. 176 (U. S. 1857)); *The Grapeshot* (9 Wall. 129 (U. S. 1869)); and *Dooley v. U. S.* (182 U. S. 222 (1901)). (See also 183 U. S.) In some of these cases annexation followed invasion, but the President's power to direct invasion and occupation is hardly greater when annexation follows than when it does not. The decision in each case required the tacit assumption by the Court of the right of the President as Commander in Chief to unilaterally direct occupation of territory invaded by us in time of war.

A corollary of this authority is the right of the President to take such action, as Commander in Chief, as may be necessary to protect occupation forces and maintain the occupation, if it is threatened by hostile powers. It stands to reason that if occupation troops are attacked or endangered, the President may reinforce them or take such other action as may be needed to meet the danger. This consideration is of some importance in relation to the aggression in Korea, and the possibility of aggression in Europe.

D. CONGRESSIONAL LIMITATIONS ON THE POWERS OF THE PRESIDENT TO SEND TROOPS ABROAD

The question arises whether the Congress in the exercise of its powers can constitutionally limit or curb the exercise by the President of his powers to send troops abroad in pursuit of the legitimate objectives discussed above.

1. By virtue of congressional powers over the armed forces

It may be well to consider first the powers which the Congress has over the armed forces.

(a) *Power of the purse.*—It is obvious that the power of Congress over appropriations is very great, and that, if the Congress fails to provide sufficient money for defense, the armed forces may be inadequate to the responsibilities which the Commander in Chief may wish to impose on them.

(b) *Power to govern and regulate armed forces.*—At times it has been argued that the power of the Congress to make rules for the Government and regulation of the land and naval forces (Constitution, art. I, sec. 8, clause 14) enables the Congress to limit the exercise of the Presidential power as Commander in Chief. This contention has been firmly rejected by the courts. It was well stated by the Court of Claims in *Swaim v. U. S.* (28 Court of Claims 173, 221) (affirmed, 165 U. S. 553 (1897)):

Congress may increase the Army, or reduce the Army, or abolish it altogether; but so long as we have a military force Congress cannot take away from the President the supreme command. It is true that the Constitution has conferred upon Congress the exclusive power "to make rules for the government and regulation of the land and naval forces"; but the two powers are distinct; neither can trench upon the other; the President cannot, under the disguise of military orders, evade the legislative regulations by which he in common with the Army must be governed; and Congress cannot in the disguise of "rules for the government" of the Army impair the authority of the President as Commander in Chief.

This statement does not, of course, define the area of the President's authority as Commander in Chief. In the *Swaim* case there was a congressional statute providing for courts martial. The President established a court martial of his own to try the Judge Advocate General. This court martial was not established in accordance with the statute. However, the statute did not expressly prohibit it. In deciding the case the Court of Claims held that it would not construe the statute to conflict with the action of the President.

(1) Selective Service Act of 1940: In 1940 the Congress enacted a geographical limitation on the use of United States troops abroad. Both the act of August 27, 1940, dealing with the Reserves (Public Res. 96, 54 Stat. 858, 859; 50 U. S. C. App. 401), and the Selective Service Act of 1940 (Public Law 783, September 16, 1940, 54 Stat. 885, 886, 50 U. S. C. App. 303 (e)), provided that persons called thereunder into the land forces of the United States could not be employed beyond the limits of the Western Hemisphere except in the Territories and possessions of the United States.

On July 7, 1941, President Roosevelt notified the Congress that pursuant to agreement with the Government of Iceland and the Government of Great Britain he had sent American troops to Iceland (vol. 87, Congressional Record, July 7, 1941, pp. 5841-5842). Whether the troops sent included any inducted or called up under the statutes in question is not clear, but it is significant that the Presidential notification did not attempt to justify the action on the ground that no such inductees had been sent. Few people were bold enough to claim that Iceland, which is only 700 miles from Europe, and east of the Azores, lay in the Western Hemisphere.

This territorial limitation on the use of troops was suspended in 1941 (act of December 13, 1941, c. 571, sec. 3, 55 Stat. 799, 50 U. S. C. App. 731) and is no longer in effect.

(2) Lend-Lease Act and Neutrality Act of 1939: Another example of conflict between Presidential action and congressional policy is provided by the controversy over the use of naval convoys in the Atlantic

in 1941. In adopting the Lend-Lease Act, the Congress had added a provision reading as follows:

Nothing in this Act shall be construed to authorize or to permit the authorization of conveying vessels by naval vessels of the United States (act of March 11, 1941, c. 11, sec. 3 (d); U. S. C. A., title 22, sec. 411 (d); 55 Stat. 31).

The statute also had a provision (sec. 3 (c)) referring to the Neutrality Act of 1939:

Nothing in this Act shall be construed to authorize or to permit the authorization of the entry of any American vessel into a combat area in violation of section 3 of the Neutrality Act of 1939.

Under the Neutrality Act (U. S. C. A., title 22, sec. 441), the President was to define "combat areas" by proclamation. He did not so define the North Atlantic area in which the convoying later took place. Consequently, the use of naval vessels in the North Atlantic did not violate the Neutrality Act.

The Lend-Lease Act contained a further provision intended to curb the use of the armed forces. This was section 10, which reads:

Nothing in this Act shall be construed to change existing law relating to the use of the land and naval forces of the United States, except insofar as such use relates to the * * * noncombatant purposes enumerated in this Act.

None of these provisions were regarded by the President as a limitation on his power to use the Navy in the North Atlantic area or send troops to Iceland and Greenland and other places. The provisions of the act were not flat prohibitions. They merely asserted that the act itself, which had to do with supplying war materials to other nations, should not be construed as an authorization for the use of the armed forces of the United States. Obviously, there were other circumstances entering into the situation. The President might feel that the defense needs of the United States authorized the use of the armed forces to resist Nazi warfare in the Atlantic, regardless of the objectives of the Lend-Lease Act.

There were some attempts, nevertheless, to read these provisions of the Lend-Lease Act as a limitation on the President's authority. (See vol. 87, Congressional Record, p. 5841 ff., July 7, 1941.)

However, whether or not President Roosevelt actually violated either the selective-service law or the Lend-Lease Act by his use of the armed forces in 1941, there was plenty of support in the Senate itself for the view that these statutes could not constitutionally curb his power. The argument was made that since the direction of the armed forces is the basic characteristic of the office of the Commander in Chief, the Congress cannot constitutionally impose limitations upon it. This view had been expressed in the Senate as far back as 1922, when Senator Reed, of Missouri, suggested that the Congress could make the President bring home certain troops then stationed in Europe. Senator Borah had replied:

We could not make the President do it. He is Commander in Chief of the Army and Navy of the United States; and if in the discharge of his duty he wants to assign them there, I do not know of any power that we can exert to compel him to bring them home. We may refuse to create an army, but when it is created he is the Commander (vol. 64, Congressional Record, December 27, 1922, p. 933).

During the debate in the Senate in 1940 on the Selective Service Act, several of the older Members took the position that the Congress

could not constitutionally keep the President from sending the armed forces out of the Western Hemisphere. Senator Lodge, who supported this limitation, was answered by Senator Ashurst in the following words:

I fear the Senator's amendment is what we call a brutum fulmen, a harmless thunderbolt, though it is a provision which should be in this bill. I am of the opinion that the present Chief Executive, or any other Chief Executive, would be inclined to respect an expression of this sort by the Congress, incorporating into the bill certainly the legislative wish and hope, the expression of our opinion that drafted troops should not be sent to Europe to participate in the wars of Europe, but such an expression is not legally binding on the Executive (vol. 86, Congressional Record, August 26, 1940, p. 10896).

Senator Wiley supported Senator Ashurst:

Why is the Senator from Arizona correct? Because, under our form of government, the Executive is given constitutional powers with which the Legislature cannot interfere. We claim as a Legislature that we have constitutional powers with which the Executive cannot interfere. We have had example after example of the Executive power in the use of the Army. It seems to me that while we can suggest to the President that it is well to take a certain course, at the same time there is no need of our trying to give the impression to our boys and to our citizens that that language is of any legal effect (ibid.).

Senator Ashurst had ample authority for his statement. President Taft laid it down flatly that Congress may not interfere with the powers of the President, when he wrote:

In the first place, it is clear that Congress may not usurp the functions of the Executive by an appointment to office, by pardoning a criminal, or one accused of crime, by initiating or making a treaty, by providing for the reception of particular ambassadors, and thus recognizing a foreign government, or by forbidding or directing the movements of the Army and Navy. [Italics supplied.] (Taft 25 Yale Law Journal 599, 606 (1916).)

On at least two occasions President Wilson ignored congressional enactments that interfered with his power in foreign affairs. (See Corwin, E. S., *The President, Office and Powers* (1948), p. 231.) And at another time attacked a congressional attempt to intervene in diplomatic relations (Corwin, earlier edition, p. 409).

2. *By virtue of the congressional power to declare war*

(a) *Effect of the "danger of war" on Presidential power.*—The argument on this point does not rest wholly on the powers of the Congress over the armed forces. It is often contended that the President by sending troops abroad may be bringing the country into the danger of war, and that such action is unconstitutional because only the Congress has the power, under the Constitution, to declare war. This argument is so vigorously advanced that it deserves careful examination. (See, for example, vol. 87, Congressional Record, July 10, 1941, p. 5926.)

In *The Prize Cases* in 1862 the minority of the Supreme Court contended that whatever the powers of the President might be to defend the country, he could not create a state of war, in the legal sense, without a declaration of war by the Congress. Mr. Justice Nelson summarized the views of the minority on this point as follows:

that the President does not possess the power under the Constitution to declare war or recognize its existence within the meaning of the law of nations, which carries with it belligerent rights and thus change the country and all its citizens from a state of peace to a state of war; that this power belongs exclusively to the Congress of the United States and, consequently, that the President had no

power to set on foot a blockade under the law of nations (*The Prize Cases*, 2 Black, 635, 698).

This view was overruled by the majority of the Court, and has not been law from that day to this.

Today, however, the contention is not that the President has no power to create a legal state of war, but that he has no power to take steps which are in his judgment necessary for defense or to the carrying out of our foreign policy, if those steps may lead to war. This argument, in short, is that the constitutional power of the President is limited by the possibility that our adversaries may take hostile action, even though the conduct of the President is entirely defensive. There is no constitutional doctrine to this effect, and there can be none if the Nation is to survive.

The constitutional power of the President obviously extends to situations where the risk of war exists as well as to those where it does not. Indeed, in such situations it has been exercised in such a way as to prevent war. Scholars believe that by such exercise of power President Adams prevented a general war with France in 1798, and Presidents Jefferson and Johnson averted war with England in 1807, and 1868-69. (See McDougall and Lans, 54 *Yale Law Journal* 181, 534, at 614 (1945).)

(b) *Limitations on the power to declare war.*—The Constitutional Convention was quite aware of these problems. The first draft of the Constitution gave the Congress the power "to make war." On August 17, 1787, Pinckney objected, saying Congress would be too slow "to make war." Mr. Madison and Mr. Gerry moved to substitute "declare" for "make," leaving to the Executive the power to repel sudden attack. On a vote, eight States were in favor of "declare," to one against (Rogers, J. F., *World Policing and the Constitution* (1945), p. 29, Berdahl, op. cit., p. 62).

Thus, the Constitutional Convention trimmed down the war power of Congress even before the Constitution was submitted to the States.

Later on the point came up again, when President Washington issued a proclamation of neutrality upon the outbreak of war between France and Great Britain in 1793. Washington's opponents immediately challenged this as being outside the President's constitutional powers. Hamilton replied and, in the course of his argument in favor of broad Executive power, he pointed out that while treaties could only be made by the President and the Senate jointly, they might be suspended by the President alone. He then went on to say:

This serves as an example of the right of the Executive, in certain cases, to determine the condition of the Nation, though it may, in its consequences, affect the exercise of the power of the Legislature to declare war. Nevertheless, the Executive cannot thereby control the exercise of that power. The Legislature is still free to perform its duties according to its own sense of them; though the Executive, in the exercise of its constitutional powers, may establish an antecedent state of things, which ought to weigh in the legislative decision.

