VIETNAM POLICY PROPOSALS

MONDAY, MARCH 16, 1970

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 4221, New Senate Office Building, Hon. J. W. Fulbright (chairman) presiding.

Present: Senators Fulbright, Sparkman, Symington, Aiken, Case, Cooper, Williams and Javits.

Also present: Senator Mathias.

The CHAIRMAN. The committee will come to order.

OPENING STATEMENT

Continuing its consideration of possible congressional action to help bring an end to the war in Vietnam, the committee will hear testimony today by Administration representatives on the joint resolution introduced by Senator Mathias and Senator Mansfield. Representing the Administration's viewpoint, the witness today will be Under Secretary of State Elliot L. Richardson, accompanied by Mr. Michael Hornblow.

The Mathias-Mansfield resolution calls for the repeal of the Taiwan, Middle East, Cuba, and Gulf of Tonkin resolutions. It also provides for the creation of a Joint Congressional Committee to consider methods and the possible consequences of termination of the National Emergency Proclamation by President Truman in 1950. The resolution would also have the Congress declare its support for the President's "efforts to achieve a political solution in Vietnam and his plan for accelerated withdrawal of all United States forces," urge all South Vietnamese to work together to establish a viable government, and call on the President to work for initiation of a multilateral reconstruction program for Vietnam.

This hearing is part of the committee's continuing effort to make use of the legislative process in order to assist the President in his efforts to bring an early and satisfactory conclusion to the war in Vietnam. To this end, the committee has already heard testimony by several Senators on behalf of various resolutions and legislative proposals, all of which remain under active consideration. The committee has also heard extensive testimony by civilian and military officials of the pacification program in Vietnam. In the near future we hope to hear further testimony by well qualified individuals on the relationship of the war to major social and economic problems within the United States. All of these hearings are designed to provide the committee with in-
formation pertinent to its consideration of effective legislative means of helping the President to bring an end to the war in Vietnam.

Mr. Richardson, we are pleased to have you with us today. Before you start, I want to say again that I thought your letter in response to the committee's inquiry regarding the Department's attitude toward the Mathias resolution was a very good statement. I thought it showed a proper and useful attitude towards discussing these very important constitutional matters. I was very pleased with it.

STATEMENT OF UNDER SECRETARY OF STATE ELLIOT L. RICHARDSON; ACCOMPANIED BY MICHAEL HORNBLow

Mr. Richardson. Thank you, Mr. Chairman, and members of the committee. I am very pleased to have the opportunity this morning on behalf of the Department of State and the Administration to appear and testify on this joint resolution, and, of course, I will be very pleased to try to respond to any questions you may have. Since our letter in itself does constitute quite a full statement of our views on the pending resolution, it would seem to me that we might usefully proceed directly, Mr. Chairman, to any questions you may have. Just the one added point that perhaps should receive some emphasis; namely, that while our position is as stated in the letter, we are concerned lest there be misunderstanding or adverse repercussions in any of the affected areas that could follow from the adoption of the resolution.

DEPARTMENT OF STATE COMMENTS ON S.J. RES. 166

The Chairman. Mr. Secretary, I think it is a very fine way to proceed. The complete letter will be made a part of the record at this point.

(The information referred to follows.)

HON. J. WILLIAM FULBRIGHT,
Chairman, Committee on Foreign Relations,
United States Senate, Washington, D.C.

Dear Mr. Chairman: In accordance with your letter of December 11, 1969, the Department of State has carefully reviewed Senate Joint Resolution 166 and is pleased to comment upon it.

Section 1 of Senate Joint Resolution 166 would repeal the Formosa Resolution (69 Stat. 7), the Resolution on the Middle East (71 Stat. 5), the Cuba Resolution (65 Stat. 697), and the Tonkin Gulf Resolution (75 Stat. 554). Section 2 would establish a joint committee of the Congress to study termination of the national emergency proclaimed by the President on December 16, 1950. Sections 3, 4, and 5 would express the sense of the Congress on certain matters relating to Viet-Nam and reconstruction of war-ravaged areas in Southeast Asia.

For reasons discussed in detail below, the Department believes that repeal of the Resolutions specified in Section 1 is a matter within the discretion of the Congress. We neither advocate nor oppose Congressional action. Similarly, the Department has no objection to a study of the consequences of terminating the 1950 proclamation of a state of national emergency, although we consider it would be unwise for the proposed joint committee to work with a pre-ordained position. Finally, while the Department agrees with certain of the principles stated in Sections 3, 4, and 5 and considers that they reflect a sound view of Viet-Nam policy and reconstruction in Southeast Asia, we believe that other parts of those sections would have unfortunate implications.
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SECTION 1—THE CONTINUING SIGNIFICANCE OF THE JOINT RESOLUTIONS

Each of the Resolutions specified in Section 1 was passed in response to a crisis situation in the affected area. Thus, the Formosa Straits Resolutions dealt with a direct military threat against the off-shore islands; the Mid-East Resolution arose from the threat of Soviet expansionism in the area and the situation following the 1956 Suez/Sinai war; the Cuba Resolution was passed in the context of adventurist Soviet military policies directly threatening our security; and the Tonkin Gulf Resolution responded to an assault upon our naval forces in international waters.

In these moments of crisis, the use of these Resolutions as a highly visible means of executive-legislative consultation was instrumental in demonstrating unified support for our policies to the world and the American public and in indicating Congressional approval for the possible employment of United States military forces in support of those policies.

The crisis circumstances giving rise to these Resolutions have long since passed. As indicated by the specific analyses below, the Administration is not depending on any of these Resolutions as legal or constitutional authority for its present conduct of foreign relations, or its contingency plans.

Equally important, the Administration does not consider the continued existence of these Resolutions as evidence of Congressional authorization for or acquiescence in any new military efforts or as a substitute for the policy of appropriate and timely Congressional consultation to which the Administration is firmly committed.

Should a situation arise calling into play our treaty commitments or otherwise seriously and immediately affecting vital United States interests in the areas affected by these Resolutions, we would wish to see Congress at that time fulfill its proper role under the Constitution in the decision-making process. We would keep the appropriate committees and the Congressional leadership fully informed and would cooperate to the maximum in Congress' fulfillment of its responsibilities. Should circumstances warrant, and after consultation with appropriate committees and the Congressional leadership, we might indeed ask further Resolutions in fresh crises.

In short, as a functional matter, these Resolutions have no continuing significance in the foreign policy formulation process, and it is for Congress to determine whether they should be terminated or simply allowed to fade away.

At the same time, the Department would call to the Committee's attention that these Resolutions contain significant recitals of basic principles of our policies in the affected areas. Repeal of these Resolutions would raise questions about current United States policy in the areas concerned and thus inevitably would entail certain adverse political consequences abroad. On the other hand, we believe the Administration has stated its policy clearly with respect to the questions dealt with by those Resolutions. As the President made clear in his recent State of the Union message and on numerous prior occasions, the United States intends to keep its defense commitments. Thus, to foreclose any possible misunderstanding, we analyze below the current legal significance of the Resolutions involved in Section 1 and we restate the relation between the policy principles stated in these Resolutions and the policies of this Administration as spelled out by the President and the Secretary of State.

The Cuban Resolution

The Cuban Resolution of October 3, 1962, was above all a statement of United States policy toward Cuba. It was not intended to add to the President's powers or to authorize any particular action he might take in the future. Consequently, we do not consider that the Cuban Resolution in any way affects the powers of the Executive and Legislative Branches. It has never been relied upon by the Executive as the legal basis for any action. President Kennedy's 1962 order for the interdiction of the delivery of offensive missiles to Cuba cited as authority only the Constitution and statutes of the United States, while adding that the President was acting "in accordance" with the Cuban Resolution as well as the resolutions of the Organization of American States on the subject.

The Cuban Resolution does, however, reflect United States policy toward Cuba. That policy conforms to the hemisphere-wide policy adopted by the Organization of American States. It expresses the United States determination to prevent the Castro regime from extending its aggressive or subversive activities to any part of the Western Hemisphere. It states that the United States is determined to
prevent in Cuba the creation or use of an externally supported military capability endangering the security of the United States. Finally, it expresses United States determination to work in support of self-determination for the Cuban people. This policy remains the policy of this Administration. We believe the success of this policy will be enhanced by the success of the broad program of Action for Progress for the Americas, which the President set forth in his address before the Inter-American Press Association on October 31, 1969. In that address the President also said:

I would stress one other point. We cannot have a peaceful community of nations if one nation sponsors armed subversion in another's territory. The export of revolution is an intervention which our system cannot condone, and a nation like Cuba which seeks to practice it can hardly expect to share in the benefits of this community.

