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
take as to the processes that should be pursued in order to create the kind of base of public understanding and support that you referred to. But there are a lot of ways of doing this and I would expect that whatever conclusions were reached, were reached through the process of consultation.

CONGRESSIONAL CONSULTATION

Senator Case. That is a very fair statement. May I interject at this point to say that I do think that this rules out calling down to the White House the chairmen of two or three committees and the titular heads of the parties and saying that constitutes consultation with Congress, does it not?

Mr. Richardson. I think certainly it is more than that.

Senator Case. It is a general knowledge by the membership, at least a general knowledge or general availability of information that is talked about here. I assume you mean that.

Mr. Richardson. Yes, I think that is a fair statement.

Senator Case. Mr. Chairman, I think I will leave the matter there.

The Chairman. I want to say to the Senator he has made very clear a point I have often tried to make. We were consulted in the sense, of a few people being brought in and given a briefing. This was considered to be consultation with Congress in substitution apparently for a declaration of war or joint resolution.

Senator Case. Was it not done on the basis that you would not confide to other people what you learned there?

The Chairman. The Senator is correct and I think the point he makes is very good.

ADMINISTRATION’S VIEW OF EXECUTIVE AND CONGRESSIONAL WAR POWERS

Relevant to the first thing the Senator said about trying to get you to concede anything, we are not trying to get you to concede anything. We are trying to understand what this Administration’s view is of the Constitution and the relationship between the legislative and executive branch.

In view of the fact that this President was Vice President under President Eisenhower, and also in view of the very great reputation of President Eisenhower, I think it is appropriate to read two paragraphs of what he said about this matter. It wasn’t too long ago. This was a press conference on March 10, 1954. I quote:

There is going to be no involvement of America in war unless it is the result of the constitutional process that is placed upon Congress to declare it. Now, let us have that clear.

In connection with the Formosa Resolution he stated:

Authority for some of the actions which might be required would be inherent in the authority of the Commander-in-Chief. Until Congress can act I would not hesitate, so far as my constitutional powers extend, to take whatever emergency action might be forced upon us in order to protect the rights and security of the United States. However, a suitable congressional resolution would clearly and publicly establish the authority of the President as Commander-in-Chief to employ the armed forces of this nation promptly and effectively for the purposes indicated if in his judgment it became necessary.

I subscribe to that. All along there has been this theory of presidential authority in an emergency, under certain circumstances, to protect
life and property, citizens, and the national security and economy. When it comes to using it in a substantial way and in waging war, then he doesn't have it.

I am not trying to get you to concede anything. You can't concede it any more than I can. The Constitution is there and it is a question of how we implement it. It is legitimate for the committee and country to understand how this Administration views this relationship. I approve of the way President Eisenhower viewed it and all I am really trying to clarify is that, hopefully, this Administration would agree with that view. You have no authority to concede anything, but you do have authority to speak on this view for the Administration.

If the Administration's view is that they don't need any approval from the Congress, then we have a difference to talk about so the country will understand it. I don't personally accept the view that the President has the inherent power to wage war. I do think he has a power to take emergency action as President Eisenhower said.

The Senator from Delaware.

ADVANCE CONGRESSIONAL APPROVAL FOR GROUND TROOPS IN LAOS

Senator Williams, Mr. Secretary, I can understand the caution and concern that you have in answering the questions of Senator Case about the consultation that the President will have with the Congress prior to any truce, but it was my understanding based upon the President's statement and also the testimony that we received from the Secretary of State in answer to the questions, I believe, from the chairman of this committee, that the President would not only consult but get prior approval before there was a commitment.

I wish that we had a clear understanding on this about the initiation of ground troops.

The Chairman. May I say to the Senator I thought so too, but this witness has not gone as far. The Secretary of State in executive session did explicitly say this. Since it has been brought up, I don't think this involves a matter of security. It involves only the effort to try to understand the relationship between the Congress and Executive and how this Administration views the relationship. I think it is proper under these circumstances to quote from that hearing.