The division of the Executive power in the Constitution creates a concurrent authority in the cases to which it relates (Hamilton, op. cit., VII, 76 ff., cited in Corwin, op. cit. (1948), p. 218).

What Hamilton meant, in plain language, is that the President can create an actual conflict which Congress would have to recognize in the exercise of its power to declare war.

Naturally, the Jeffersonian party protested violently against this doctrine, and President Jefferson went so far in 1801 as to forbid our

warships, which he had sent to the Barbary coast, to take any offensive acts against the pirates until Congress formally declared war. This aroused Hamilton's contempt, and in 1801 he wrote:

But when a foreign nation declares, or openly and avowedly makes, war upon the United States, they are then by the very fact already at war, and any declaration on the part of Congress is nugatory; it is at least unnecessary (*Works of Hamilton*, VII, p. 745; Corwin, op. cit., p. 243).

Coming down to our own times the idea has been even more bluntly and firmly asserted by President Taft in his famous lectures at Columbia in 1916. He said:

The President is the Commander in Chief of the Army and Navy, and the militia when called into the service of the United States. Under this he can order the Army and Navy anywhere he will, if the appropriations furnish the means of transportation. Of course the instrumentality which this power furnishes, gives the President an opportunity to do things which involve consequences that it would be quite beyond his power under the Constitution directly to effect. Under the Constitution, only Congress has the power to declare war, but with the Army and the Navy the President can take action such as to involve the country in war and to leave Congress no option but to declare or to recognize its existence. This was the charge made against President Polk in beginning the Mexican War. War as a legal fact, it was decided by the Supreme Court in *Prize cases*, can exist by invasion of this country by a foreign enemy or by such an insurrection as occurred during the Civil War, without any declaration of war by Congress at all, and it is only in the case of a war of our aggression against a foreign country that the power of Congress must be affirmatively asserted to establish its legal existence (Taft, op. cit., pp. 94-95).

Indeed, the power of Congress to declare war has been very little used, compared to the number of occasions on which American armed forces have been employed abroad. Congress has declared war five times. There are at least four other conflicts which amounted to war in the eyes of historians: The Naval War With France (1798-1800), the Barbary War (1801-05), the Second Barbary War (1815), and the Mexican hostilities of 1914-17. In these cases the President carried on the conflict without a declaration of war.

(c) *Neutrality statutes.*—While Congress has seldom had occasion to exercise its power to declare war, there is a good deal of weight to the view that during times of peace Congress can restrain the President from using the armed forces, through the enactment of neutrality statutes. In 1794 Congress passed our first neutrality act and ever since then it appears to be taken for granted that Congress has the constitutional power to adopt such statutes (Corwin op. cit. p. 220). However, the neutrality laws adopted by Congress have always by the nature of the case vested considerable discretion in the Executive.

The Neutrality Act of 1939 rigorously prohibited various types of contact with belligerent nations, but it only became effective after the President by proclamation named the belligerent states and found that a war existed. Another discretionary power conferred upon the President by this neutrality act was that permitting him to establish "combat areas," from which areas the statute barred American vessels. President Roosevelt used these discretionary powers in such a way as not to cut off our assistance to Britain or our convoys in the North Atlantic. (See Koenig, L. W., *The Presidency and the Crisis* (1944), ch. II.)

Whatever the power of Congress may be, it is clear that under modern conditions any neutrality act will have to leave a wide discretion in the Executive to adapt to changing conditions. It is not likely

that Congress would adopt a neutrality law so comprehensive and so rigid as to prevent the President from taking measures, in his discretion, to protect the United States against the threats of hostile powers. If it did, such an act might well be unconstitutional. This point has apparently never been judicially decided or discussed, but it seems clear that in the face of a real threat to the security of the country the President would be justified in using his powers as Commander in Chief to protect the United States, even in contravention of a duly enacted neutrality law, and the courts would probably sustain him.

Here, however, as in all these matters, it is important to point out that the concepts of constitutional power do not provide the final answer. The President and the Congress together must cooperate to defend and protect the United States. Congress may want to outline the general policy for the President to follow, but it must be careful not to bind his hands. These are matters of discretion and judgment in which public opinion has to be respected and in which cooperation among all branches of the Government is essential.

3. *By virtue of the congressional power to enact legislation to implement treaties*

The next question of constitutional authority has to do with the power of Congress to implement treaties. Does the Congress have any power, arising from participation of the Senate in treaty making or from clause 18 of section 8 of the first article, to bind the discretion of the Executive in carrying out a treaty? Recent speeches seem to hint at a doctrine that legislation must be enacted in order to carry out a treaty, and that the President cannot act either in violation of, or beyond the scope of such legislation. This is not a proposition for which there appears to be any authority. As we have seen above, following *Ware v. Hylton*, the doctrine is that a treaty is binding on the various organs of the Government in accordance with their respective duties and functions. Professor Corwin puts it this way:

Treaty provisions are sometimes addressed exclusively to the President, as for instance were certain articles of the treaties which resulted from the Washington Conference of 1921, and which provided for conference among the high contracting parties in named contingencies. The duty of communication thus cast upon the President was, obviously, well within his diplomatic prerogative. Other treaty provisions, however, are addressed primarily to Congress (Corwin, op. cit. p. 237).

The power to send troops abroad is certainly one of the powers which the President may exercise in carrying out such a treaty as the North Atlantic Treaty or the United Nations Charter. Since it is a power which only he can exercise, provisions of these treaties which have to do with such measures of defense may certainly be deemed to be "addressed" to the President.

In the absence of a clear indication in a treaty as to the exact nature of the action required to carry it out, there arises the question as to which branch of the Government has the duty of interpreting the international obligation which it imposes. Is it the Congress or the President which must say whether or not the purposes and commitments of a treaty require the sending of troops abroad? Alexander Hamilton clearly expressed the view that it is up to the President to

interpret the international obligations arising under a treaty. He wrote:

The President is the Constitutional Executor of the laws. Our treaties, and the laws of nations, form a part of the law of the land. He, who is to execute the laws, must first judge for himself of their meaning. In order to the observance of that conduct which the laws of nations, combined with our treaties, prescribed to this country, in reference to the present war in Europe, it was necessary for the President to judge for himself, whether there was anything in our treaties, incompatible with an adherence to neutrality (Corwin, op. cit. p. 237).

Certainly in the absence of congressional prohibitions the President is entitled to interpret the obligations of the treaty to meet the circumstances as they arise and to act upon his own interpretation to the extent that it is within his constitutional functions to do so.

E. POWERS OF THE PRESIDENT UNDER THE UNITED NATIONS CHARTER AND THE UNITED NATIONS PARTICIPATION ACT—ACTION IN KOREA

It now remains to consider the specific actions taken by the President, under the United Nations Charter, with regard to the aggression in Korea, and the proposed sending of additional troops to Europe under the North Atlantic Treaty. Each of these great treaties has a legislative history of its own, and implementing legislation, all of which has considerable bearing upon the application of the general principles outlined above.

1. *Provisions of the United Nations Charter*

The action of the Security Council in June 1950 was taken under articles 39 and 40 of the Charter. These articles read as follows:

ARTICLE 39—The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

ARTICLE 40—In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Acting pursuant to these articles, the Security Council on June 25 adopted a resolution calling for the cessation of hostilities in Korea. This resolution was not complied with and, on June 27, the Security Council adopted another resolution recommending that the members of the United Nations render to the Republic of Korea such assistance as might be necessary to repel the armed attack and restore international peace and security.

This was an application of the principle set forth in article 2, section 5, of the Charter, which provides that all members shall give the United Nations "every assistance in any action it takes in accordance with the present Charter." The Security Council resolutions were an appeal to the member nations to act in accordance with their capabilities to support the Charter and the great principles for which it stands.

In response to the recommendations of the Security Council, the President exercised his constitutional authority and dispatched armed forces to Korea.

It is contended, however, that, because of article 43 of the Charter and the provisions of the United Nations Participation Act relating to it, he had no authority to do so.

Article 43 of the Charter spells out the procedure to be followed by the member nations in providing the national contingents which the Security Council was originally intended to have permanently at its disposal. This article reads as follows:

ARTICLE 43—1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

The purpose of this article is obviously to ensure that there will be forces which the Security Council can call upon in the event of an emergency. The article can hardly be construed to impair or modify the powers of the Security Council to make recommendations under article 39, or the authority of the Member states to carry out such recommendations.

2. Provisions of the United Nations Participation Act

When the Charter of the United Nations was submitted to the Senate for ratification in 1945 a controversy arose concerning the method to be followed in "ratifying" the agreements required under article 43. On July 27, 1945, the President sent a message from Potsdam to Senator McKellar stating:

* * * when any such agreement or agreements are negotiated it will be my purpose to ask the Congress for appropriate legislation to approve them (vol. 91 Congressional Record, July 28, 1945, p. 8185).

Following this Presidential lead, the Senate Committee on Foreign Relations found that—

* * * all were agreed on the basic proposition that the military agreements (under art. 43) could not be entered into solely by Executive action (S. Rept. 717 to accompany S. 1580, November 8, 1945, 79th Cong., 1st sess., p. 6).

In November 1945, the Senate committee reported the United Nations Participation Act to the Senate (Public Law 264, 79th Cong., 1st sess., c. 583). In its report the committee took the view that the agreements required under article 43 were not to be considered as treaties, but as matters for legislative sanction by the Congress under its constitutional powers with relation to the armed forces. Accordingly, the committee recommended that Congress approve such agreements by appropriate act or by joint resolution. The same view was taken by the House Committee on Foreign Affairs.

The committee apparently anticipated that an effort would be made to require the President to go to Congress for approval in every instance of the use of armed force on the request of the Security Council. To forestall this crippling requirement, it devised specific language exempting the President from congressional control with respect to the use of the armed forces, but withholding congressional authorization from the commitment of troops or forces beyond those specified in the agreements. This language is embodied in section 6 of the act:

The President is authorized to negotiate a special agreement or agreements with the Security Council which shall be subject to the approval of the Congress by appropriate act or joint resolution, providing for the numbers and types of armed forces, their degree of readiness and general location, and the nature of facilities and assistance, including rights of passage, to be made available to the Security Council on its call for the purpose of maintaining international peace and security in accordance with article 43 of said Charter. The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under article 42 of said Charter and pursuant to such special agreement or agreements the armed forces, facilities, or assistance provided for therein: *Provided*, That nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the Security Council for such purpose armed forces, facilities, or assistance in addition to the forces, facilities, and assistance provided for in such special agreement or agreements. (Public Law 264, 79th Cong., 1st sess., 59 Stat. 619, 22 U. S. C. 287, sec. 6; later amended by Public Law 341, 81st Cong., 1st sess., act of October 10, 1949, 63 Stat. 734, in aspects not relevant to this discussion.)

The reasons behind this position were stated in both House and Senate committee reports in the same language:

* * * the committee is convinced that any reservation to the Charter, or any subsequent congressional limitation designed to provide, for example, that employment of the Armed Forces of the United States to be made available to the Security Council under special agreements referred to in article 43 could be authorized only after the Congress had passed on each individual case would clearly violate the spirit of one of the most important provisions of the Charter. One of the fundamental purposes of the Charter is to provide forces which will be immediately available to the Security Council to take action to prevent a breach of the peace. Moreover, if a reservation to this effect were to be adopted by the Senate, the very nature of the Charter itself would be changed, and further negotiations with the other signatories of the Charter would unquestionably be necessary.

Preventive or enforcement action by these forces upon the order of the Security Council would not be an act of war but would be international action for the preservation of the peace and for the purpose of preventing war. Consequently, the provisions of the Charter do not affect the exclusive power of Congress to declare war.

The committee feels that a reservation or other congressional action such as that referred to above would also violate the spirit of the United States Constitution under which the President has well established powers and obligations to use our Armed Forces without specific approval of Congress (S. Rept. 717, pp. 6-8).

3. Attempts to curb Presidential powers—The Wheeler amendment and the Taft amendment

On the Senate floor opposition to the act was led by Senator Wheeler. He introduced an amendment, reading as follows:

Nothing in such agreement or agreements shall authorize the President, and the President shall have no authority, to make available to the Security Council

any armed forces to enable the Security Council to take action under article 42 of said Charter, unless the Congress has by appropriate act or joint resolution authorized the President to make such forces available to enable such Council to take action in the specific case in which the Council proposes to take action (vol. 91, Congressional Record, December 4, 1945, p. 11392).