The Formosa Resolution

The Formosa Resolution of January 29, 1955, expressed Congressional approval for the President "to employ the Armed Forces of the United States as he determines necessary for the specific purpose of securing and protecting Formosa and the Pescadores against armed attack, this authority to include the securing and protection of such related positions and territories of that area now in friendly hands and the taking of such other measures as he judges to be required or appropriate in securing the defense of Formosa and the Pescadores."

This Resolution is now 15 years old. In the event of a new crisis in the Formosa Strait, this Administration would not view the continued existence of the Formosa Resolution as a source of Congressional authority.

Our defense commitment to the Republic of China is clearly set forth in our Mutual Defense Treaty, which entered into force several months after the Resolution was adopted. Repeal of the Resolution would not affect our commitment to the defense of the treaty area or our ability to meet it.

The Middle East Resolution

Much of the Middle East Resolution of March 9, 1957, is no longer relevant. That portion of Section 2 of the Resolution giving Congressional approval for the President to undertake military assistance programs has now been overtaken by the Foreign Assistance Act. Similarly, Section 3 of the Resolution, authorizing the President to expend funds during fiscal year 1957 is no longer relevant. Section 4, authorizing the President to furnish assistance to the United Nations Emergency Force, has no current applicability since UNEF no longer exists.

The Resolution’s statement, in Section 2, that “the United States is prepared to use armed forces to assist any nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism” plays a role in United States bilateral agreements with Iran, Pakistan and Turkey. Article 1 of those agreements, which is common to all three of them, says that “In cases of aggression against Iran/Pakistan/Turkey, the Government of the United States of America, in accordance with the Constitution of the United States of America, will take such appropriate action, including the use of armed forces, as may be mutually agreed upon and as is envisaged in the Joint Resolution to promote peace and stability in the Middle East, in order to assist the Government of Iran/Pakistan/Turkey at its request.” Repeal of the Resolution would in no way affect the continuing validity of those bilateral agreements. On the other hand, if the Resolution is not repealed, the Administration would not construe it as a source of authority for any decisions which might involve the United States in a conflict in that area.

Perhaps the most important statement of the Middle East Resolution is the sentence in Section 2 which states that “...the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East.” The policy expressed by this statement has continued throughout the years, to be the cornerstone of United States policy in the Middle East. It remains the policy of this Administration. Repeal of the Middle East Resolution would not affect our continued commitment to the preservation of independence and integrity of the nations in that area.

The Tonkin Gulf Resolution

As noted above, this Administration has not relied on or referred to the Tonkin Gulf Resolution of August 10, 1964 as support for its Viet-Nam policy.

Repeal at this time, however, may well create the wrong impression abroad about U.S. policy.
prevent in Cuba the creation or use of an externally supported military capability endangering the security of the United States. Finally, it expresses United States determination to work in support of self-determination for the Cuban people. This policy remains the policy of this Administration. We believe the success of this policy will be enhanced by the success of the broad program of Action for Progress for the Americas, which the President set forth in his address before the Inter-American Press Association on October 31, 1969. In that address the President also said:

I would stress one other point. We cannot have a peaceful community of nations if one nation sponsors armed subversion in another's territory.

The Ninth Meeting of American Foreign Ministers clearly enunciated this principle. The export of revolution is an intervention which our system cannot condone, and a nation like Cuba which seeks to practice it can hardly expect to share in the benefits of this community.

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The Formosa Resolution of January 22, 1955, expressed Congressional approval for the President "to employ the Armed Forces of the United States as he determines necessary for the specific purpose of securing and protecting Formosa and the Pescadores against armed attack, this authority to include the securing and protection of such related positions and territories of that area now in friendly hands and the taking of such other measures as he judges to be required or appropriate in assuring the defense of Formosa and the Pescadores."

This Resolution is now 13 years old. In the event of a new crisis in the Formosa Strait, this Administration would not view the continued existence of the Formosa Resolution as a source of Congressional authority.

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The President has made our policy on Viet-Nam clear on numerous occasions. We seek a negotiated settlement and are proceeding with efforts to bring the war to an end even if such negotiated settlement proves unobtainable. The Congress could, of course, draft and adopt a new Resolution to complement and support that policy.

**TERMINATION OF THE NATIONAL EMERGENCY—SECTION 2**

Section 2 of Senate Joint Resolution 166 would establish a “Joint Committee on the Termination of the National Emergency.” The Department has no objection to the creation of such a study committee and would be pleased to cooperate in any way possible with the committee’s work. However, we should like to suggest that if such a study is to be undertaken its conclusions ought not be prejudged either by the title of the committee or by its terms of reference. The first specific function of the Committee would be to “consult and confer with the President and his advisers regarding the most effective method of terminating such national emergency.” This language assumes that the national emergency should be terminated and that the only question is how. In fact, the Proclamation of 1960 makes operative some 170 statutes that provide a set of authority the continuation of which is important under present world conditions. If the national emergency were to be terminated we believe that substantially similar authority would have to be provided in its stead. Thus, the first question which the Committee might study is not how the national emergency should be terminated but what purposes it serves. With respect to those purposes it found to be substantial, it could then ask whether these were best provided for by continuation of the present Proclamation or by some other means.

**VIET-NAM SETTLEMENT—SECTION 3**

We welcome the expression of support in this Section for the President’s efforts to achieve a political solution in Viet-Nam. Section 3 goes on to support the President’s plan for withdrawal of U.S. forces and urges the creation of an international peacekeeping force for Viet-Nam, a proposal that is consistent with the President’s call for international supervision of a cease-fire. For the sake of accuracy Section 3 might be revised to state our fundamental objective of self-determination for the South Vietnamese people and to avoid the possible implication that the continued implementation of the program of troop withdrawals will result in a situation in which the people of South Viet-Nam will be dependent on an outside force to assure their security or protect them from reprisals.

**FORMATION OF A NEW GOVERNMENT IN SOUTH VIET-NAM—SECTION 4**

Section 4 of the Senate Joint Resolution 166 urges South Vietnamese leaders of “all political, religious and ethnic groups in South Viet-Nam to initiate serious discussions designed to lead to the creation of a government capable of gaining popular support and sustaining a durable political order after the departure of U.S. forces.” It is the policy of this Administration to support and encourage as broadly representative a government as possible in South Viet-Nam. Unfortunately, the language of Section 4 is misleading in its implication that the present government is incapable of “gaining public support and sustaining a durable political order.” In addition, the language of Section 4 may connote an American effort to impose a coalition government on South Viet-Nam. The President has indicated that he would not favor any political settlement imposed on South Viet-Nam from outside, the form and composition of their government being a matter for the South Vietnamese to decide.

**SOUTH ASIA RECONSTRUCTION—SECTION 5**

The Department concurs in the aims of Section 5 of the Mathias Resolution; that is, multilateral cooperation in the reconstruction of the areas in Southeast Asia damaged by the war. The Administration intends to submit to the Congress its recommendation for post-war reconstruction and development and to request appropriate actions for a U.S. contribution to a multilateral effort at an appropriate time.

In light of the above comments, the Department of State is prepared to cooperate fully with the Committee on Foreign Relations in examining the questions raised by the draft Resolution.

Sincerely,

H. G. Torbert, Jr.,
Acting Assistant Secretary for Congressional Relations.
The Chairman. With your permission, we would be very glad to proceed with questions based on the letter.

Mr. Richardson. Yes. That would be certainly very satisfactory to me, Mr. Chairman.

LEGAL AUTHORITY FOR U.S. INVOLVEMENT IN VIETNAM WAR

The Chairman. Mr. Secretary, I am very pleased that the Department does not oppose repeal of the Tonkin Gulf and other resolutions, but there are questions that arise from this letter.

Specifically, your reply states as follows: "The Administration is not depending on any of these resolutions as legal or constitutional authority for its present conduct of foreign relations or its contingency plans."

I wonder if you could tell us on what legal authority then does the Administration base its conduct of the Vietnam war?

Mr. Richardson. Well, Mr. Chairman, this Administration, of course, took office just over a year ago when the war was in full progress and as, of course, you know, we began to undertake steps to reduce our involvement in the war. We never had occasion therefore to reach the question of what original constitutional authority may have been relied upon by the previous Administration.