The Secretary of State had said that "we have no present plans, if it [Laos] is overrun, to use combat troops. Now, whether we would, I do not want to say that we would never think about it but there are no present plans of that kind."

Then I said, "You say you will seek the approval?" We were speaking of the approval of Congress. "Does this mean the explicit approval of Congress or just a general approval of bringing up another resolution that in effect sort of confirms," that is, "the Tonkin Gulf approved primarily what he had already done"—referring to the President—"by his sorties against North Vietnam."

The Secretary of State said "No. I am talking about advance approval."

This, I think, is the origin of this idea as to what is the proper relationship between Congress and the Executive. We are not talking about major situations. We recognize the distinction, the same distinction as President Eisenhower made. I think it is very healthy to
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Senator Williams. I thank the chairman because it was definitely my understanding that prior to any initiation of ground troops or new steps being taken, the President would not only consult with the Congress but would not proceed until he obtained congressional approval. I think the statement of the Secretary of State certainly clears up this point. It was also my understanding, based upon the statement of the President, that he concurred in this and this was based upon his understanding. In fact, we were told that in the committee meeting.

I have no further questions.

DISTINCTION BETWEEN USE OF AIR AND GROUND FORCES IN LAOS

The Chairman. Before we leave this, the fact that you are doing it and the previous Administration was doing it constituted in no way an authority to do it, was brought out in another line of questioning.

I confess that your first answer, when you said you felt having our troops in Vietnam, that the President had a right to take measures to protect them and bring them home, is very appealing because he is liquidating a situation which may or may not have been authorized. Isn't there a distinction between that and the situation now in Laos, in escalating a war, using B-52's that never had been used before? What is the authority for it? Shouldn't this be presented as a new undertaking?

I think this raises the very interesting point of the distinction between B-52's and combat troops.

Could you comment on that a little further?

Mr. Richardson. Mr. Chairman, may I first comment very briefly on Senator Williams' point? My original response to Senator Case was based on an awareness of what the Secretary of State had said to this committee in executive session. I simply felt that I should in the interests of caution and accuracy qualify somewhat what might be pursued as the means of obtaining approval.

Turning to the question of B-52's, of course, B-52's have been employed in the bombing of Ho Chi Minh Trail for a long time and in that sense have been used to---

The Chairman. That comes within your first idea, but not the second.

Mr. Richardson. There has only been one strike by B-52's in Laos outside of the Ho Chi Minh Trail area and in this it certainly has not seemed to us that a difference of degree of the kind that we have been discussing would obtain as if, for instance, combat troops, ground combat troops, were introduced—were involved.

It is, you might say, a different delivery system for bombs but the activity itself is not otherwise different.

May I, Mr. Chairman, while I have a moment, also go back briefly to one other earlier point. Senator Case asked me whether I would agree that it was no less aggression to drop bombs than it was to use ground combat forces, or a question to that effect. I said I agreed that one could be aggressive just as much as the other. However, I wouldn't want to leave the record with any possible implication that we consider our activities in Laos as involving aggression, since they have been
undertaken at the request of the legally constituted Government of Laos.

Senator Case. It was an unfortunate word that I used. If I may be permitted to interject here, if it were against any other nation it would be, of course, aggression.

Mr. Richardson. Yes. I think the general question—

CONGRESSIONAL APPROVAL REQUIRED FOR WAGING WAR

Senator Case. I think probably if we could get at it, we would say waging war, in effect, and even that can be done at the request of a nation as we have had that request here. That is the kind of thing I meant. It is just as much a warlike act.

Mr. Richardson. I understood that. I just wanted to remove any possible misinterpretation in my answer.

The Chairman. These things are not cleared up easily. I am not at all sure I would let it pass without an observation about a request from a foreign government giving the President the authority to wage war that he doesn't have if the Congress hasn't approved it. You get into an endless kind of game here. Just because some head of a small state says, "we would like your help," I don't think automatically the President has the power to do that. He ought still to have congressional approval if he wishes to do what amounts to waging war.