He supported this amendment by an argument based on the constitutional power of Congress to declare war, which, he said, would be infringed if the President were to have the authority to send troops to the support of the Security Council. The amendment was defeated by a vote of 65 to 9.

Early in the debate Senator Taft had introduced an amendment to curb the authority of the United States representative on the Security Council. The United Nations Participation Act in section 3 provides that the United States representative on the Security Council shall be answerable to the President and shall "at all times act in accordance with the instructions of the President." Senator Taft wanted to require the United States representative to act according to the direction of Congress in any matters pertaining to the use of sanctions or force under article 39, 41, or 42 of the Charter (91 Congressional Record, pt. 9, p. 1159, November 29, 1945).

After much debate, Senator Taft modified his own amendment, but even after this modification it was defeated (*ibid.*, 1167).

Senator Taft opposed the Wheeler amendment because, in his view, the President already had the power to use troops without congressional sanction by virtue of section 3.

With respect to both these amendments, debate centered on action under article 42 of the Charter, which deals with the use of security forces provided by the members under article 43. Nothing was said that could be construed as a limitation on the President's constitutional authority to use troops to carry out other provisions of the Charter, or to respond to Security Council action under article 39.

4. *Effect of failure of article 43 on the President's powers*

It has been argued, however, that the debate in the Senate in December 1945 was based on the assumption that the consummation of agreements under article 43 is a condition precedent to any action by the President in sending any troops whatever.

The flaw in this argument, however, is that the President has authority to use the troops irrespective of the Charter. This is authority arising from the Constitution, and may be exercised by the President to carry out the foreign policy of the United States, of which the Charter is a principal element.

The United Nations Participation Act does not purport to limit or control this general authority. It merely provides that the act is not to be construed to authorize the President to send more troops under article 42 than are provided for in the agreement under article 43.

Article 43 has never been put into effect because of Russian opposition, so the act refers to a situation which does not exist.

Even if the act were construed as a limitation in the narrow circumstances envisaged under articles 42 and 43, it might well prove to be ineffective. The fate of similarly worded provisions in the Selective Service Act of 1940 and the Lend-Lease Act (see *supra*) is illustrative.

But the main point is that articles 42 and 43 are not the whole of the Charter; that the President can act under article 39, and that he is under a duty as Chief Executive to see that the great objectives of the Charter are carried on so far as it lies within his power to do so. All that has been said above concerning the power of the President to interpret a treaty, and to execute a treaty when the means of action lie in his jurisdiction, confirms such a conclusion.

The Charter of the United Nations, implemented by the United Nations Participation Act, is a great international commitment. It is not to be construed like a corporation mortgage.

F. POWERS OF THE PRESIDENT UNDER THE NORTH ATLANTIC TREATY— ACTION IN EUROPE

The authority of the President to send troops abroad under the North Atlantic Treaty presents fewer difficulties than his authority under the United Nations Charter.

1. *Provisions of the North Atlantic Treaty*

The North Atlantic Treaty is in many of its aspects a defensive alliance. Its pertinent provisions are as follows:

ARTICLE 3—In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.

ARTICLE 5—The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

ARTICLE 6—For the purpose of Article 5 an armed attack on one or more of the Parties is deemed to include an armed attack on the territory of any of the Parties in Europe or North America, on the Algerian departments of France, on the occupation forces of any Party in Europe, on the islands under the jurisdiction of any Party in the North Atlantic area north of the Tropic of Cancer or on the vessels or aircraft in this area of any of the Parties.

ARTICLE 11—This treaty shall be ratified and its provisions carried out by the Parties in accordance with their respective constitutional processes. * * *

In the public discussion of the treaty and the debate leading to its ratification, attention was concentrated on the kind of measures that would have to be taken to provide mutual aid and to exercise the right of self-defense in the event of an armed attack.

It was, of course, recognized that United States occupation forces stationed in Germany are part of the defensive strength of the treaty nations. This is clearly established by the reference to occupation forces in article 6 of the treaty.

2. Attempts to curb the President's powers under the treaty

In presenting the treaty to the Senate for ratification, the Senate Committee on Foreign Relations indicated that the treaty was confirmatory of the powers already possessed by the President, as Commander in Chief. The committee said:

Article 5 records what is a fact, namely, that an armed attack within the meaning of the treaty would in the present-day world constitute an attack upon the entire community comprising the parties to the treaty, including the United States. Accordingly, the President and the Congress, within their sphere of assigned constitutional responsibilities, would be expected to take all action necessary and appropriate to protect the United States against the consequences and dangers of an armed attack committed against any party to the treaty. The committee does not believe it appropriate in this report to undertake to define the authority of the President to use the armed forces. Nothing in the treaty, however, including the provision that an attack against one shall be considered an attack against all, increases or decreases the constitutional powers of either the President or the Congress or changes the relationship between them (81st Cong., 1st sess., S. Ex. Rept. No. 8, June 6, 1949, p. 14).

The committee returned to this proposition in explaining what is meant by "constitutional processes" in article 11. It said:

The treaty in no way affects the basic division of authority between the President and the Congress as defined in the Constitution. In no way does it alter the constitutional relationship between them. In particular, it does not increase, decrease, or change the power of the President as Commander in Chief of the armed forces or impair the full authority of Congress to declare war.

Except for the proposed foreign military assistance program, no legislation related to the treaty is presently contemplated or considered necessary. The treaty would constitute legislative authorization for our share of the expenses of the organization contemplated in article 9, but appropriations by Congress would be necessary (*ibid.*, p. 19).

That article 5 might require the President to order the armed forces into action was clearly foreseen by the opponents to the treaty in the Senate. To forestall this possibility Senator Watkins introduced a reservation to the treaty which read as follows:

The United States understands and construes article V of the treaty as follows: That the United States assumes no obligation to restore and maintain the security of the North Atlantic area or to assist any other party or parties in said area, by armed force or to employ the military, air, or naval forces of the United States under article V or any article of the treaty, for any purpose, unless in any particular case the Congress, which under the Constitution has the sole power to declare war or authorize the employment of the military, air, or naval forces of the United States, shall by act or joint resolution so provide (vol. 95, Congressional Record, July 21, 1949, p. 9898).

This reservation was rejected by a vote of 84 to 11 (*ibid.*, p. 9916). The Senate thus repudiated the idea that the President could not use the armed forces of the United States to carry out article 5 without congressional authority.

The treaty was ratified by a vote of 82 to 13 (*ibid.*).

It should be noted that Presidential action in sending troops to Europe might rest as much upon broad considerations of foreign policy and national defense as on the purposes of the treaty. Strategic considerations vary from time to time, but at the present moment few would maintain that, even in the absence of the treaty, the defense of the United States might not require United States armed forces in Europe. Certainly, as has been pointed out above, the President can send armed forces to protect and defend our occupation of the United

States zone in Germany. Sending armed forces to Europe may be as necessary to national defense in these days of the airplane and the atomic bomb as sending troops to Florida was in the days of President Monroe.

It is true that the treaty does not impose a legal obligation on the President to send troops, but neither does it impair his authority to do so. As we have noted above, the interpretation of what a treaty may call for in the way of sending troops is up to the Commander in Chief. The absence of a legal obligation to send troops is not a prohibition on sending them, if the Chief Executive determines that they are necessary to carry out the purpose of the treaty.

Some persons have suggested that there is a distinction between article 3 of the treaty and article 5, contending that whatever the President's powers may be under article 5 in the event of attack, he has no power to send troops under article 3 in advance of attack. It is hard to see what this alleged distinction is based upon. The Mutual Defense Assistance Act, which was adopted to implement the mutual-aid provisions of the treaty, principally under article 3, imposes no limitations on the President's powers to send troops. In the hearings on the treaty, administration witnesses said that it was not contemplated that troops would be sent under article 3, but this statement was not inconsistent with the possibility that troops might be sent by the President if circumstances changed, as they have since 1949.

G. NEED FOR COLLABORATION BETWEEN THE PRESIDENT AND THE CONGRESS

As this discussion of the respective powers of the President and the Congress in this field has made clear, constitutional doctrine has been largely molded by practical necessities. Use of the congressional power to declare war, for example, has fallen into abeyance because wars are no longer declared in advance. The constitutional power of the Commander in Chief has been exercised more often because the need for armed international action has grown more acute. The long delays occasioned by the slowness of communications in the eighteenth century have given place to breath-taking rapidity in the tempo of history. Repelling aggression in Korea or Europe cannot wait upon congressional debate. However, while the need for speed and the growth in the size and complexity of the armed forces have enlarged the area in which the powers of the Commander in Chief are to be wielded, the magnitude of present-day military operations and international policies requires a degree of congressional support that was unnecessary in the days of the nineteenth century. Professor Corwin has expressed this very well:

The point is that the sort of foreign policy which present-day conditions require can never be kept going by attributing to the President, as in the past, the simple power to order the Navy around without consulting Congress. Far otherwise; Congress must be constantly asked to exercise powers which no President has ever ventured to exercise on any scale—the power to tax, to pledge the credit of the United States, to raise armies, to regulate commerce, and so forth, and so forth. And if Congress cannot be persuaded to back Presidential policy by bringing these powers to its support, then—the idea of a Presidential coup d'état being dismissed—the policy fails, and that is all there is to it (Corwin, *op. cit.*, p. 271).

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Authority State 7-5-78 letter
By if, NARS, Date 1-29-80

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OUTGOING TELEGRAM Department of State

INDICATE: COLLECT
 CHARGE TO

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Bundy

80
Origin
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Info:

ACTION: Amembassy SAIGON E 2873
INFO CINCPAC FOR POLAD
EXDIS Saigon pass COMUSMACV
Ref: MACV 19118 JOINT STATE - CIA MESSAGE

JUN 11 5 39 PM '65

In response to Washington requests, State/INR and CIA have prepared the following coordinated intelligence comments on paras 2 thru 8 of MACV's ref and tel. Would appreciate Mission's views. DOD/DIA has been consulted ~~xxx~~ has no ~~xxxxxxxx~~ questions at this time.

We agree with general thrust of MACV assessment on seriousness of current military situation. Moreover, we feel that meaningful evaluation has been given to the factors involved in assessing relative postures of ARVN and Viet Cong, e.g., on the one hand, infiltration of VC cadres and PAVN units, improved VC firepower, numerical strength, and tactical organization and, on the other hand, ARVN combat initiative, desertion rates, and effective force strength.

However, MACV's assessment implies, though does not ^{rpt not} clearly state, that there is a serious danger of complete military collapse within relatively short period of time. We have not ^{rpt not} received this impression from the totality of Mission reporting, particularly the daily and weekly military reports, and indeed ref tel does not ^{rpt not} appear on the surface to describe any dramatic and unexpected development in the military situation during the past several months

Drafted by: CIA:MKreimer	Telegraphic transmission and classification approved by:	INR - George C. Denney, Jr.
INR/RFE/SA:LGSarris:am 6/11/65		
Clearances:	RFE - Mr. Leonard	FE - Mr. Unger
	DIA - Gen. Maples (by phone)	S/S - Mr. Walsh
	CIA - Mr. R.J. Smith (by phone)	

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months. We agree that performance by some ARVN units during past few weeks has been disappointing, but we lack information on current effectiveness and morale of ARVN as a whole.

Fuller description by Mission of current military situation, would be very helpful. Would also appreciate further comments by Mission (utilizing all-source material where helpful) on certain points raised in ref tel for which info somewhat lacking here. For example, our info on deployment of 304th PAVN Division is tenuous and contradictory; latest weekly mil rep indicates adverse trend in ARVN desertion rate was reversed somewhat in April and dropped lower still in May; and weekly mil rep for May 23-May 30 indicated improvement in ARVN initiative. What are latest MACV figures on VC confirmed, probable, and possible infiltrators during 1965? We also not clear what percentage of ARVN constitutes an actual combat force and ~~XX~~ what percentage this force is currently understrength, particularly in view of comment in last weekly mil rep that buildup of regular (and regional) forces is continuing slightly ahead of program as contrasted with comment in ref tel that buildup is being curtailed in order bring existing units up to ^{strength.} /What is actual fighting strength of average bn as compared to average VC bn? Would further assist us to have ratio of VC combat (main and local) force to ARVN combat force by corps area and Capitol Military District.