The important thing is that we are now doing the best we can to bring the war to an end.

Regardless, in any case of the extent of the President's general constitutional authority to employ troops abroad, he certainly does have in our view the authority as Commander-in-Chief to take all reasonable measures to protect those troops once they are engaged and to secure the conditions that make possible their orderly withdrawal under circumstances that contribute to a durable peace.

I might simply add that these activities, of course, have been widely known to the general public, to the whole world, and, of course, the Congress itself, and the Congress has supported the President in his current efforts, including its position in the appropriations without which our military efforts could not be continued.

ACTION BY MASSACHUSETTS LEGISLATURE

The Chairman. You are quite right, Mr. Secretary, of course, in your point that the war was in progress and you didn't have to find a justification for the original entry, but you are a distinguished attorney, formerly an attorney general of the State of Massachusetts. Incidentally, I know of an action of your State legislature a few days ago, which I thought extremely enlightened. Do you know of it?

Mr. Richardson. I noticed that, Mr. Chairman. I would not have used the same words to characterize it.

The Chairman. I thought perhaps this reflected the influence that you exerted while you were there, that these people had been educated as to the constitutional realities of that case.

Mr. Richardson. Quite possibly to the contrary, Mr. Chairman, that my departure from the State had encouraged action that might not have taken place had I remained.

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TERMINATION OF THE NATIONAL EMERGENCY—SECTION 2

Section 2 of Senate Joint Resolution 166 would establish a "Joint Committee on the Termination of the National Emergency." The Department has no objection to the creation of such a study committee and would be pleased to cooperate in any way possible with the committee's work. However, we should like to suggest that if such a study is to be undertaken its conclusions ought not be prejudged either by the title of the committee or by its terms of reference.

The first specific function of the Committee would be to "consult and confer with the President and his advisers regarding the most effective method of terminating such national emergency;" this language assumes that the national emergency should be terminated and that the only question is how. In fact, the Proclamation of 1950 makes operative some 170 statutes that provide a set of authority the continuation of which is important under present world conditions. If the national emergency were to be terminated we believe that substantially similar authority would have to be provided in its stead. Thus, the first question which the Committee might study is not how the national emergency should be terminated but what purposes it serves. With respect to those purposes it found to be substantial, it could then ask whether these were best provided for by continuation of the present Proclamation or by some other means.

VIET-NAM SETTLEMENT—SECTION 3

We welcome the expression of support in this Section for the President's efforts to achieve a political solution in Viet-Nam. Section 3 goes on to support the President's plan for withdrawal of U.S. forces and urges the creation of an international peacekeeping force for Viet-Nam, a proposal that is consistent with the President's call for international supervision of a cease-fire.

For the sake of accuracy Section 3 might be revised to state our fundamental objective of self-determination for the South Vietnamese people and to avoid the possible implication that the continued implementation of the program of troop withdrawals will result in a situation in which the people of South Viet-Nam will be dependent on an outside force to assure their security or protect them from reprisals.

FORMATION OF A NEW GOVERNMENT IN SOUTH VIET-NAM—SECTION 4

Section 4 of the Senate Joint Resolution 166 urges South Vietnamese leaders of "all political, religious and ethnic groups in South Viet-Nam to initiate serious discussions designed to lead to the creation of a government capable of obtaining popular support and sustaining a durable political order after the departure of U.S. forces." It is the policy of this Administration to support and encourage as broadly representative a government as possible in South Viet-Nam. Unfortunately, the language of Section 4 is misleading in its implication that the present government is incapable of "gaining public support and sustaining a durable political order." In addition, the language of Section 4 may convey an American effort to impose a coalition government on South Viet-Nam. The President has indicated that he would not favor any political settlement imposed on South Viet-Nam from outside, the form and composition of their government being a matter for the South Vietnamese to decide.

SOUTH ASIA RECONSTRUCTION—SECTION 5

The Department concurs in the aims of Section 5 of the Matthews Resolution: that is, multilateral cooperation in the reconstruction of the areas in Southeast Asia damaged by the war. The Administration intends to submit to the Congress its recommendation for post-war reconstruction and development and to request appropriate actions for a U.S. contribution to a multilateral effort at an appropriate time.

In light of the above comments, the Department of State is prepared to cooperate fully with the Committee on Foreign Relations in examining the questions raised by the draft Resolution.

Sincerely,

H. G. Torbert, Jr.,
Acting Assistant Secretary for Congressional Relations.
CONSTITUTIONAL AUTHORITY TO EMPLOY TROOPS ABROAD

Coming back to this immediate question, you started out by saying the “general constitutional authority to employ troops abroad.” Is this a different way of saying, as was referred to by Under Secretary Katzenbach, the inherent powers of the Presidency in foreign relations? Is that what you had in mind? What do you mean by general constitutional authority to employ troops abroad?

Mr. Richardson. Well, Mr. Chairman, the precise scope of that authority, of course, is one of those not clearly defined areas which perhaps it will never be possible to define with complete clarity. I think certainly the President in given situations does have authority as Commander-in-Chief to deploy troops abroad, but exactly what those circumstances are and the circumstances under which they can constitutionally be committed to combat are questions to which I think it is impossible to give precise answers.

The Chairman. It may not be possible to give general rules that are easy to follow. I think it is possible to develop a clearer understanding of what is involved. Don’t you think the language of the Constitution regarding a declaration of war is quite clear? There is no specific language in the Constitution saying the President may send troops abroad, is there?

Mr. Richardson. No.

CONGRESSIONAL PARTICIPATION IN DECISIONS TO USE ARMED FORCES

The Chairman. There is none. There have been precedents with regard to using our armed forces to repel pirates and to protect citizens’ rights. These are far short of waging war. I don’t know that we can generalize to the point of saying all questions are solved. I do think there is a certain principle at which we can arrive. That is that in a major operation involving a substantial number of troops and prosecuting a war as against an emergency action and protection of property in a riot or something of this sort, we can agree that Congress will be consulted. The matter will be subjected to debate and there will be requested of Congress a declaration of war, which, I would say, is the proper and constitutional procedure. I have difficulty in saying that a declaration of war in such form is very different from a joint resolution by the Congress. This is a distinction that is difficult for me. It depends, of course, upon the form of the joint resolution and how it is explained. If such a joint resolution is disguised as a reaction to an unprovoked attack upon us and obtained by what I believe to have been deceptive and misstated facts, then that presents another matter, but these matters I think are subject to some clarification. The Senate in passing the commitments resolution was seeking to begin to draw some lines of understanding between the legislative and executive branches in the hope of preventing in the future precipitate action even by the Senate itself in this area. In other words, we would have a debate, a national consideration, of anything involving troops in any substantial amount.

This is, I think, a very crucial matter and I was inviting you to help us draw some lines or come to some understanding.

Mr. Richardson. Mr. Chairman, it seems to me that past history and conjunctural future possibilities help to underscore the difficulty
of drawing any precise lines. Under the United Nations Charter, for example, we can be called upon to assist in the situation in which aggressive action has been involved without necessarily implying that we are going to war but rather contributing armed forces together with other nations pursuant to the charter.

There may be other cases in which our assistance is requested to protect the national integrity of another country which is threatened by external forces, again in which if we were to declare war we might be triggering a series of consequences which we aren't quite prepared to undertake, and these are situations in which certainly this Administration believes it would be exceedingly important to engage in full consultation with the Congress but the consequences of that consultation could well be the conclusion that a formal declaration of war might not be a wise course.

Indeed, the conclusion of such consultation might be that no joint resolution was called for either. But nonetheless, the President was acting within the scope of his constitutional authority or proposed so to act.

The Chairman. This is very interesting. Do you think this can arise from a request of a country to whom we have no treaty obligations and have made no formal commitment?

Mr. Richardson. I think so far as a country with which we have no treaty obligations is concerned that the obligation might arise in a given instance conceivably under the United Nations Charter or as a result of joint action determined upon in the United Nations.

The Chairman. Of course, the United Nations Charter is for practical purposes a treaty. In taking action in response to such action I think it would go very far to meet the situation. There would be, I think, open and aboveboard discussion, debates, about a matter presented in such fashion in contrast to the Tonkin Gulf. To me this is a classic example of precipitate action taken with a minimum of debate, a minimum of revelation of facts and involvement.

Senator Case. Mr. Chairman, would you yield just for a second?

The Chairman. Yes.

CONGRESSIONAL ACTION ON GULF OF TONKIN RESOLUTION

Senator Case. Precipitate on the part of the Administration or the Congress?