Senator Case. I fully agree with that, and in agreeing with the Secretary I was agreeing entirely in his correction of my use of the word "aggression." I think it requires congressional approval to wage war at the request of an ally as it is without that request?

The Chairman. Senator Cooper?

RELATIONSHIP BETWEEN U.S. ENGAGEMENT IN LAOS AND VIETNAM

Senator Cooper. I do not want to engage in abstractions about the constitutional power except in this way, because I think the questions of the members of the committee, I know mine are, are based upon what I believe is the attitude of many in the Congress and many in our country, that we should not become involved in a large war, or any war in Laos.

At the beginning of the questioning, you were asked by the chairman what was the basis of the constitutional authority of this Administration to be in Vietnam, and I think you said that since we are engaged in a war there, the President has the authority, as I believe he has, to protect our troops and particularly when we are trying to disengage in Vietnam.

Now, is that reasoning applicable to Laos? Are we engaged in a war in Laos?

Mr. Richardson. Senator, I think that the situation in Laos is certainly analogous to the extent that the activities in which we are engaged in Laos are of the kind that were already being conducted when the Administration took office, so that in a sense the question of original authority may be superseded by events in both cases. The two are similar. Beyond that I can only add that there are two other aspects of the situation in Laos which are at least relevant.
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One is that to a substantial degree our activities there are related to and inseparable from the—inseparable in the military sense—from our activities in South Vietnam itself.

The other is that it is at least pertinent that we were requested as a signatory of the Geneva Accords of 1962 to assist the duly constituted government in preserving its own integrity. But I would say that the justification of our continued activity in Laos has to rest upon a combination of these things, the relationship of that activity to what we are doing in South Vietnam, to the fact that it is in effect more of the same from the standpoint of this Administration, and that it does have at least this relationship to our obligations under the Geneva Accords.

But I would prefer not to try to justify it under any one of those grounds alone.

Senator Cooper. Well, I think everyone understands that the bombing of the Ho Chi Minh Trail certainly has been related to the war in Vietnam. But to extend that bombing beyond the Ho Chi Minh Trail, or introducing troops into Laos, do you see a relation to the war in Vietnam?

Mr. Richardson. Well, it does have one very direct relationship which is—well, two, really.

One is that we have never been able to visualize any settlement of the war in Vietnam that did not include the restoration into full force and effect of the 1962 Geneva Accords as applied to Laos. We have said this many times in Paris and the President has made this clear in his statements about our negotiating objectives.

Another relationship to the war in Vietnam is that a reason undoubtedly why the North Vietnamese have stepped up the number of their troops in North Laos is probably to create a situation in which pressure could be exerted on us to stop the bombing of the Ho Chi Minh Trail and, again, this is a relationship, too.

Prior Congressional Approval for U.S. Ground Troops in Laos

Senator Cooper. I asked this primarily to emphasize what others have said here, the belief that before any ground troops should be sent in, or any other military factors, in fact, any continuance of what we are doing now, I think ought to be brought to the Congress for approval unless the Administration contends what it is doing there is wholly related to the war in Vietnam.

I do not see any other constitutional authority it could have, do you?

Mr. Richardson. Well, beyond what I have said, Senator, I can't really add very much. I think that it is related to the war in Vietnam for the reasons I have stated, and it does have the aspect of our participation in the Geneva Accords, and finally, perhaps as important as any of these points, is the continuation of an activity of which there has been an assertion of authority by the previous Administration and some awareness on the part of the Congress as to what was going on.

I might say that in regard to the resolution which you and Senator Church joined in sponsoring as an amendment to the current appropriation bill, one could conclude from its legislative history that it was adopted on a basis which was not designed to roll back or to—

Senator Case. To stop what was being done.