GP-1.

RUSK

END.

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6/11/65

FOA695
OO RUEHC
ZFH1 STATE OPERATIONS (FOR LCOL COWHARD)

TELECON ITEM
O 111000Z
FM MACV.
TO NMCC
INFO CINCPAC
BT

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SUBJECT: CURRENT US STRENGTH IN VIETNAM
REF: TELECON ITEM 110003Z

1. US STRENGTH AS OF 2400H, 10 JUNE, BY SERVICE AND REQUESTED CATEGORY. READ SIX COLUMNS.

CATEGORY	ARMY	NAVY	AIRFORCE	MARINE	TOTAL
COMBAT	3016	420	0	9943	13379
AIR	3855	16	1887	1427	7185
SUPPORT	18449	2972	3159	4064	33644
TOTAL	25320	3403	10046	15425	54199

NOTE: COMBAT DEFINED AS US GROUND COMBAT UNITS

NOTE: AIR DEFINED AS US ARMY AVIATION UNITS, MARINE AIR WING FLYING UNITS, AND USAF FLYING UNITS AND DOES NOT INCLUDE ASSOCIATED MAINTENANCE OR SUPPORT ELEMENTS. IT IS POINTED OUT THAT ARMY UNITS HAVE LARGER NUMBER OF MAINTENANCE AND SUPPORT PERSONNEL ORGANIC TO UNIT THAN DOES USAF AND USMC.
NOTE: SUPPORT INCLUDES MACV AND SPECIAL FORCES ADVISORS AND ALL OTHER PERSONNEL.

2. RVNAF STRENGTHS FOR TIME PERIODS INDICATED. READ IN FOUR COLUMNS.

	1 JAN 65	15 MAR 65	PROJ END CY65
REGULAR FORCES	246,284	255,129	230,000
REGIONAL FORCES	96,049	105,172	130,600
POPULARFORCES	163,317	150,167	171,400

BT

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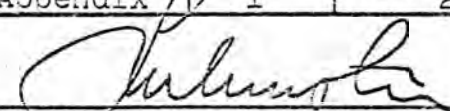
Authority OSD Hq 2/22/77
By MFE., NARS, Date 4/12/78

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JOINT MESSAGEFORM		RESERVED FOR COMMUNICATION CENTER																	
SECURITY CLASSIFICATION SECRET		DIST: CJCS-1 DJS-3 SJCS-3 J1-1 J3-8 J4-3 J5-2 SACSA-5 NMCC-2 SAMAA-1 SECDEF-5 ASD/ISA-9 ASD/PA-1 WHOUSE-3 CSA-2 CNO-2 CSAF-2 CMC-7 RAIR-1 FILE-1 (62) T/D REF A IS JCS 92244///REF B IS JCS 93177																	
TYPE MSG	BOOK	MULTI	SINGLE																
		X																	
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ACTION	PRIORITY	Authority E.O. 11652 SEC. 5(A) and (D)																	
INFO	PRIORITY	By <u>ip</u> , NARS, Date <u>4-6-78</u>																	
FROM JCS		DTG 112108Z JUN 65																	
TO CSAF /ZEN CINCSRIKE/USCINCPAC		SPECIAL INSTRUCTIONS																	
Info: CINCPAC CINCSAC CINCPACSTRIKE COMUSMACV CINCPACAF COMSTS COMATS COMTMTS WHITE HOUSE STATE DEPARTMENT ANMCC NECPA NEACP		<p>Distribution</p> <table border="0"> <tr><td>CJCS</td><td>SAMAA</td></tr> <tr><td>DJS</td><td>CNO</td></tr> <tr><td>SJCS</td><td>CSA</td></tr> <tr><td>J-1</td><td>CMC</td></tr> <tr><td>J-3</td><td>SECDEF</td></tr> <tr><td>J-4</td><td>ASD/ISA</td></tr> <tr><td>J-5</td><td>ASD/PA</td></tr> <tr><td>SACSA</td><td></td></tr> </table> <p>Coordination</p> <p>Army Lt Gen V.P. Mock Navy Captain Vannoy Air Force Col Hill Marine Corps Col Codispoti J-4 Capt Kirkpatrick</p>		CJCS	SAMAA	DJS	CNO	SJCS	CSA	J-1	CMC	J-3	SECDEF	J-4	ASD/ISA	J-5	ASD/PA	SACSA	
CJCS	SAMAA																		
DJS	CNO																		
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J-3	SECDEF																		
J-4	ASD/ISA																		
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Subj: Alerting of Additional Fighter Squadrons for Deployment to SEASIA (U)		DATE 11 TIME 1705																	
Ref: a. COMUSMACV 19118, 070335Z Jun 65 (NOTAL); b. CINCPAC 072325Z Jun 65 (NOTAL); c. JCS 2343/564-7 (NOTAL)		MONTH YEAR June 1965																	
1. (S) Reference a requests additional fighter support in SVN. Ref b refines ref a and requests deployment of 4 TFS to SVN as soon as airfield facilities permit.		PAGE NO. NO. OF PAGES 1 2																	
2. (S) Request the four remaining fighter squadrons listed as items 12, 13, 18 and 23 in Annex O to Appendix																			
DRAFTER	TYPED NAME AND TITLE LT COL E. F. SMITH, USAF Pacific Division, J-3	PHONE 53031	SIGNATURE 																
		RELEASER	TYPED (OR STAMPED) NAME AND TITLE L. M. MUSTIN, VADM, USN Director for Operations																
SECURITY CLASSIFICATION SECRET		REGRADING INSTRUCTIONS GP 4																	

ABBREVIATED JOINT MESSAGEFORM
AND/OR CONTINUATION SHEET

SECURITY CLASSIFICATION

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PRECEDENCE	RELEASED BY	DRAFTED BY	PHONE
ACTION			
INFO			

B to ref c and support forces totaling approximately 2500⁷ personnel be placed on alert repeat alert for deployment on 48 hours notice to SEASIA/WESTPAC in preparation for further deployment to SVN when feasible. Substitution of type aircraft authorized if mutually agreed to by CINCPAC and CINCSTRIKE. Deployment destinations and composition of supporting forces being requested from CINCPAC and will be provided when available. GP 4.

CONTROL NO.	TOR/TOD	PAGE NO.	NO. OF PAGES	MESSAGE IDENTIFICATION	INITIALS
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GP-4				SECRET	

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JOINT MESSAGEFORM		RESERVED FOR COMMUNICATION CENTER	
SECURITY CLASSIFICATION TOP SECRET		DIST: CJCS-1(9) DJS-3(12-12) SJCS-3(13-15) J1-1(16) J3-8(17-24) J4-3(25-27) J5-2(28-29) SACSA-5(30-34) NMCC-2(35-36) SECDEF-5(37-41) ASD/ISA-9(42-50) DIA-4(51-54) WHOUSE-3(55-57) CSA2 (58-59) CNO-2(60-61) CSAF-2(62-63) CMC-5 (64-68) RAIR-1(69) FILE-1(1) DACC-1(2) J3CB-1(3) ADV CY TO::: SECDEF-1(4) DIA-1(5) CSA-1(6) CNO-1(7) CSAF-1 (8) (69) T/D	
TYPE MSG	BOOK	MULTI	SINGLE
		X	
PRECEDENCE		DTG 112347Z JUN 65	
ACTION	IMMEDIATE		
INFO	IMMEDIATE		
FROM	JCS		
TO	CINCPAC		
INFO	CINCSTRIKE/USCINCPAC CINCARSTRIKE CINCPACAF CINCPACFLT COMUSMACV CGFMFPAC STATE DEPT WHITE HOUSE		
DECLASSIFIED	Authority E.O. 11652 SEC. 5(A) and (D) By <i>SP</i> , NARS, Date <i>4-6-78</i>		
	ANMCC NEACP NECPA CMC		
TOP SECRET	JCS	003809	JCS Send.
Subj: Force Deployments (U)		SPECIAL INSTRUCTIONS	
Refs: a. COMUSMACV 19118/070335Z NOTAL b. CINCPAC 072355Z NOTAL c. JCS 2343/602 Being Forwarded NOTAL d. JCS 3771/112108Z e. JCS 3772/112116Z f. JCS 3773/112119Z g. CG USASCV 101/311200Z NOTAL May		Distribution CJCS NMCC DJS ANMCC SJCS NEACP J-1 NECPA J-3 CSA J-4 CNO J-5 CSAF SACSA CMC DIA SECDEF ASD/ISA	
1. (TS) The following additional deployments to Southeast Asia are under active consideration as possible alternatives to those developed and reflected in refs a, b, and c.		COORDINATION -4 Capt Kirkpatrick X 52327 Army LTGEN V.P. Mock Navy ADM Hyland X 54402 AF Col Dupont X 53281 USMC - LtCol Heyer, X 41420	
a. USMC: 2 BLTs, 1 VMFA (F-4B) and appropriate		DATE TIME MONTH YEAR PAGE NO. NO. OF PAGES 1 4	
DRAFTER	TYPED NAME AND TITLE	PHONE	SIGNATURE
	LtCol E. J. Daley, USA, X 53049 LtCol C. C. Stewart, USA X 53031	53049	<i>E. J. Daley</i>
SECURITY CLASSIFICATION	REGRADING INSTRUCTIONS		
	TOP SECRET	GP-4	

IMMEDIATE

- BUNDY-SMITH
- BATOR
- BOWDLER
- BOWMAN
- CHASE
- COOPER
- HAYNES
- JESSUP
- JOHNSON
- KEENEY
- KLEIN
- KOMER
- MOODY
- REEDY
- SAUNDER
- THOMSON

ABBREVIATED JOINT MESSAGEFORM
AND/OR CONTINUATION SHEET

SECURITY CLASSIFICATION

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supporting divisional and air elements. Approx 8,000 ⁷ personnel. (Refs a, b, and c)

b. US ARMY: One additional Brigade of 3 maneuver battalions with supporting force to close in South Vietnam by 31 July. CSA has designated a bde from 1st Inf Div. Not previously identified in refs.

c. USAF: Four Tactical Fighter Squadrons and supporting forces for deployment to bases in Southeast Asia/WESTPAC in preparation for further deployment to bases in South Vietnam earliest feasible. Approx 2,500. (Refs a, b, and c).

d. US ARMY: Proceed with previously planned deployment of one bde of 101 Airborne Div (ETA 28 Jul) and one bde of 1 Inf Div (ETA 15 Jul). Retain 173d Airborne Bde in South Vietnam until further notice.

e. US ARMY: US Army Field Force Hqtrs, Vietnam. CSA is being requested to plan the organization of this Hq, activation and deployment of which will be subject of separate actions.

2. ~~(TS)~~ By present plans, destination of bde from 1st Inf Div, (subpara 1 d above) is QUI NHON with one

CONTROL NO.	TOR/TOD	PAGE NO.	NO. OF PAGES	MESSAGE IDENTIFICATION	INITIALS
		2	4	003809	
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ABBREVIATED JOINT MESSAGEFORM
AND/OR CONTINUATION SHEET

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battalion at CAM RANH Bay; destination of brigade from 101 Abn Div is BIEN HOA-VUNG TAU area, to relieve 173 Abn Bde.

3. ~~(TS)~~ Request earliest the following info for planning connection foregoing possible deployments:

a. What initial deployment location do you recommend for the additional bde from the 1st Inf Div (subpara 1 b, above)? Only two infantry battalions now available in 1st Inf Div for this additional bde. Do you wish a mechanized battalion reconfigured to infantry, or do you prefer a mix of infantry and mechanized battalions? Further, what is your recommendation with respect to the composition of the total bde force?

b. What is your recommended bed-down for the four additional TFS, subpara 1 c above, while awaiting move to SVN? What are your logistic support force requirements for these squadrons at initial and final bases?

c. What initial deployment location recommended for 101 Abn Div Bde if 173 Abn Bde remains in SVN?