The Chairman. I was thinking particularly of the Congress.

Senator Case. There had been suggestions that the Administration had been considering such a matter.

The Chairman. I was thinking of the Senate and the public together, the country. It is the country's men and money that are involved in a war. I was thinking of the role the Senate played. It consisted, after the joint meeting of this committee and Armed Services of about an hour and 40 minutes, of total debate on the floor of 5 or 6 hours at most. This was under the impact of an extremely provocative presentation of alleged facts, which I do not believe to have been true, about our having been attacked on the high seas. I won't relate all of that, but the circumstances were such that the emotions of the Senate as well as the House were aroused. The House passed this resolution just as rapidly with practically no debate and unanimously which is
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**WHAT CONSTITUTES CONSULTATION WITH CONGRESS?**

This is what I am talking about. You say you will have consultation. Does that mean in such a way that the Senate is involved in an opportunity for debate and the full revelation of the facts? Or does it mean the kind of consultation that has been used by the previous Administration, private consultation of the so-called leadership and then saying Congress was consulted and knew all about it?

There was, I think, a very successful series of meetings which were designed to and did properly subvert the Congress from the open and aboveboard discussion of such issues in such meetings as this. I want to avoid a repetition of that. I thought your letter was forthcoming. At least it opens it up.

**EXECUTIVE WAR POWERS**

I am trying to pinpoint the Administration's position. Does this Administration believe it has the power to engage in war abroad without the authorization of Congress? I do not mean in defense of our own country, nor in defense of lives, nor in a riot situation, but to wage a war against an organized community?

I think a good example was Wilson's attack upon Mexico. Originally it seems to have been just to repel an attack by a bandit. That I think they admit, but then when it goes further to attack the established government, there begins to be a point where it becomes a war against the government. This is where I am trying to draw you out a bit.

Mr. Richardson. Well, Mr. Chairman, I don't think I can say more than that. As we have pointed out in our letter, and I quote:

Should a situation arise calling into play our treaty commitments or otherwise seriously and immediately affecting vital United States' interests.

And I can skip the next phrase in order to broaden the point.

We would wish to see Congress at that time fulfill its proper role under the Constitution in the decision-making process. We would keep the appropriate committees and the Congressional leadership fully informed and would cooperate to the maximum in Congress' fulfillment of its responsibilities.

Should circumstances warrant, and after consultation with appropriate committees and the Congressional leadership, we might indeed seek further resolutions in fresh crises.

In any case, Mr. Chairman, it seems to me, to go back to the example you gave of United States' involvement in the Mexican border under the Administration of President Wilson, I imagine that in the first instance it didn't appear likely, certainly we didn't have the intention of engaging in significant hostilities against the Mexican Government. If the Congress is kept fully informed, in the first instance through its leadership and the committees having jurisdiction in the matter, then it should be possible at a given time for the leadership to conclude in consultation with the Administration that the time had come for some broader action which could include hearings and debate.

In any event, given the possibilities that one could visualize in the future of a situation that had small beginnings and no very clear lines of demarcation, as it grew in scale, we could only say that we would undertake to keep in such close touch with the Congress that a joint
determination could be made by the Congress and the executive branch together of the point at which some broader or more formal action was appropriate.

**CONGRESSIONAL CONSULTATION RE USE OF TROOPS**

The Chairman. Of course, if you follow that procedure, I accept that as being my own view. In that connection, do you think the executive has an option as to whether or not it would seek authority to use troops in what I would call a substantial operation as distinguished from repelling a raid by a bandit? It seems to me that isn't quite clear. You say you might do this. I don't think consulting the leadership is enough. I think the Congress should be informed and have an opportunity to debate.

Laos is a current example. We have not been fully informed. We are becoming more fully informed primarily by news articles. When the Administration is confronted with the articles, they usually admit to them, but we have not been fully informed about Laos in my view. I think this is what has been uppermost in the minds of Senator Symington and the committee about being fully informed so that we can consider it. He hasn't concluded in advance that you shouldn't be doing it, but we have concluded certainly that we ought to be informed.

You know what I am talking about—the transcript of the subcommittee hearings. What bothers Senator Symington, the other members of that subcommittee, and I think the whole committee, is the Administration's disposition not to take the Congress and the country into its confidence in a matter involving very serious use of vast amounts of the country's armed forces, either in the form of our air force or ground troops. In this case not very many troops, not many personnel are involved. I know somebody attacked me in one of the newspaper columns for saying we didn't know about it. I forget who it was. We knew something was going on, but I certainly didn't know anything like the extent of what was going on. There is a story in the morning paper about the secret radar station. I didn't know anything about that. Senator Symington has been out there a number of times. He didn't know about these things and he didn't know about the extent of the Army organized by the CIA. These things have all come out in the press. All we knew is that there was something going on in Laos and I thought and most of us thought it was far less important than it actually turned out to be.

I think this is a fair example of keeping in touch and revealing what goes on to the Congress before it degenerates into major warfare. When that happens it is usually too late for the Congress or the people to have any voice in the matter really. I think this feeling of frustration is at the root of a lot of the so-called alienation in the country.

**IMPORTANCE OF PUBLICATION OF LAOS TRANSCRIPT**

Mr. Richardson. Well, I can only say on this score, Mr. Chairman, that whatever may have been the situation at any given time in the past, the committee through the subcommittee chaired by Senator Symington certainly now does have full information on the situation in Laos, leaving only the question of some points as to which there is
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continuing discussion of the question of publication of the full transcript.

The CHAIRMAN. Of course, the publication is very important. The transcript has to be released in order to discuss this in public. When I say in public, I mean with the committee in public and with the Senate in public. I think this is very important. It is bad enough to invite or require citizens to go and fight and lose their lives and spend their money and bankrupt the country. They ought not to do it without being aware of why they are doing it and having voted on it.

I think the one thing democracy surely should provide is a full and free discussion of these involvements. We can't have that without the release of such testimony as that in the subcommittee.

Senator SYNGE. Will the Chair yield for an observation?

Mr. Secretary, in support of the chairman's position, this episode, as now written in detail in the paper this morning, the dateline out of Vientiane, is in the testimony we would like to see released. It is one of the stories in our hearings that is still classified.

Thank you, Mr. Chairman.

Mr. RICHARDSON. I would just add that while there are some questions still in issue with respect to disclosure which I believe are going to be the subject of further discussion with the committee and its staff, still all the essential elements of the general picture have either already been disclosed in the President's statements or I believe are agreed to be the appropriate subject of publication in the transcript itself.

The CHAIRMAN. That transcript was taken in October and it is now March. This kind of delay does not make for a very useful discussion. Other things intervene and there are many new developments that make it obsolete. This makes it very difficult for us to function. I know the Senator from Missouri has put a great deal of time into this matter and it is very frustrating to operate under these conditions.

CONSTITUTIONAL PROCESSES CONTEMPLATED BY TREATIES

You are familiar with the so-called national commitment resolution, aren't you?

Mr. RICHARDSON. Yes, sir.

The CHAIRMAN. The second part of the resolution states the sense of the Senate that a national commitment results only from affirmative action taken by the executive and legislative branches of the U.S. Government by means of a treaty, statute or concurrent resolution of both houses of Congress specifically providing for such commitment.

Most of our security treaties, both multilateral and bilateral, specify that any action taken will be in accordance with the constitutional process. I would like to know what in your view are the constitutional processes contemplated by this language in our treaties?

Mr. RICHARDSON. Well, Mr. Chairman, this is a question, of course, which arises in connection with many situations in which this phrase is used. I think that the only possible answer one can give is that the constitutional processes referred to are whatever constitutional processes are required by the situation. The phrase ordinarily as used in treaties as I understand it is used essentially as a saving clause in order to make clear that the treaty does not by its own force override these processes.
This really takes us back to the question we were discussing earlier this morning, namely, what are the situations in which the President has authority to send U.S. troops abroad without specific and affirmative congressional action? I don't think—unless we say that there must be affirmative action by the Congress in each such case, under our Constitution, we can deny that there are some such situations and if there are, then they are situations in which the President is acting constitutionally and thus in accordance with our constitutional processes as the phrase is used in the resolution.

The Chairman. Do you or do you not believe that the authority to take military action derives directly from the treaties? Isn't their language supposed to negate that assumption?

Mr. Richardson. Yes. Wherever it is so used in a treaty as I understand it, it is intended to negate what otherwise might be the inference that such action could be taken with reliance on the treaty alone.