4. ~~(TS)~~ Your logistic and other support requirements

CONTROL NO.	TOR/TOD	PAGE NO.	NO. OF PAGES	MESSAGE IDENTIFICATION	INITIALS
		3	4	003809	
REGRADE INSTRUCTIONS GP-4				SECURITY CLASSIFICATION TOP SECRET	

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in ref c for in-country forces and to receive a division as reflected in ref e now includes approx 9,600 Army. Request your revised logistic and other support requirements for above alternative which does not deploy a full division at this time.

5. ~~(TS)~~ Presently planned additional logistic support for Chu Lai, Da Nang and Phu Bai areas totals 1200 Navy/USMC (ref c). Are there any changes required?

6. (U) In view of imminence of final decision on above actions and deployments, request reply ASAP. GP-4

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		4	4	003809	
REGRADING INSTRUCTIONS				SECURITY CLASSIFICATION	
GP-4				TOP SECRET	

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THE JOINT CHIEFS OF STAFF
WASHINGTON, D.C. 20301

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DECLASSIFIED
Authority JCS 9-19-78 letter
By RP, NARS, Date 3-26-79

JCSM-457-65
11 JUN 1965

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Subject: US/Allied Troop Deployments to South Vietnam (SVN) (S)

1. ~~(C)~~ The Joint Chiefs of Staff have reviewed US/Allied force requirements in SVN in the light of recent developments in Southeast Asia and the Republic of Vietnam (RVN). Findings and recommendations resulting from this review are set forth in the following paragraphs.

2. ~~(TS)~~ There are significant indications that the communists may be on the threshold of moving the conflict in Southeast Asia to a new and higher level of intensity. By JCSM-415-65, dated 27 May 1965, as supplemented by JCSM-442-65, dated 7 June 1965, the Joint Chiefs of Staff advised you of their views that the deployment of increased numbers of jet fighters, some jet light bombers, and SA-2 surface-to-air missiles to North Vietnam shows a communist decision to add a new dimension to the situation in Southeast Asia. Further, with respect to land combat, the Viet Cong (VC) have been engaged in a build-up of their forces and are capable of mounting regimental-size operations in all four corps areas and at least battalion-size operations in virtually all provinces. Many VC units are well trained and equipped and some are equipped with a new family of weapons. Elements of the 101st Regiment of the 325th North Vietnamese Army (PAVN) Division are in the northern zone of II Corps area, and it is possible that elements of two other regiments of the division are now deployed within the provinces of Kontum-Pleiku and Phu Bon or in nearby Laos. Elements of the 304th PAVN Division are suspected to be in Southern Laos, capable of early movement into the RVN. The communists recently have shown a willingness to take heavy losses to achieve their objectives. So far, the VC have not employed their full capabilities. Only two of the nine VC regiments have been heavily engaged and probably only a similar

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proportion of their separate battalions have been committed. Recent events as well as captured VC prisoners and documents suggest that a summer campaign is now underway to destroy government forces and, concurrently, first to isolate and then attack district and province towns.

3. ~~(TS)~~ RVN ground forces are in a precarious position as to their capability to withstand such an offensive. As a result of recent heavy engagements with the VC, COMUSMACV reports that some ARVN units are beginning to show signs of reluctance to take necessary offensive actions and, in some areas, their steadfastness under fire is coming into doubt. Planned RVN force build-ups have been suspended until November, because of the requirement to allocate available resources toward reconstituting units recently combat-attrited. Thus, it is estimated that a further deterioration in the near term will occur through change of force ratios in favor of the communist units in South Vietnam.

4. ~~(S)~~ While a formal appraisal in the form of a SNIE by the USIB has not been conducted, informal polling of the intelligence community indicates general agreement with the COMUSMACV views regarding the enemy and friendly situation in Southeast Asia.

5. ~~(TS)~~ In this unstable military situation, appropriate counter-measures are required. The Joint Chiefs of Staff consider that the ground forces situation requires a substantial further build-up of US and Allied forces in the RVN, at the most rapid rate feasible on an orderly basis. The Appendix hereto summarizes US and Allied forces required now for this build-up, designed to provide a substantial and necessary increase in offensive capability. The recommended deployments were discussed with Ambassador Taylor on 9 June 1965 and he foresees no political problems with the Government of Vietnam in the introduction of these forces. Lists in the Appendix may be further refined by recommendations from CINCPAC and the Services.

6. ~~(TS)~~ In addition to the above deployments, the Joint Chiefs of Staff consider that air action against North Vietnam should be intensified to include increased armed reconnaissance of LOCs and strikes against militarily important targets. Such action is necessary to reduce DRV capabilities to support the VC and the PAVN, further punish the DRV, and further establish US intent to prevent a communist seizure of SVN.

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7. (U) In addition to the actions recommended in JCSM-415-65, JCSM-442-65, and paragraph 6, above, the Joint Chiefs of Staff recommend that the deployments shown in the Appendix be approved now for implementation.

For the Joint Chiefs of Staff:

Earle G. Wheeler

EARLE G. WHEELER
Chairman
Joint Chiefs of Staff

Attachment

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APPENDIX

DEPLOYMENTS REQUIRED NOW

ITEM	FORCES	ANNEX	SERVICE	APPROX. STRENGTH		PLANNED INITIAL DEPLOYMENT AREA	APPROX.* CLOSURE DATE	US TOTALS (CUMULATIVE)		ALLIED TOTALS (CUMULATIVE)		JCSM-321-65 APPENDIX/LINE
				PERS	BNS			PERS	BNS	PERS	BNS	
1	US approved strength as of 8 June 1965 (includes Bde of 1st Inf Div to Qui Nhon and Bde of 101st Div to replace 173rd)		Army Navy Air Force Marines	37,941 3,905 10,841 16,906	69,593	13	In place, en route or approved for deployment (Planning closing dates in SVN - 1st Inf Div Bde, 15 July 65; 101st A/B Div Bde, 28 July 65)	69,593	13	1,250	1**	
2	Remainder of Ground Forces of III MAF (2 BLTs) and appropriate supporting divisional and air elements. (Reconstitute SLF from I MEF units now en route to WESTPAC)	A	USMC	8,000***	2	I CTZ	ASAP (Can load-out in 4-8 days)	77,593	15			B / 20
3	Remainder of LOG and other Support Units.	B	US Army	9,600	--	Various RVN	ASAP to 15 Aug	87,193	15			B / 15-16
4	Air Mobile Div (173d A/B Bde remain in-country until Air Mobile Div closes in SVN and is operational)	C	US Army	15,800	8	Qui Nhon ****	20 August @	102,993	23			B / 17
5	Combat Support for Air Mobile Division	D	US Army	2,600	--	Various RVN	20 August	105,593	23			B / 15
6	Logistic Support for Air Mobile Division	E	US Army	6,000	--	Various RVN	20 August	111,593	23			B / 16
7	One Corps Hq		US Army	(1,500)†	--	RVN‡	Concurrent with Air Mobile Div					B / 18
8	One ROK Marine RCT‡‡‡		ROK	4,000	3	Chu Lai-Quang Ngai	ASAP after 1 July			5,250	4	B / 7
9	a. ONE ROK Division (-) b. US Logistic Support	F	ROK US Army	14,500 1,500	6 --	General Area of Qui Nhon®	1 November starting 15 September	113,093	23	19,750	10	B / 19 B / 12
10	Four additional Tactical Fighter Squadrons and support forces	G	USAF	2,500		Various Airfields	ASAP after 1 September	115,593				
11	Additional logistic support for the Chu Lai, Danang, Phu Bai enclaves	H	USN/USMC	1,200		Chu Lai, Danang, Phu Bai	ASAP after 1 July	116,793				B / 10

* Approximate closure date is based on assumed decision date of 11 June 1965 and the use of available lift.

** One Australian Bn (Strength 900) is already in SVN; item 8, Appendix B, JCSM-321-65

*** Although 23,200 of III MAF not yet deployed, CINCPAC and COMUSMACV recommended only 8,000 be deployed at this time.

**** Initial deployment area differs from previous recommendation to ensure secure base and LOC prior to deploying to the highlands.

† To be filled out to maximum extent from in-country resources.

‡ Deployment area unspecified to provide flexibility to meet changing situation.

‡‡‡ Changed from ROK RCT to ROK Marine RCT as requested by CINCPAC/COMUSMACV.

® Deployment area changed as requested by CINCPAC.

@ Subject to the availability of shipping for helicopters.

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ANNEX A
ELEMENTS OF III MAF

<u>ITEM</u>	<u>UNIT</u>	<u>STRENGTH</u>	<u>PLANNED DE- PLOYMENT AREA</u>	<u>JCSM 321-65 ANNEX/LINE</u>
1	Hq Bn(-)	1078	(Hue/Phu Bai	
2	Regt HQs(-)	171	-Danang	
3	Regt(-) (Includes 2 Bn's)	2430	-Chu Lai)	
4	ArtyRegt(-) (includes 105mmBn, 155mmBtry, 8" Plt)	722		
5	MT Bns(-)	348		
6	Eng Bn(-)	324		
7	AT Bn(-)	154		
8	Med Bn(-)	172		
9	Tank Bn(-)	297		
10	AmTrac Bn(-)	322		
11	Shore Party Bn(-)	205		
12	Det, FSR	475		
13	H&MS	337		

NOT APPLICABLE

Annex A

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<u>ITEM</u>	<u>UNIT</u>	<u>STRENGTH</u>	<u>PLANNED DE- PLOYMENT AREA</u>	<u>JCSM 321-65 ANNEX/LINE</u>
14	MABS	310		
15	VMFA Sqdn(F-4B)	312		
16	MACS	201		
17	HAWK Btry	<u>100</u>		
		8008		

NOT APPLICABLE

Annex A

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ANNEX B

REMAINDER OF LOGISTIC AND OTHER SUPPORTING UNITS FOR FORCES
ALREADY DEPLOYED AND TO RECEIVE AIR MOBILE DIVISION

<u>ITEM</u>	<u>UNIT</u>	<u>STRENGTH</u>	<u>PLANNED DEPLOYMENT AREA</u>	<u>JCSM 321-65 ANNEX/LINE</u>
I. LOGISTIC COMMAND UNITS (MACV INCREMENT 1)*				
<u>ENGINEER</u>				
1	EN BN CBT	622	Qui Nhon	L / 6
2	EN GP CBT HHC	116	Qui Nhon	L / 8
3	EN CO CONST SPT	164	Cam Ranh Bay	M / 6
4	EN BN CONST	899	Cam Ranh Bay	M / 2
5	EN BN CONST	899	Vung Tau	M / 3
6	EN CO PORT CONST	227	Qui Nhon	M / 5
7	EN DET WTR TRK TM FD	2	Can Tho	NA
8	EN DET WP TM GF	4	Cam Ranh Bay	NA
<u>MEDICAL</u>				
9	MD SUP DET TM FB	18	Qui Nhon	NA
10	MD SUP DET TM FB	18	Can Tho	NA

* Army logistic troops required to support and sustain the US/Allied military structure in SVN at currently authorized level of commitment.

Annex B

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<u>ITEM</u>	<u>UNIT</u>	<u>STRENGTH</u>	<u>PLANNED DEPLOYMENT AREA</u>	<u>ANNEX/LINE</u>
11	MD SUP DET TM FB	13	Vung Tau	M / 49
12	MD SUP DET TM FB	13	Nha Trang	NA
13	MD DET TM CA	9	Can Tho	M / 50
14	MD DET DISP TM MA	21	Cam Ranh Bay	M / 34
	<u>ORDNANCE</u>			
15	OD CO GS	201	Cam Ranh Bay	M / 52
16	OD BN M-S HHD	37	Vung Tau	M / 62
17	OD CO GAS	185	Saigon	M / 53
	<u>QUARTERMASTER</u>			
18	QM CO DS	284	Saigon	M / 80
19	QM CO DS	268	Saigon	M / 74
20	QM DET MHER TM HL	1	Vung Tau	NA
21	QM DEP HHC R/S	99	Cam Ranh Bay	NA
22	QM DEP HHC R/S	99	Saigon	NA
	<u>TRANSPORTATION</u>			
23	TC BN HHD TML SVC	66	Saigon	M / 95
24	TC DET CRANE TM JB	2	Nha Trang	M / 119

Annex B

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<u>ITEM</u>	<u>UNIT</u>	<u>STRENGTH</u>	<u>PLANNED DEPLOYMENT AREA</u>	<u>ANNEX/LINE</u>
25	TC DET AMPH MAINT	31	Qui Nhon	M / 100
II. LOGISTIC COMMAND UNITS (MACV INCREMENT 2)*				
<u>MEDICAL</u>				
26	MC CO CLEARING AUG	125	Qui Nhon	M / 43
27	MC DET TM KA SURG	7	Qui Nhon	M / 28
28	MC DET TM KH X-RAY	3	Qui Nhon	NA
29	MC DET TM MA/MC GEN DISP	34	Qui Nhon	NA
30	MC DET TM RA HEL AMB	42	Qui Nhon	M / 35
31	MOBILE ARMY SURG HOSP AUG	119	Qui Nhon	M / 47
<u>ORDNANCE</u>				
32	ORD CO DS	181	Qui Nhon	M / 51
33	ORD CO GS	201	Qui Nhon	NA
34	ORD CO AMMO	263	Qui Nhon	M / 55
35	ORD DET EOD TM KA	10	Qui Nhon	M / 56

* Army logistic troops, additional to Increment 1, which must be positioned in SVN to ensure ability to accept Air Mobile Division, Corps Headquarters, and Corps troops.