And—

The Chairman. So further action is contemplated, isn't it?

Mr. Richardson. Yes.

The Chairman. It seems to me the logical action would be either a concurrent resolution, a statute, or any one of the processes which we have used involving both Houses. I am inclined to agree with you to the extent that there may be occasions when the least formal joint resolution is more appropriate than a formal declaration of war. I guess this is the difference that inheres in the distinction between a treaty and an executive agreement. I have never been able to find any difference other than really one of degree. You might say the significance of the action. If it is quite important and involves the Executive of the country, it would be done by a treaty. If it is an insignificant and minor matter, then it can be done by executive agreement. Yet the line to draw between those two is very difficult. However, in the involvement of troops and the use of them in any substantial way, it seems to me we ought to have an understanding with regard to the nature of the consultation and action and, what I think is most important, the opportunity for debate.

VALUE OF CONGRESSIONAL DEBATE

I don't say this because I think the debaters are so superior, but I do think there is some value in simply having debated these matters on the floor of the Congress. It does tend to cause the Members themselves and even the Executive to exercise better judgments. I think it has great value and in recent years, not this Administration but the preceding one, there was a tendency to resort to consultation of a very restricted kind as a substitute for debate. This is one of the things I think that grew out of that experience and I would like to read into your statement that that is not what you mean by consultation. You mean consultation and an opportunity to debate, in revelation of the facts. This is what disturbs us about the tendency to hold back the information about Laos because it is a current and very dangerous situation.

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Senator Sparkman. Mr. Chairman, I was interested in the discussion that you and Mr. Richardson were having.

STATE DEPARTMENT VIEWS ON REPEAL OF AREA RESOLUTIONS

Mr. Secretary, I have read the letter addressed to the chairman on March 12, in which the pending resolution is discussed. Am I correct that the only resolutions concerned are the Gulf of Tonkin, the Formosa, the Cuban, and the Near East?

Mr. Richardson. Yes, sir. Those are the only resolutions that would be affected.

Senator Sparkman. As I understand it, the Department has no particular objection to their repeal.

Mr. Richardson. This is true, Senator, in the sense that we have tried to make clear, namely, that we do not presently nor do we expect to, rely on any legal authority which is conveyed, or purports to be conveyed, by these resolutions. On the other hand, it is important to make clear that the resolutions do contain recitals that remain valid as expressions of current Administration policy. And so we do think it important to ask the committee to consider carefully the question whether it is wise to repeal them insofar as their repeal could give rise to questions in the areas affected as to whether or not our policies do remain constant in these respects.

Now, we are, of course, able to make clear what our policies are through other means and the President and Secretary of State and others in the Department of State have taken appropriate occasions to do this and will undoubtedly do so in the future. On the other hand, there is some reason for concern on this score insofar as, for example, the Governments of Taiwan or Thailand may be concerned and so it would be important and will be if the Congress should see fit to repeal the resolutions for us to take appropriate action to make sure that the repeal is not misunderstood.

Senator Sparkman. Do you not believe that language could be necessarily incorporated in the resolution itself to the effect that it does not affect this Government's proclaimed public policies?

Mr. Richardson. This could be done and I think might be helpful.

Senator Sparkman. Surely in the report we could make that very clear.

Mr. Richardson. Yes.

Senator Sparkman. In other words, it seems to me that present statements of policy and the action part of these previous resolutions are not necessarily inseparable.

Mr. Richardson. No, they aren't, and our only concern really is in the avoidance of misunderstanding and insofar as the resolutions can be seen as having emerged out of a particular crisis situation, long since passed, or insofar as they may purport to convey authority, they do not have from the standpoint of the Administration any present force or effect. But it is only in this latter respect as I have said and as you have recognized that we do have any concern and we do need to be sensitive to the possible repercussions or misinterpretations that could attach to the repeal and as you suggested, this could be guarded against in either or both of the ways you mentioned.
SECURITY TREATY WITH NATIONALIST CHINA

Senator Sparkman, I agree with you fully in that statement. In the case of the Formosa Straits resolution, of course, we have a security agreement with the Nationalist Government of China, do we not?

Mr. Richardson, Yes, we do, Senator, entered into force in 1955, just shortly after the enactment of the Formosa Straits resolution itself.

Senator Sparkman, I was under the impression that the treaty with Nationalist China preceded—

Mr. Richardson, I think not, Senator. I think it entered into force within a matter of months after the adoption of the resolution.

One of the reasons for the resolution arose out of the fact that we didn’t then have a treaty in effect and one of the reasons now why the Administration does not in any sense rely upon the resolution is because the treaty has, from the standpoint of any commitment or obligation to the Republic of China, superseded the resolution.

Senator Sparkman, This is the only one of the areas affected with which we have a treaty.

Mr. Richardson, Yes, that is correct.

Senator Sparkman. I believe that is all.

The Chairman. Senator Aiken.

COMMENDATION OF THE WITNESS

Senator Aiken, Mr. Chairman, first let me say it is refreshing to have an Under Secretary of State with us who seems to have respect for this committee and who is willing to talk with us on level ground.

As a Member of the Senate and a member of this committee, I also am appreciative of the fact that we are now receiving a great deal of information which was withheld from us for quite a long time.

I have about three questions which won’t take very long.

POPULAR SUPPORT OF SOUTH VIETNAMESE GOVERNMENT

Section IV of S.J. Res. 166 reads as follows:

"The Congress hereby urges South Vietnamese leaders representative of all political, religious, and ethnic groups in South Vietnam to initiate serious discussions designed to lead to the creation of a government capable of gaining popular support and maintaining a durable political order after the departure of the United States forces."

This section clearly carries a suggestion that the current government in Saigon is not capable of gaining popular support once the U.S. troops leave. Do you agree with this suggestion?

Mr. Richardson, No, Senator. I don’t, and as we pointed out in our report on the resolution, we believe that if the Congress, this committee, should see fit to report the resolution favorably, that this portion of it does give rise to an unfortunate implication and we think that it should be modified accordingly.

U.S. POSTWAR PLANNING FOR VIETNAM, LAOS AND CAMBODIA

Senator Aiken. Now, the second question: Section V of the resolution urges the United States Government to start formulating plans
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Mr. Richardson. Yes, Senator. I would be glad to. We have recognized for some time that it is insufficient to simply be thinking about the withdrawal of U.S. forces and the termination of hostilities without also anticipating the problems that will then exist in terms of rehabilitation, reconstruction, and economic development not only within South Vietnam itself but within the entire area.

Senator Aiken. Including North Vietnam?

Mr. Richardson. Including.

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Mr. Richardson. Including North Vietnam, Laos and Cambodia, yes. And so we did accordingly set up a working group under the planning and coordination staff in the Department headed by Mr. David Osborne who, until he was brought back to head this group, had been for the last several years Deputy Chief of Mission in Tokyo.

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**RECENT PRIVATE INVESTMENT IN SOUTH VIETNAM**

Senator Aiken. I have been advised lately that there has been very heavy private investment in South Vietnam over recent months and that this investment is made by South Vietnamese investors themselves rather than U.S. investors. Does this indicate that our participation in the war has been very profitable for South Vietnamese investors? Or where would they get the money?

Mr. Richardson. I have no doubt that there are South Vietnamese individuals who have profited economically from our involvement there. On the other hand, I think it is also true that despite the war, there has been some significant general progress in the growth of the economy and I would hope that the existence of these investments at least in part reflects the confidence that the economic future of South Vietnam is hopeful and positive.

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Mr. Richardson. I believe that is one inference that can fairly be drawn from the fact that these individuals are investing their money in South Vietnam rather than somewhere else.

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The Chairman. The Senator from Missouri.

Senator Symington. Thank you, Mr. Chairman.

First let me express my appreciation to Under Secretary Richardson for his cooperation when we were working together on these transcripts. If we had gone on with him, we might have them out by now,
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time; and progress has been rough.

ACCU RACY OF INFORMATION RECEIVED BY HIGH ADMINISTRATION
OFFICIALS

Mr. Secretary, as a high Administration official, are you satisfied
that you are consistently getting accurate and reliable information
from lower echelons in the State Department?

Mr. Richardson. Yes, I am.

Senator Symington. There was a book written recently by a former
Assistant Secretary of Defense, which in effect is a narrative of many
instances when high officials in that Department in recent years were
fairly consistently misinformed; but you don't think anything like
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Mr. Richardson. Well, of course, Senator, to say that it never goes
on, you know, would be perhaps only to open myself up to the possi­
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Our only problem really is the problem of time required to assimil­
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Senator Symington. So if there is any misinformation, it is relatively
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Mr. Richardson. Yes, I am sure of that.

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Senator Symington. I read this bipartisan Mansfield-Mathias reso­
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That fact is often emphasized by various representatives of this Ad­
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Senator Symington. Wouldn't you say the Guam position of the
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BASIS FOR PRESIDENT'S POWER TO SEND MILITARY FORCES ABROAD

Senator Symington. In your comments on Senate Resolution 85, you have this sentence: "As Commander-in-Chief the President has the sole authority to command our armed forces whether they are within or outside the United States and although reasonable men may differ as to the circumstances in which he should do so, the President has the constitutional power to send United States military forces abroad without specific congressional approval."

Without getting into the merits or demerits of that position, could I ask if you believe any of this authority is based on these resolutions, or whether it is based on his constitutional prerogatives?

Mr. Richardson. Well, I am not sure, Senator, whether this authority is based on—

Senator Symington. In other words, do you make that statement based on one or more of the resolutions in question, or do you make it based on his constitutional authority?

Mr. Richardson. Well, based on—you are referring to the Department's comments on Resolution 85?

Senator Symington. Yes, that is right.

Mr. Richardson. Submitted in March of last year?

Senator Symington. I believe that is right.

Let me reread the sentence: "As Commander-in-Chief, the President has the sole authority to command our armed forces whether they are within or outside the United States, and although reasonable men may differ as to the circumstances in which he should do so, the President has the constitutional power to send United States military forces abroad without specific congressional approval."

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Mr. Richardson. Solely the latter, Senator. That sentence has no reference to the resolutions at all. It does take us back to the questions which I was discussing earlier with the Chairman.

Senator Symington. I appreciate that answer.

VIETNAMIZATION AND PARIS NEGOTIATIONS

There is one more question I would ask you about. We talk about 550,000 Americans in Vietnam. The implication in past years has been that that was the total of Americans prosecuting the war against North Vietnam. That figure has been cut down by some 100,000, but actually the 550,000 figure was fictitious in the beginning. There were some 65,000 added people in Thailand, Americans, and 90,000 to 100,000 in the fleet; and then there were many thousand Americans in Japan whose sole effort had to do with the war in Vietnam. The same thing is true of many in the Philippines and Okinawa and Guam.

So it was closer to 800,000 than 700,000. Nor does this count the many thousands of people who were back here producing arms and ammuni-
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One is Vietnamization so-called, designed to give the necessary billions of dollars in equipment to the South Vietnamese in order that they can handle this war by themselves. On that there has been much testimony recently before the Armed Services Committee. The other facet is to negotiate out of this war on some basis we consider right.

If some 800,000 Americans can’t do this job with the Thieu-Ky government—as we have tried for 5 years—and we understand that if we put up the money the same rules and regulations and restrictions against our military will apply to the South Vietnamese forces as have been applied to our forces, if we cannot get any more success than we have to date with this tremendous number of Americans, why is it felt that we have any better chance of success without all those superb young Americans?

Secondly, why don’t we put somebody of the stature of Ambassador Lodge in Paris, and really try to get somewhere with these negotiations?

The background of these two questions is what this war is obviously doing to the economy of the United States.

PROSPECTS FOR VIETNAMIZATION

Mr. Richardson. Well, Senator, these are certainly vital and searching questions. Responding briefly I would say that under the first heading, if the forecasts of future action in South Vietnam were as discouraging as they were for a long time, particularly at the period of peak engagement of U.S. forces, I think we would have to question seriously the viability of the policy of Vietnamization. But actually since Tet 1968 and especially over the last 12 months the gains in control of the countryside, both through military action and through the pacification program, have been quite substantial and the result is, therefore, that the chances that the Government of South Vietnam and the South Vietnamese armed forces properly trained and equipped can maintain their position after U.S. forces have been radically reduced or withdrawn, is much greater than it would have looked a year or more ago.

And so we think that the prognosis for Vietnamization is quite good and to the extent that this is so, this fact in turn should, we believe, convince the other side that the opportunity to negotiate is a wasting opportunity.

By that I mean that their chances of a favorable deal from their point of view through the negotiating process are not going to be as good a month from now or a year from now as they were last month or last year. In this sense the Vietnamization process and the negotiating process have always in this Administration seemed to be inseparably related.
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Now, so far as our representation in Paris is concerned, the point essentially is that we have sought by every means we can conceive of to engage the other side in serious negotiations. The U.S. part in the negotiations necessarily involves primarily the mutual withdrawal of external forces. The other major heading for negotiations is a political settlement. And here it has been our position that a political settlement can only be negotiated among the Vietnamese. The key parties in any such settlement obviously are the Government of South Vietnam and the so-called Provisional Revolutionary Government of the Viet Cong. And so far the other side has persistently refused to permit that type of negotiation to take place.

And so what we are saying in substance is that we and the Government of South Vietnam stand ready to enter into serious negotiations at any time. We have made clear that no proposition that we have advanced has been advanced on a take it or leave it basis, that the only fundamental to which we adhere is that any political solution should be a political solution arrived at freely among the South Vietnamese through the process of negotiation and elections. And so in effect at this stage we are awaiting an indication of the other side's willingness to engage in serious negotiations, and, of course, at that point if it seemed desirable, we would be prepared to send another delegation head to Paris, but in the meanwhile, we have made clear that Ambassador Habib has full power to negotiate. He has the full confidence of the Administration. And he is a very experienced and resourceful, fair-minded diplomatic representative.

Senator Symington. Let me say I have the highest respect for Ambassador Habib. My point is that he is not as well known nationally and internationally, as his predecessors. That is a point that has been developed by many people in many countries. If we are sincere about these negotiations, I would think we would want to carry them out in more practical and customary fashion.

Mr. Richardson. Well, Senator, I can only really add that the point has been made primarily, and it is made often, by the spokesmen for the Government of North Vietnam and the People’s Revolutionary Government in Paris, but we think this is an excuse on their part, a smokescreen, designed to mask their own unwillingness to negotiate. They have plenty of ways available to them at any time to signal their readiness to enter into serious negotiation and if at that point it became significant to substitute a new delegation head in Paris, we would certainly do it. But so far there really appears to be nothing in this point beyond the attempt by the other side to divert responsibility or attention from their own intransigence.

Senator Symington. Thank you, Mr. Secretary.

Disengagement and Withdrawal from Vietnam

By any chance did you read an article by former Gen. Matthew Ridgway, former Chief of Staff of the Army, former head of our forces in Korea, which was written in The New York Times as of March 14, entitled “Topics: Settlement, Not Victory, in Vietnam.”

Mr. Richardson. No, Senator, I didn’t.
Senator SYMINGTON. Well, there is a strange development in this town. Those of us who believe that we must do something more in effort to control the economy, and therefore protest heavy cost overruns on planes, or torpedos, or tanks, now realize that things have gotten to a point where just a protest in itself of any policy incident to any military activity makes you a dove, you might say, using that pretty hackneyed word. Nobody could criticize as a dove as great a soldier, with the record he has, as General Ridgway for being one not for what is best for the security of the United States.

Mr. Chairman, I would ask that this article be inserted in the record.

The CHAIRMAN. Without objection, so ordered.

(The information referred to follows.)


Topics: Settlement—Not Victory—in Vietnam

(By Matthew B. Ridgway)

General Ridgway, now retired, was U.N. and U.S. commander in Japan, Korea and the Far East and later Army Chief of Staff. He points out that these are personal views without access to classified official studies.

Many continue to argue that a military solution, or “victory,” in Vietnam has all along been within our reach, that nothing less would serve our interests. I believe such a solution is not now and never has been possible under conditions consistent with our interests.

That would have required, and would still require, resort to military measures unacceptable to most of our people. But regardless of past policy decisions, were such a course to be pursued now the divisive influences throughout our land, comparatively quiescent, would be intensified.

The basic decision, which I believe is irrevocable and which was made and announced long ago, was to reduce our operations and to initiate disengagement and withdrawal according to a plan merely outlined.

Whether or not it includes an ancillary decision to complete withdrawal by a fixed date, I do not know, though I assume it does. For reasons of its own—and reasonable ones are not lacking—the Administration has not seen fit to announce it.