Annex B

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<u>ITEM</u>	<u>UNIT</u>	<u>STRENGTH</u>	<u>PLANNED DEPLOYMENT AREA</u>	<u>ANNEX/LINE</u>
	<u>QUARTERMASTER</u>			
36	QM GP HHD	46	Qui Nhon	M / 72
37	QM CO (PETROL DEPOT)	271	Qui Nhon	NA

Annex B

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<u>ITEM</u>	<u>UNIT</u>	<u>STRENGTH</u>	<u>PLANNED DEPLOYMENT AREA</u>	<u>ANNEX/LINE</u>
	<u>SIGNAL</u>			
38	SIG CO FWD SM	146	Qui Nhon	M / 88
	<u>TRANSPORTATION</u>			
39	TC CO LT TRK	168	Qui Nhon	M /102
40	TC CO LT TRK	168	Qui Nhon	M /103
41	TC CO MED TRK PETROL	182	Qui Nhon	M /105
42	TC BN TERM HHD	66	Qui Nhon	M /110
43	TC CO TERM SVC	329	Qui Nhon	M / 96
44	TC CO TERM SVC	329	Qui Nhon	M / 97
45	TC DET CRANE TM FK	10	Qui Nhon	NA
46	TC DET TM JF (STEVEDORE)	8	Qui Nhon	M /108
47	TC DET TM FJ TUG	7	Qui Nhon	M /114

III. SUPPORT COMMAND UNITS OTHER THAN LOG COMD (MACV INCREMENT 1)

	<u>AVIATION</u>			
48	AV GP HHC	78	Saigon	NA
49	AV CO AIR MBL LT FW	149	Vung Tau	NA
50	AV DET ASTA	148	Pleiku	NA
51	AV CO ATC	357	Saigon	NA

Annex B

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<u>ITEM</u>	<u>UNIT</u>	<u>STRENGTH</u>	<u>PLANNED DEPLOYMENT AREA</u>	<u>ANNEX/LINE</u>
	<u>SIGNAL</u>			
52	SC CO CBT CONST	266	Saigon	L / 20
53	SC DET AVION TM RL	10	Da Nang	NA
	<u>ADJUTANT GENERAL</u>			
54	AG BN REPL HHD	55	Saigon	M /130
55	AG CO REPL	38	Saigon	M /124
	<u>MILITARY POLICE</u>			
56	MP BN ARMY	595	Qui Nhon	M /125
57	MP CO	196	Nha Trang	M /129
58	MP CO GD	125	Saigon	M /133
59	MP DET HQ TM AC	6	Saigon	NA
60	MP GP HHD TM AE	23	Saigon	NA
61	MP DET PM TM FB	7	Saigon	NA
62	MP DET CONF FAC TM MD	19	Saigon	M/132
63	MP DET CI TM LE	21	Saigon	M /134
64	MP DET PLT HQS DOG TM PA (3)	6	Saigon	NA
65	MP DET PLT DOG TM PB (70)	140	Saigon	NA

Annex B

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ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	ANNEX/LINE
66	MP DET SUPV DOG TM PE (14)	28	Saigon	NA
67	MP DET AN CARE TM PF (8)	8	Saigon	NA
68	MESS DET TM CA/CB	6	Saigon	M /135
	<u>TRANSPORTATION</u>			
69	TC CO A/C MAINT	244	Qui Nhon	NA
70	TC DET A/C REP	57	Vung Tau	NA
71	TC DET A/C REP	57	Nha Trang	NA
	TOTAL	<u>5663</u>		

Annex B

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ANNEX C

AIR MOBILE DIVISION ORGANIZATION

ITEM	UNIT	STRENGTH	PLANNED INITIAL DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
1	Div Hq & Hq Co	150	Qui Nhon	Appendix B, Line 17
2	Engr Bn	620	" "	
3	Cavalry Sqdn	740	" "	
4	Infantry Bns (8)	6160 (770 ea)	" "	
5	Brigade Hq (3)	645 (215 ea)	" "	
6	Hq & Hq Btry	155	" "	
7	105mm How Bn (3)	1200 (400 ea)	" "	
8	Arty Avn Btry	100	" "	
9	Aerial Arty Bn	400	" "	
10	Support Command	3140	" "	
11	Avn Gp Hq & Hq	225	" "	
12	Assault Hel Bn (2)	1050 (525)	" "	
13	GS Avn Co	200	" "	

ANNEX C

II

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AIR MOBILE DIVISION ORGANIZATION

ITEM	UNIT	STRENGTH	PLANNED INITIAL DEPLOYMENT AREA	JCEM-321-65 ANNEX/LINE
14.	Assault Support Hel Bn	520	Qui Nhon	
15	Sig Bn	340	" "	
16	MP Co	155		
	Total	15,800		

NOTE: One brigade, consisting of three infantry battalions and supporting troops, will have an airborne capability.

Annex C

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ANNEX D

COMBAT SUPPORT FOR AIR MOBILE DIVISION

ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
1	CORPS HQ CO	75	Qui Nhon	NA
2	ASA LN DET	5	Qui Nhon	L/36
3	CM PLAT DS DIV	41	Qui Nhon	L/1
4	CM DET INTEL GA	10	Qui Nhon	L/2
5	CM DET CBR MGF	5	Bien Hoa	L/4
6	CM DET CBR JA	5	Qui Nhon	L/5
7	EN BN CBT AUG	622	Qui Nhon	L/7
8	EN CO LT EQUIP	186	Qui Nhon	L/9
9	EN CO PNL BRG	127	Qui Nhon	L/10
10	EN CO PNL BRG	127	Qui Nhon	L/11
11	EN CO FLT BRG	225	Qui Nhon	L/12
12	EN CO TOPO	114	Qui Nhon	L/13
13	ENG DET INTEL IC	9	Qui Nhon	L/14
14	EN DET TERR IK	11	Qui Nhon	L/15

Annex D

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ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
15	MD DET INTEL QA	3	Qui Nhon	L/16
16	MP CO AUG	182	Qui Nhon	L/28
17	OD DET INTEL LB	6	Qui Nhon	L/17
18	QM DET INTEL LA	4	Qui Nhon	L/19
19	SC BN (CORPS)	708	Qui Nhon	
20	SC TROPO SCATTER RI	9	Qui Nhon	NA
21	SC TROPO SCATTER RI	9	Qui Nhon	NA
22	SC TROPO SCATTER RI	9	Qui Nhon	NA
23	SC TROPO SCATTER RI	9	Qui Nhon	NA
24	SC TROPO SCATTER RI	9	Qui Nhon	NA
25	SC TROPO	9	Qui Nhon	NA
26	SC CO RAD RLY VHF	164	Qui Nhon	L/21
27	SC CO SPT	227	Qui Nhon	L/22
28	SC DET PHOTO FA	5	Qui Nhon	L/23
29	SC DET CRYPTO NB	20	Qui Nhon	L/24
30	SC DET AVION RE	7	Qui Nhon	L/25
31	SC DET INTEL TA/TB	10	Qui Nhon	L/26
32	MP DET CI LD	12	Qui Nhon	L/29

Annex D

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ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
33	MH DET MIL HIST	2	Qui Nhon	L/30
34	MI DET ARS	42	Saigon	L/31
35	MI DET BDE ABN	32	Bien Hoa	L/32
36	MI DET DIV	66	Qui Nhon	L/33
37	MI DET CORPS	72	Qui Nhon	L/34
38	MI DET INTC AB	22	Qui Nhon	L/35
39	ASA CO DIV SPT	165	Qui Nhon	L/37
40	AVN CO (CV-2)	158	Qui Nhon	L/40
41	TC DET INTEL HA	12	Qui Nhon	L/41
42	TC DET FM AB	82	Qui Nhon	L/42
43	PSY WAR DET FA, FB, FD, FE	21	Qui Nhon	NA
44	WEATHER DET AFUMD	24	Qui Nhon	NA
45	TRANS ACFT RPR KC	41	Qui Nhon	NA
46	GROUND SURV RADAR TM	30	Qui Nhon	NA
47	ASTA PLAT	83	Qui Nhon	NA
48	ASTA PLAT	83	Qui Nhon	NA
49	ARTY 105 HOW BN (TOWED)	516	Qui Nhon	NA

Annex D

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ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
50	ARTY SLT BTRY	151	Qui Nhon	NA
51	AVN HVY HEL	120	Qui Nhon	NA

Annex D

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ANNEX E

LOGISTIC SUPPORT FOR AIR MOBILE DIVISION

ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
I. LOGISTICAL COMMAND UNITS (MACV INCREMENT 3)*				
<u>ENGINEER</u>				
1	EN BN DEP HHD (R/S)	39	Qui Nhon	NA
2	EN DET FT TM FB (3)	18	Qui Nhon	
3	EN DET POW PLANT OP TM HJ (2)	22	Qui Nhon	NA
<u>MEDICAL</u>				
4	MD CO AMB	98	Qui Nhon	M/26
5	MD CO AIR AMB	184	Nha Trang	M/44
6	MD DET PREV TM LA	11	Qui Nhon	NA
7	MD DET VET FD IN TM JA	5	Nha Trang	NA
8	MD DET DEN SVC TM KJ	36	Qui Nhon	M/33
9	MD DET DISP TM MA	17	Saigon	M/39
10	MD DET TM OA	9	Qui Nhon	M/46

* Units required to accompany and sustain a US Army Air Mobile Division Force.