Last Nov. 3 the President set forth three conditions that would, he said, determine the rate of our withdrawal: progress in the Paris talks; the character of enemy operations; and the rapidity with which the South Vietnamese Army can assume full responsibility for ground operations. He warned that “if increased enemy action jeopardized our remaining forces,” he would “not hesitate to take strong and effective measures,” not spelled out but alluded to again in his Jan. 30 press conference.

Adherence to these conditions could result in relinquishing the initiative. Hanoi’s stalling in Paris, or Saigon’s unwillingness or inability to bring its army up to the requisite level of combat effectiveness, or an escalation of enemy action would then compel a choice between resort to “strong measures”—a reversion, it would seem to me, to the search for a military solution already publicly eschewed—or suspending and even reversing our withdrawal.

Nonmilitary Options

If this reasoning is sound, then it is relevant to examine our options, should events seem to demand dealing “strongly” with the situation.

We could decide: to halt and subsequently reverse the disengagement process; to resume bombing in North Vietnam on the same scale and against the same target systems as before; to widen the bombing to include key points in power grids, port facilities and utilities, even though located in population centers; to impose a sea blockade of North Vietnamese and Cambodian ports; to invade North Vietnam with ARVN or U.S. ground forces, or both; to use nuclear weapons.

Putting any of these measures into effect could result in: ending hopes for arms control; raising U.S.-S.R.-U.S. tensions; causing heavy loss of life among non
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This will present painful problems, but they must be faced. It raises serious military questions: How long will it take to increase the combat effectiveness of the South Vietnamese Army to a necessary level? If a long time, how much U.S. combat and logistic support will be needed, and for how long? If chiefly U.S. Air Force and Navy combat elements are needed, who is to provide security for their bases? And if reliance is to be placed on South Vietnamese forces, who will command them? How will U.S. base commanders and their troops react to such arrangements? These are a few of the military problems, quite apart from the political ones.

FOR A POLITICAL SOLUTION

A negotiated political settlement, which I think we would all prefer, and which I believe we must ultimately reach, will be unattainable unless we retain the initiative and face up to these problems now.

Regardless of how much this may tax the wisdom and determination of our Government and the patience of our people, our decision is, I believe, the prudent one, and we should channel its execution into the mainstream of our long-range national interests.

Senator Case. Would the Senator yield for a comment on that? I read it with great interest and I think it is one of the soundest and most comprehensive statements about our policy and about the policy that we ought to pursue that I have ever seen.

Senator Symington. I thank the Senator and believe it particularly pertinent to remember that General Ridgway when Chief of Staff led those who opposed our going into Vietnam in 1954, at the time discussion was rife as to whether we should or should not support the French, just prior to the fall of Dienbienphu.

OPTIMISM ABOUT VIETNAMIZATION QUESTIONED

The other question has to do with your optimism about Vietnamization. I can remember at the time of the start of the great depression Black Friday, October 29, 1929, everything was going to get better soon. Then, some person said, everybody assumes a better time is just around the corner, but nobody seems to be able to find the street. Isn’t it logical, after we announced that we would not attack by air north of the DMZ on the 31st of October, 1968, just north of the DMZ now looks like a great ammunition and materials and supply depot characteristic of large ones in this country. Isn’t it logical for the North Vietnamese to take their divisions and put them into Laos rather than let them sit at home and eat off the Government without anything to do?

ADMINISTRATION PLANS CONCERNING LAOS

If you were in Hanoi, wouldn’t you use these troops in Laos? Have we made any decisions incident to what we plan to do in resisting this further invasion of Laos? I ask that because it is my understanding you all say now we will not put ground troops into Laos. What is your
plan with respect to air? Do you plan to continue, or increase, the heavy air strikes, or do you plan not to despite the offensive currently being carried on by the North Vietnamese and the Pathet Lao against Souvanna Phouma's Government?

Mr. Richardson, Senator, I really can't go beyond the President's statement on this score in which he said that we had no plans to involve ground combat forces, and the question of what else we might do I can only say is the sort of thing that is explored in the process of contingency planning, but our principle emphasis at this point is not military but rather on the restoration of the Geneva Accords. And this, of course, was the objective of the President's letters to the Co-Chairmen.

We hope that there can be progress through the discussions between Prince Souvanna Phouma and Souphanouvong leading towards some restoration of a stable government there and this remains our principle hope and emphasis at the present time.

SECRET OF U.S. ACTIVITIES IN LAOS QUESTIONED

Senator Symington. We are operating in Laos to protect the Geneva Accords? Is that correct? And with the premise that the North Vietnamese first broke said Accords of 1962.

Mr. Richardson. This is true in North Vietnam, yes. Although the government's operations there do have a relationship to hostilities in South Vietnam also.

Senator Symington. I understand. But the Laos agreement was 1962. The Vietnam agreement was earlier, wasn't it?

Mr. Richardson, 1954.

Senator Symington. So we are in Laos because of violation of the 1962 agreement, correct?

Mr. Richardson. This is correct of North Laos, yes.

Senator Symington. Then why do we keep secret what we do in there, if it is known that the reason we are there is because the North Vietnamese have violated the 1962 agreement? Why does it have to be kept secret, all the details of our operation, if the reason we are there is, as we say constantly, because the North Vietnamese first violated the 1962 agreement?

Mr. Richardson. Of course, the fact of our engagement there is now known and has been stated by the President and will appear more fully in the transcripts of testimony before your subcommittee. Such details as it may be agreed still to withhold would be withheld essentially for either reasons of the protection of the military operations themselves or in part perhaps because of the circumstances reinforced today by the statement by Kosygin which appears in the newspaper which in effect rejects any collaborative efforts to restore the Geneva Accords and makes no reference at all to the presence and activity of North Vietnamese forces in North Laos and of the North Vietnamese violation.

The problem essentially is one of the one-sidedness of the process of disclosure and this, of course, has been an element in the problem from the beginning.

Senator Symington. Thank you, Mr. Secretary. I want to thank you for the facts that have been released about Laos.

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Senator Case. Thank you, Mr. Chairman. It is a pleasure to have you appear before this committee any time and it is refreshing and your preciseness and care in expression are things that we very much appreciate.

Mr. Richardson. Thank you.

LEGislATIVE AND EXECUTIVE POWERS

Senator Case. I am not going to engage in any exercise of attempting to get you to make any concessions about the limits of Presidential power. It is ridiculous that one branch of the Government should try and get the other branch at any time to concede that it has less power than any of its predecessors at any time. I have my own views about these limits and they do not go as far as has been suggested even with regard to moving troops around as Commander-in-Chief. There are, I think, limits that we ought to exercise here. I am not sure that any great advantage is to be gained by attempting ahead of time to pick out the line of demarcation. As a matter of fact, I don’t know that there is a precise line of demarcation. I think there is a good deal of overlap, rather, and to a certain extent I think a lot of this discussion therefore is really irrelevant.

I don’t think, for example, that even if Congress by one vote passed a declaration of war, if this represented as close a division among the people, that we could go to war in such circumstances or that we would try. It has to be somehow or other—a matter as serious as this—an action of the people expressed and exercised by the Government, and so I will not pursue any efforts to get you to say the President can’t do this or that or the other thing or embarrass you or your proper representation of the executive branch here.

I think it is proper to say, though, that this leads me to a question. If I am not concerned about what the President could do, I think I am very right in expressing a concern and raising a few questions as to what the President intends to do and I think that is very much in point.

CONGRESSIONAL APPROVAL PRIOR TO INTRODUCTION OF GROUND TROOPS INTO LAOS

For example, it is my impression that we have an understanding, we have an assurance from the Administration, that without congressional approval, our ground combat troops will not be introduced into Laos. Is that correct?

Mr. Richardson. Yes, that is correct, Senator, except to the extent that I suppose I should—

Senator Case. We are not talking about some new situation that might arise and involve the exercise de novo of some admitted press—

Mr. Richardson. There are no plans under present circumstances to do this.

Senator Case. Right. And we do have this assurance that congressional approval before such action is taken will be sought?
MR. RICHARDSON. Yes, you do.

Senator Case. Thank you. That is of very great importance and I think the country is entitled to know it and I appreciate very much your very frank answer.

The CHAIRMAN. Will the Senator yield? I didn't understand that before. I thought the assurance was only that we would be notified and consulted. I welcome the idea that you will not do it unless we approve.

Senator CASE. There was some—I think there has been some misunderstanding about this, Mr. Chairman.

The CHAIRMAN. I didn't know that he had ever said he would not do it without our approval. I am very glad to have that.

Senator CASE. I had felt that this was at least implied if not expressed and I felt it was therefore justified to bring it into the open.

The CHAIRMAN. Certainly it is justified. I congratulate the Senator on the way he obtained the right answer. I had never read such an answer before.

Senator CASE. I am sure you realize I wasn't trying, nor am I capable of exercising any unusual trickery or skill in leading this man to say anything he doesn't want to say.

The CHAIRMAN. No, I didn't mean that.

Senator CASE. I just say that only because I don't want it to appear that he ever had any intention of saying anything else or not saying that. And I think—

DISTINCTION BETWEEN USE OF AIR AND GROUND FORCES IN LAOS

The CHAIRMAN. Will the Senator yield? If that is true about ground combat troops, why isn't it true about air power?

Senator CASE. The Chairman took the words right out of my mouth.

The CHAIRMAN. I am sorry. I withdraw the question.

Senator CASE. No, please do. I was going to ask you because I think it is a logical thing. There may be reasons why the Government doesn't want to answer the question at this time, but I think it would be very helpful, Mr. Secretary, if you would explain that proposition and that whole situation just a little bit. Where do we stand on air power?

Mr. RICHARDSON. Well, Mr. Chairman, and Senator Case, I think the distinction certainly between ground combat forces and air power in Laos is that for us to introduce ground combat forces would represent a significant departure—

Senator CASE. A change.

Mr. RICHARDSON. — from what has been going on in the past whereas the continuation of air strikes is simply more of the same, more of what was being done when the Administration took office.

I think I should—I am looking at the question of approval—I suppose I should indicate some qualification with respect to what the President might ultimately decide in the light of the process of consultation. I think it does require some qualification as to what is meant by approval in the sense of formal action as distinguished from some general understanding—

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LEGISLATIVE AND EXECUTIVE POWERS

Senator Case. I am not going to engage in any exercise of attempting to get you to make any concessions about the limits of Presidential power. It is ridiculous that one branch of the Government should try and get the other branch at any time to concede that it has less power than any of its predecessors at any time. I have my own views about these limits and they do not go as far as has been suggested even with regard to moving troops around as Commander-in-Chief. There are, I think, limits that we ought to exercise here. I am not sure that any great advantage is to be gained by attempting ahead of time to pick out the line of demarcation. As a matter of fact, I don't know that there is a precise line of demarcation. I think there is a good deal of overlap, rather, and to a certain extent I think a lot of this discussion therefore is really irrelevant.

I don't think, for example, that even if Congress by one vote passed a declaration of war, if this represented as close a division among the people, that we could go to war in such circumstances or that we would try. It has to be somehow or other—a matter as serious as this—an action of the people expressed and exercised by the Government, and so I will not pursue any efforts to get you to say the President can't do this or that or the other thing or embarrass you or your proper representation of the executive branch here.

I think it is proper to say, though, that this leads me to a question. If I am not concerned about what the President could do, I think I am very right in expressing a concern and raising a few questions as to what the President intends to do and I think that is very much in point.

CONGRESSIONAL APPROVAL PRIOR TO INTRODUCTION OF GROUND TROOPS INTO LAOS

For example, it is my impression that we have an understanding, we have an assurance from the Administration, that without congressional approval, our ground combat troops will not be introduced into Laos. Is that correct?

Mr. Richardson. Yes, that is correct, Senator, except to the extent that I suppose I should—

Senator Case. We are not talking about some new situation that might arise and involve the exercise de novo of some admitted power—

Mr. Richardson. There are no plans under present circumstances to do this.

Senator Case. Right. And we do have this assurance that congressional approval before such action is taken will be sought?
about congressional approval. But I wouldn't want you to get off the matter of Air Force unless you exhausted it to your satisfaction.

Mr. Richardson. No, I really have said all that I can on that score.

Senator Case. I understand, which isn't very much.

Mr. Richardson. I thought I had answered the question as to how we distinguish between consultation with Congress on the use of ground forces and the approval of Congress on whatever is done through air power. The distinction I made was between new action in this first instance and continuation of present action in the second.

DISTINCTION BETWEEN AIR AND GROUND FORCES IN LAOS QUESTIONED

Senator Case. I wonder if that is a real distinction. Your suggestion was that this kind of activity already was going on when this Administration took office. I raise a question as to the possibility of a difference in degree being a difference in kind. Was it going to be with B-52's bombing not along the Ho Chi Minh trail but up near the Plain of Jars? Is that not a change? I wish you would talk a little bit more—if you can't, all right. We will have to go into it in some other fashion in executive session, but in this matter you can commit aggression on another nation as much with the use of air power as by the introduction of combat troops; is that not true?

Mr. Richardson. Excuse me, Senator, what was the—

The Chairman. You can commit aggression against another nation or another people outside your own borders just as surely by use of air power as by the use of ground troops. Can you not?

Mr. Richardson. Yes, certainly.

The Chairman. Against that background, is there anything more you feel you can say because the people are concerned about our getting involved not just intentionally but in the nature of things by reason of our very heavy activity in Laos?

Mr. Richardson. Well, I don't think I can add very much, Senator, to what I have already said. The character of the activities in which we are currently engaged both in North Laos and the Ho Chi Minh Trail is of a kind which has been going on for quite a long time, since, I believe, 1963, and I wouldn't wish to try to show here today what has been the extent of congressional awareness of this. Certainly there has been a substantial amount of awareness of it and there has been—

Senator Case. May I say as a Member of Congress, the first I was aware of it at all was when we had some testimony in secret session late last fall. Is that about the time?

The Chairman. October. That is when we had the hearings.

Mr. Richardson. Well, as I say, I wouldn't want to try to account for whatever degree of congressional awareness there may have been or communication to Congress but there certainly has been a significant amount of it, and it seems to me that there really is a difference in kind between the continuation of the type of activity that has been carried on for a considerable amount of time and the introduction of U.S. forces to engage in a new kind of combat activity.

By the way, I also—

Senator Case. No question about that. We agree on that proposition. If this were the first time we were bombing Laos, this would be a new kind of thing, just as significant as the introduction of a battalion of
ground troops. I think it does make some difference. But the amount of bombing and the intensity of the activities that we have been doing is what we really come down to now and I think therefore it may be not improper to raise the question—whether it can be answered or not—how much further do we intend to go?

Mr. Richardson. Well, I can't really add to my answer on that, Senator. I said that we have no plans to introduce ground forces which means that under present circumstances we would not introduce them. But obviously I can't foreclose options which the President might choose to exercise under different circumstances. In that case there would be consultation with the Congress.

WHAT CONSTITUTES CONGRESSIONAL APPROVAL?

On the score of approval, I can only stand on the qualification of my answer that I entered a moment ago.

Senator Case. I am sorry. Would you repeat that because I didn't hear your qualification.

Mr. Richardson. Well, I said that the word “approval” might seem to call for some affirmative action and insofar as that is true, I didn't mean to imply that this will be necessary. So there is presumably left open the question of possible ambiguity.

Senator Case. I will say there is. There surely is.

Mr. Richardson. Consult with the Congress and then—

Senator Case. You mean acquiescence? You mean notification and failure to take affirmative action to opposition? Is that what you mean by approval?

Mr. Richardson. I would have to, I think, rather than appear to be speaking here in limitation of the President's authority, under the Constitution, to say that is what I do mean, yes.

Senator Case. That is what you mean?

Mr. Richardson. Yes.

CONGRESSIONAL AUTHORITY CONCERNING INTRODUCTION OF GROUND COMBAT TROOPS INTO LAOS

Senator Case. Would you concede getting around to the other issue again, and I don't mean to be tricky at all except this is a very difficult area to be precise about, do you mean or do you concede that Congress might negate a presidential decision to introduce combat troops into Laos? And if so, would it have to be done by a law passed by both Houses, signed by the President, or if vetoed, passed over its veto by a two-thirds vote?

Mr. Richardson. I am not sure, Senator, I should try to give the Congress advice in the exercise of its own constitutional powers.

Senator Case. Now, but the President has given some assurance through his agencies, through his officers, to the Congress and to the public. Now, what is that assurance? It isn't a question of what Congress will do. It is a question of what the President will do.

Mr. Richardson. Well, I can only go back to my colloquy with the chairman earlier which in effect dealt with the point that when the President or the executive branch engages in consultation with representatives of the Congress there presumably needs to be some give and
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