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ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
11	MD DET INTEL TM QA	12	Nha Trang	NA
12	MD DET HOSP FLD (100 BED UNIT)	60	Nha Trang	NA
13	MD HOSP EVAC SMBL AUG	313	Qui Nhon	M/36
14	MD LAB MBL	12	Qui Nhon	M/37
	<u>ORDNANCE</u>			
15	OD CO DS	183	Saigon	M/63
16	OD GP M-S HHC	54	Cam Ranh Bay	M/59
17	OD CO AMMO	263	Qui Nhon	NA
18	OD CO AMMO	263	Qui Nhon	NA
19	OD CO AMMO	263	Cam Ranh Bay	NA
20	OD CO AMMO (R/S)	175	Cam Ranh Bay	M/60
21	OD PLAT AMMO	90	Qui Nhon	NA
22	OD CO FLD SUP	158	Qui Nhon	M/64
23	OD CO FLD SUP (R/S)	117	Qui Nhon	NA
24	OD BN M-S HHD	37	Qui Nhon	NA
25	OD CO TIRE REP	157	Cam Ranh Bay	NA
26	OD CO PARK (R/S)	116	Cam Ranh Bay	NA

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Annex E

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ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
27	OD CO COLL CLAS	167	Cam Ranh Bay	M/58
28	OD CO SUP DEP (R/S)	175	Cam Ranh Bay	M/61
29	OD DET AMMO REN TM IA	65	Saigon	M/70
30	OD DET EOD TM KA	10	Qui Nhon	M/66
31	OD DET EOD TM KC	8	Saigon	M/69
<u>QUARTERMASTER</u>				
32	QM CO PETROL SUP	182	Qui Nhon	NA
33	QM CO DS	284	Qui Nhon	NA
34	QM CO DS	284	Qui Nhon	M/84
35	QM BN GS HHD	34	Qui Nhon	M/73
36	QM BN GS HHD	34	Qui Nhon	NA
37	QM CO FLD DEP (R/S)	224	Cam Ranh Bay	M/81
38	QM CO SVC	165	Qui Nhon	NA
39	QM CO FLD MAINT SVC	268	Cam Ranh Bay	M/75
40	QM DET REFRIG REP TM IE (3)	6	Qui Nhon	NA
41	QM DET SALES TM BF	10	Qui Nhon	M/77
42	QM DET SALES TM BF AUG	4	Qui Nhon	M/78

Annex E

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ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
43	QM DET AER SUP TM EA	64	Qui Nhon	M/76
44	QM DET LDRY TM GA	12	Nha Trang	M/83
45	QM DET PETRL LAB TM KC	8	Qui Nhon	NA
46	QM DET MAINT TM HA	10	Can Tho	NA
47	QM DET MAINT TM HA	10	Vung Tau	NA
48	QM DET LDRY TM GA	12	Qui Nhon	NA
<u>SIGNAL</u>				
49	SC CO DEPOT	170	Cam Ranh Bay	M/89
50	SC BN S-M HHD	67	Qui Nhon	M/87
51	SC DET ISSUE TM KB	20	Qui Nhon	NA
52	SC DET DEP-EQUIP REP TM KD	28	Saigon	I/19
53	SC DET RAD REP TM RD	8	Qui Nhon	NA
54	SC DET RAD REP TM RD	8	Vung Tau	M/94
55	SC DET MORT RAD MNT TM RN	5	Qui Nhon	M/90
<u>ADJUTANT GENERAL</u>				
56	ARMY POSTAL UNIT (TYPE E)	13	Qui Nhon	NA
<u>FINANCE</u>				
57	FIN DET TM AD DISB	3	Nha Trang	NA

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ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
58	FIN DET TM AE FH DISB	25	Qui Nhon	NA
59	FIN DET TM FJ DISB	30	Saigon	NA
	<u>TRANSPORTATION</u>			
60	TC CO LT TRK	172	Qui Nhon	M/112
61	TC CO LT TRK	172	Qui Nhon	I/10
62	TC CO MDM THK CARGO	182	Cam Ranh Bay	M/104
63	TC MED TRK CO (COMP)	225	Qui Nhon	NA
64	TC BN TML HHD	56	Cam Ranh Bay	M/117
65	TC CO TML SVC	329	Saigon	M/113
66	TC CO AMPH	175	Cam Ranh Bay	NA
67	TC DET BT CR TM FF	3	Saigon	M/115
68	TC DET BT CR TM FF	3	Cam Ranh Bay	M/122
69	TC DET TUG CR TM FJ	7	Cam Ranh Bay	M/121
70	TC DET TUG CR TM FJ	7	Saigon	NA
71	TC DET BARGE CR TM FM	24	Cam Ranh Bay	NA
72	TC DET TUG CR TM FJ	18	Cam Ranh Bay	NA
73	TC DET CRANE TM JB	2	Can Tho	NA
74	TC DET CRANE TM JB	2	Cam Ranh Bay	M/116

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ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
II. SUPPORT COMMAND UNITS OTHER THAN LOG COMMAND (MACV INCREMENT 3)				
<u>SIGNAL</u>				
75	SC DET AVION TM RL	6	Can Tho	I/17
76	SC DET AVION TM RL	6	Vung Tau	NA
<u>ADJUTANT GENERAL</u>				
77	AG CO REPL	27	Nha Trang	M/131
78	AG CO REPL	27	Saigon	NA
<u>MILITARY POLICE</u>				
79	MP CO ESC GD	142	Qui Nhon	M/126
80	MP PLAT PW PROC	42	Qui Nhon	M/128
81	MP CO GUARD	125	Qui Nhon	M/127
<u>TRANSPORATION</u>				
82	TC BN DEP EMS (MINUS DEPOT SUP CO)	418	Cam Ranh Bay	NA
		<u> </u>		
		TOTAL - Approx.	7,400	

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ANNEX F

US LOGISTIC SUPPORT FOR ROK DIVISION

ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
LOGISTICAL COMMAND UNITS (MACV INCREMENT 4)*				
<u>ENGINEER</u>				
1	EN DET GS TM BA	25		M/23
2	EN DET FM TM EA	10		NA
3	EN DET WELL DR TM GE	2		I/27
4	EN DET WTR PUR TM GF	4		NA
5	EN DET UTIL TM HD	28		NA
<u>MEDICAL</u>				
6	MD DET HEL AMB TM RA	42		I/21
<u>ORDNANCE</u>				
7	OD CO DS	183		M/71
8	OD DET GEN SUP TM BA	16		NA
9	OD DET GEN SUP TM BA	16		NA
<u>QUARTERMASTER</u>				
10	QM PLAT TML OP (- DIST SECT)	34		NA

* Combat Service Support Units required to support a ROK Division Force deployed to Qui Nhon area.

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ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM-321-65 ANNEX/LINE
11	QM DET MHE TM HL (2)	2		NA
12	QM DET MHE TM FD	2		NA
13	QM DET SUP TM BC	35		NA
14	QM DET REFRIG TM IB (3)	18		NA
	<u>SIGNAL</u>			
15	SC DET DEPOT TM KA	11		M/92
16	SC DET DEPOT TM KA	11		M/93
	<u>TRANSPORTATION</u>			
17	TC CO LT TRK AUG	174		I/10
18	TC CO TML SV	329		M/96
19	TC DET LIQ CARGO TM FD	4		I/11
20	TC DET SUP TM BA	2		M/109
21	TC DET BARC TM FS	51		NA
22	TC DET BARC TM FS	51		NA
23	TC DET MOV CON TM LC	6		I/15
		<hr/>		
		TOTAL - Approx. 1,050		

Annex F

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ANNEX G

ADDITIONAL TACTICAL FIGHTER SQUADRONS AND SUPPORT FORCES

<u>ITEM</u>	<u>UNIT</u>	<u>STRENGTH</u>	<u>PLANNED DEPLOYMENT AREA</u>	<u>JCSM 321-65 ANNEX/LINE</u>
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NOTE: Detailed listing of units to be furnished when received from CINCPAC.

Annex G

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ANNEX H

ADDITIONAL LOGISTIC SUPPORT FOR THE CHU LAI, DA NANG, PHU BAI ENCLAVES

ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM 321-65 ANNEX/LINE
1	Administration	45	Da Nang	NA
2	Harbor Patrol	49		
3	Lighterage	254		
4	Naval Port Services Office	41		
5	Tank Farm	14		
6	Disbursing	6		
7	Air Cargo Handling	22		
8	Supply Storage & Administrative Facility	183		
9	Refrigerated Storage Facility	101		
10	Material Handling Facilities & Stevedores	209		
11	Cargo Handling	286		
12	Hospital (200-bed)	159		
13	Ward Supplement (200-bed)	88		

Annex H

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ITEM	UNIT	STRENGTH	PLANNED DEPLOYMENT AREA	JCSM 321-65 ANNEX/LINE
14	Dental	2	Da Nang	NA
15	Dental Augmentation	2		
16	Prev. Medicine Lab	15		
17	Blood Processing	19		
18	Aviation Tank Farm	13		
19	Magazine	82		
20	Camp-1000-man	81		
21	Fire Protection	7		
22	Trucking	160		
		<u>1838*</u>		
23	Logistics-over-the-shore (LOTS) operations, cargo handling, lighterage, and stevedores	181	Chu Lai	
24	Logistics-over-the-shore (LOTS) operations, cargo handling, lighterage, and stevedores	181	Phu Bai	
	TOTAL	<u>2200</u>		

* This figure includes 1000 Navy personnel previously approved in JCSM 321-65 (Annex G)

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Annex H

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THE DIRECTOR OF CENTRAL INTELLIGENCE
WASHINGTON 25, D. C.

12a

12 June 1965

The Honorable McGeorge Bundy
Special Assistant to the President
for National Security Affairs
The White House

Dear Mac:

The attached was prepared to assist me in pulling together some of my thoughts on the situation in Vietnam. It was also designed to serve me as a resume of intelligence community views which have been set forth in the recent National Intelligence Estimates. Because every effort was made to keep the present document to minimum length, departures from the full texts -- as agreed -- were unavoidable. Even though there are numerous estimates on the subject, they do not cover all of the major points presently under discussion. Accordingly, my staff has supplemented community findings with judgments very generally agreed to within the Central Intelligence Agency.

I myself have found the document useful and forward it to you for your information, emphasizing again that you should consider it a special-purpose briefing note and in no sense an agreed pronouncement of the United States Intelligence Board.

Sincerely,

"Red"

W. F. Raborn

Copies to:

- The President
- The Honorable George Ball
- The Honorable William Bundy
- Lt. General Joseph Carroll
- The Honorable Cyrus Vance
- Lt. General Marshall Carter
- The Honorable Allan Evans
- Maj. General Jack E. Thomas
- Rear Admiral Rufus L. Taylor
- Brig. General C. J. Denholm

GROUP 1
Excluded from automatic
downgrading and
declassification

DECLASSIFIED

Authority CIA 5/5/77, NSC 6/24/77
By NIE, NARS, Date 4/12/78

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CENTRAL INTELLIGENCE AGENCY
OFFICE OF NATIONAL ESTIMATES

11 June 1965

BRIEFING PAPER

NIE's and SNIE's on South Vietnam

Since June 1964 there have been 12 NIE's or SNIE's on South Vietnamese problems. Only one of these, issued 4 February 1965, "Short-Term Prospects in South Vietnam," was in any sense a general assessment of the situation. Eight were on "Communist Reactions to Certain Possible Courses of US Action" -- these US courses of action were specifically given to us by policy-makers requesting the respective Estimates.

Accordingly there are no agreed USIB documents which are currently valid and which provide a general view of the situation in all its aspects, or which deal with all contingencies which might arise.

In Part I, following, we attempt to present estimative judgments on the most immediate issues. Column 1 poses the questions, or puts the propositions. Column 2 contains what NIE's or SNIE's have said on the matter. You will realize that this presentation omits supporting arguments and most qualifications. It may serve as a basis for briefing.

Part II is a list of USIB-approved Estimates specifically related to the Vietnam situation, issued during the past 12 months. It includes a very brief note on each Estimates.

GROUP 1
Excluded from automatic
downgrading and
declassification

DECLASSIFIED
Authority NS07-226
By isl/mj, NARA, Date 4-4-14

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PART I

PRINCIPAL ISSUES IN THE SHORT TERM

I. The Communists think they are winning the war in South Vietnam, because:

(a) It is a guerrilla war, of small-scale operations, in jungle and difficult terrain, where advanced weapons, air power, and large-unit formations are not of decisive importance;

(b) it is a "war of national liberation" -- a political and social struggle -- the kind of struggle which they believe they will inevitably win;

(c) they think the US does not understand how to fight such a war;

(d) they perceive the weaknesses of the South Vietnamese government;

(e) they remember that they defeated the French;

(f) finally, they think they are winning because in fact they are winning. (See General Westmoreland's recent cable.)

The main judgments here are found most recently in SNIE 10-6-65 of 2 June 1965 (para. 3 for the DRV, para. 7 for the Chinese).

Virtually all the Estimates stress Communist confidence in ultimate victory.

No NIE would declare that the Communists are winning the war, and none does.

II. As long as the Communists think they are winning in South Vietnam, bombing of North Vietnam is unlikely to lead them to make conciliatory gestures.

Bombing of North Vietnam could be:

(a) limited to targets and areas approximately as at present;

(b) extended to airfields and SAM sites near Hanoi (and done with SAC aircraft);

(c) extended (gradually) to North Vietnamese industrial and economic targets (not population centers as such);

(d) indiscriminate and complete.

This proposition is most recently in SNIE 10-6-65, 2 June 1965, applying, however, only to bombing as in (a) and (b).

Since February 1965, SNIE's have stated that this degree of bombing would not lead Hanoi to make conciliatory gestures.

SNIE 10-6-65 (2 June 1965) says odds are against this leading Hanoi to conciliatory gestures. (Air Force dissents)

SNIE 10-3/1-65, 18 February, said (with State dissenting) that "if the US vigorously continued in its attacks and damaged some important economic or military assets the DRV ... might decide to intensify the struggle, but ... it seems to us somewhat more likely that they would decide to make some effort to secure a respite from US attack"

The 2 June SNIE, however, in effect though not specifically, reversed this judgment.

This has not been considered in any USIB paper.

III. As long as the Communists think they are winning in South Vietnam it is unlikely that Chinese Communists or Soviets will intervene with substantial military forces of their own, in combat.

The message of all recent SNIE's is in agreement with this proposition, for three main reasons:

1. Such intervention would not be necessary.
2. It would involve China and Russia in undesired risk of larger war with the US.
3. The North Vietnamese do not want a massive Chinese Communist presence in their country, at least not until their regime is facing severe defeat.

Note however that continuance of the flow of military supplies, equipment, and probably small numbers of technical and training personnel from China and the USSR to North Vietnam is virtually certain.

The chances of large-scale DRV invasion, of attacks on US aircraft carriers or bases, or of large-scale Chinese Communist military intervention call for further consideration, as follows:

CONTINGENCIES

I. Large-scale, overt, DRV invasion of South Vietnam-- on the "Korean" model.

(a) Appears to us to be militarily imprudent. The only north-south road is the coast road, open to US air and naval bombardment.

(b) Caution. This does not rule out accelerated and substantial infiltration of regular DRV forces along trails west of the coastal plain. This is occurring and probably will continue.

Estimated in 10-6-65, 2 June, as unlikely in response to SAC bombings of North Vietnamese airfields and SAM sites, because of the risks to the DRV in such an invasion.

But SNIE 10-5-65, 28 April, says that if the US bombed China in sustained fashion "the DRV armed forces, with Chinese support, would probably open an offensive against South Vietnam." (This may not mean a "Korean style" offensive, however, but a greatly intensified insurgency effort within South Vietnam.)

All Estimates on the matter allow for the possibility of such an invasion. State consistently has judged it more likely, in certain contingencies, than have the other Agencies.

II. Attacks on US carriers or on US air bases in South Vietnam.

Attacks on carriers are barely possible with Chinese Communist submarines, possible with Soviet submarines, possible but almost suicidal with IL-28's.

Attacks on airfields in South Vietnam are possible but very dangerous with IL-28's from North Vietnam; are highly likely by sabotage teams.

The possibility of such attacks is recognized in SNIE's, but (except for sabotage or sneak attacks on US airfields) they are deemed unlikely.

III. Substantial Chinese Communist
Military Intervention in
Vietnam, in Combat, with

(a) Chinese Communist aircraft and pilots, based in North Vietnam.

Considered likely, in response to US bombing of North Vietnam, as far back as SNIE 10-3-65, 11 February 1965. Limited, however, by capability of North Vietnamese airfields, especially if these airfields were under US attack.

(b) Chinese Communist aircraft from bases in China.

State considered this likely if US bombing extended to northern North Vietnam. All other agencies considered it unlikely. SNIE 10-3-65, 11 February. Also SNIE 10-6-65, 2 June.

(c) Chinese Communist attack on the offshore islands, Taiwan, or South Korea.)

Considered unlikely in SNIE 10-5-65, 28 April, even if the US bombed South China with sustained air strikes.

(d) Large numbers of Chinese Communist "volunteers" -- in the Korean style.

See next page.

Question: When would the Chinese Communists intervene militarily with ground forces in a substantial fashion (so as to change the character of the war)?

- (a) If the US/GVN were winning the war in South Vietnam? Probably not. Not estimated by USIB.
- (b) If US air attacks began to damage the industrial and military sector of North Vietnam? Probably not. Judged unlikely in SNIE 10-3-65, 11 February 1965 (with partial State dissent). This Estimate almost certainly still holds.
- (c) If the US bombed fighter bases in South China? Probably yes, if the bombings continued over some time. SNIE 10-5-65, 28 April 1965, says that the Chinese under these circumstances would probably move forces "into North Vietnam" and Northern Laos, and would threaten Thailand.
- (d) If US ground forces invaded North Vietnam in such strength as to control most of the country? Probably yes; almost certainly yes if US forces approached the Chinese frontier. This is a judgment agreed in USIB a long time ago. There has been no occasion to repeat it in the past year.

Question: What about Soviet military intervention in combat.

Such intervention is judged to be extremely unlikely.

(a) Vietnam is too far away for the Soviets to support a useful military operation, especially in view of their unfriendly relations with Communist China.

(b) The Soviets wish to avoid a military confrontation with the US.

SNIE's generally estimate Soviet reactions to be confined to propaganda, diplomatic maneuver, and supply of weapons and equipment to North Vietnam.

SOME POLITICAL FACTORS

- I. The Chinese Communists are violent, unyielding, offering no avenue to settlement acceptable to the US.
- II. The DRV is almost, though not quite, as obdurate as the Chinese, and have apparently grown more so in recent weeks.
- III. The Soviets would probably like to get the problem settled, but they cannot force the DRV to a settlement, and there is no reason to suppose that they feel either the necessity or the desire to work towards a settlement on US terms. Their attitude has hardened in recent weeks. It is worth noting that Brezhnev and Kosygin have reversed Khrushchev's policy of disengagement from the Vietnam problem.

All this is in accord with
SNIE's and NIE's.

IV. The Sino-Soviet quarrel is a factor of first importance. Much simplified:

(a) The Chinese maintain their extreme revolutionary posture, expecting that a successful outcome in Vietnam (from their point of view) will enhance their position in the Communist world and among underdeveloped nations. They wish to maximize their influence in North Vietnam, at Soviet expense.

(b) The Soviets cannot afford (even if they wish) to appear backward in their support of a "revolutionary struggle." But they are challenging Chinese influence in North Vietnam by supplying things (SAM's, IL-28's) which the Chinese cannot produce.

(c) The DRV appears eager to balance the overwhelming Chinese presence (owing to size and proximity) in their affairs with a growing Soviet involvement.

Generally in accord with various USIB pronouncements.

V. The fragility of the governmental structure in South Vietnam is also an important factor in Communist calculations.

VI. Free World Attitudes

There is widespread disapproval of US actions in Vietnam in the Free World generally, including the US itself.

Not covered in NIE's.

We believe that the Communists rely heavily on this feeling to restrain the US from (1) anything approaching unrestricted bombing of North Vietnam and (2) widening the area and scope of the war.

Emphasized in all SNIE's.

Communist diplomacy and propaganda is vigorous in encouraging the disapproval of US policy. It is an extremely important element in their general line of policy.

Emphasized in all SNIE's.

FINAL NOTE

One Estimate -- that on reactions to US bombing of China -- deals in its final section with a situation of general war in the Far East -- perhaps in the world. We note that except for this, all the Estimates deal with situations of moderate or limited escalation (or no escalation). The general proposition is that the Communists will try to restrain further expansion of military conflict -- if only because they are doing well in conflict on the present scale.

11 June 1965

PART II

USIB-APPROVED ESTIMATES SPECIFICALLY RELATED TO THE
VIETNAM SITUATION, ISSUED DURING THE PAST TWELVE MONTHS

8 September 1964, SNIE 53-64, Chances for a Stable Government
in South Vietnam

Written as General Khanh took control. "At present the odds are against the emergence of a stable government capable of effectively prosecuting the war in South Vietnam. Yet the situation is not hopeless...."

1 October 1964, SNIE 53-2-64, The Situation in South Vietnam

The Problem was "To examine the situation as it has developed since early September, and to assess its implications for the US." It said: "Since our estimate of 8 September 1964 the situation in South Vietnam has continued to deteriorate...We believe that the conditions favor a further decay of GVN will and effectiveness. The likely pattern of this decay will be increasing defeatism, paralysis of leadership, friction with Americans, exploration of possible lines of political accommodation with the other side, and a general petering out of the war effort...."

9 October 1964, SNIE 10-3-64, Probable Communist Reactions to Certain
Possible US/GVN Courses of Action

After dealing with two lesser courses, this estimate addressed itself to Communist reactions to "a systematic program of gradually intensifying US/GVN [air] attacks against targets in the DRV itself, including those associated with infiltration routes and military and economic targets...." This estimate tended, very hesitantly, to the judgment that such a program of air attacks, if continued, would probably cause the DRV to stop its military attacks in South Vietnam, press for a negotiated cease-fire in the South, and try to promote an international conference to pursue their ends, expecting, however, to fight another day. State dissented, believing that the DRV would carry on the fight.

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4 February 1965, SNIE 10-65, Communist Military Capabilities and Near-Term Intentions in Laos and South Vietnam

This paper assesses the meaning of recent Communist force build-ups in South Vietnam and Laos; it sees them as having the purpose of improving Communist military capabilities in those areas, and deterring the US from expanding the war to North Vietnam. They did not (according to the estimate) "appear to be of the nature or scope that we would expect to precede a major change in the nature of Communist military activity in Laos or Vietnam such as would precede a major offensive." Also: "We believe that Hanoi and Peiping are determined to continue their present policies in Laos and South Vietnam. While the Communists are probably not yet ready to embark on a general military offensive, it is almost certain that they will continue their support of insurrectionary forces and will prepare to exploit any new opportunities which arise in either Laos or South Vietnam."

4 February 1965, SNIE 53-65, Short-Term Prospects in South Vietnam

This was an estimate on significant political forces and attitudes in South Vietnam, with an assessment of the prospects over the next month or so. It grew out of the current conflict between Buddhists and Catholics, and analyzed the nature of these and other forces at work.

11 February 1965, SNIE 10-3-65, Communist Reactions to Possible US Actions

The Problem was "To estimate Communist reactions, particularly Soviet reactions, to a US course of sustained air attacks on North Vietnam." The Soviet response "would consist both of a vigorous diplomatic and propaganda effort to bring the US to the conference table and the provision of military support to North Vietnam." This support would almost certainly include anti-aircraft artillery and radars; the chances were about even that the Soviets would provide some SA-2 defenses. In the world generally the USSR would harden its policies toward the US. The DRV would probably not reduce its levels of activity. China might send some few volunteers but would not intervene on a substantial scale. Fighters based in North Vietnam would probably be employed to the extent of their capabilities against the US attacks. If US attacks reached the

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~~T-O-P S-E-C-R-E-T~~
SENSITIVE

northern part of the DRV China might react over North Vietnam with fighters from its own bases. (State believed China "would probably" so react.)

18 February 1965, SNIE 10-3/1-65, Communist Reactions to Possible US Courses of Action Against North Vietnam

This estimate was a supplement to the preceding one. The majority here inclined slightly to the view that Hanoi would make some effort to secure a respite from such attacks, if they were declared and sustained, and if they damaged some important economic or military assets. (State dissented.)

19 March 1965, SNIE 10-4-65, Probable Communist Reactions to Deployment of a ROK Combat Division for Base Security Duty in South Vietnam

This paper estimated that there would not be much Communist reaction, beyond propaganda.

28 April 1965, SNIE 10-5-65, Communist Reactions to Certain US Actions

Problem: "To estimate likely Communist, particularly Soviet and Chinese, reactions to non-nuclear air strikes by the US against China." The paper dealt with three possibilities: (a) to an initial exchange, and similarly limited US responses to further Chinese air attacks; (b) expanded US air attacks to include other targets of military significance in South China (beyond airfields); and (c) US air strikes expanded to include hundreds of targets of major military significance throughout China.

2 June 1965, SNIE 10-6-65, Probable Communist Reactions to Certain US Actions

4 June 1965, SNIE 10-6/1-65, Probable Reactions to Certain US Courses of Action

4 June 1965, SNIE 10-7-65, Implications of a Certain US Course of Action

These three papers dealt with probable reaction to a US air attack, using heavy bombers, aimed at destroying fighter and bomber

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SENSITIVE

aircraft and surface-to-air missiles in North Vietnam; reactions to SAC heavy bomber strikes on enemy positions in South Vietnam; and the implications of not attacking the surface-to-air missile sites, light bombers, and fighters recently furnished to the DRV by the USSR.

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~~T-O-P S-E-C-R-E-T~~
SENSITIVE