Mr. Richardson. Yes, What was currently being done.
CONGRESSIONAL OPPOSITION TO U.S. ACTIVITY IN LAOS

Senator Cooper. My attitude is certainly one of wanting to support what the Administration is doing in Vietnam, to get out of the war, but I do not understand what is being done to broaden the war into Laos. This creates another theater of war separate from the Vietnam war. I think the Administration did have notice of the Senate's resolve not to become engaged in a war in Laos. You brought the subject up yourself about the amendment to the appropriations bill. Earlier in the year I offered an amendment to use the full constitutional authority to deny any activity in Laos. You recall that?

Mr. Richardson. Yes, Senator, I do.

Senator Cooper. It was opposed by some on curious grounds. One ground was that it was—the language was ineffective to do what it was designed to do, to prevent any use of money for any kind of military activity in Laos. And then it passed the Senate, went to the conference, was deleted in conference. Following that conference action, I asked the Chairman of the Armed Services Committee the reason for its deletion, whether it was the same plea of ambiguity or whether the Administration didn't want it.

He told me both. To him it was somewhat ambiguous, but it wasn't wanted by the Administration. So the Administration did have notice earlier in the year that the Congress, at least the Senate, was trying to exercise its constitutional authority, an authority which cannot be questioned, to deny the use of any funds for any kind of combat operations in Laos.

Would you agree with me on that?

Mr. Richardson. Yes, I would agree that the Administration was on notice. I would also think that it is relevant to the amendment—that the amendment did not pass in that form.

The CHAIRMAN. Would the Senator yield in that connection?

I would like to mention that Senate Resolution 368 bears exactly on that question. It expresses the sense of the Senate, which carries out the legislative form I think, on the same idea the Senator from Kentucky had with regard to the appropriations.

Senator Javits. What is 368?

Senator Case. This is the chairman's recent resolution.

The CHAIRMAN. Yes. It requires approval of the Congress if the United States continues to engage in combat in Laos. The witness has justified the continuation of the Viennese war on the ground that the President has the responsibility and duty to protect our troops who were put there by previous Administrations, but, Mr. Secretary, isn't obviously the best way to protect those troops to bring them home and not to leave them there and expose them for years to a continuation of these attacks?

JUSTIFICATION FOR CONTINUING SOUTHEAST ASIA INVOLVEMENT

Is it enough to say that the President is authorized because they were there to carry on? I would grant he certainly is authorized and directed and required to try to protect them from destruction by any enemy, but I wonder if it isn't quite clear that a reasonable time to bring them home is all that kind of authority would justify. If he goes beyond that, he must seek some other authority.
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The other is that it is at least pertinent that we were requested as a signatory of the Geneva Accords of 1962 to assist the duly constituted government in preserving its own integrity. But I would say that the justification of our continued activity in Laos has to rest upon a combination of these things, the relationship of that activity to what we are doing in South Vietnam, to the fact that it is in effect more of the same from the standpoint of this Administration, and that it does have at least this relationship to our obligations under the Geneva Accords.

But I would prefer not to try to justify it under any one of those grounds alone.

Senator Cooper. Well, I think everyone understands that the bombing of the Ho Chi Minh Trail certainly has been related to the war in Vietnam. But to extend that bombing beyond the Ho Chi Minh Trail, or introducing troops into Laos, do you see a relation to the war in Vietnam?

Mr. Richardson. Well, it does have one very direct relationship which is—well, two, really.

One is that we have never been able to visualize any settlement of the war in Vietnam that did not include the restoration into full force and effect of the 1962 Geneva Accords as applied to Laos. We have said this many times in Paris and the President has made this clear in his statements about our negotiating objectives.

Another relationship to the war in Vietnam is that a reason undoubtedly why the North Vietnamese have stepped up the number of their troops in North Laos is probably to create a situation in which pressure could be exerted on us to stop the bombing of the Ho Chi Minh Trail, and, again, this is a relationship, too.

Prior Congressional Approval for U.S. Ground Troops in Laos

Senator Cooper. I asked this primarily to emphasize what others have said here, the belief that before any ground troops should be sent in, or any other military factors, in fact, any continuance of what we are doing now, I think ought to be brought to the Congress for approval unless the Administration contends that it is doing there is wholly related to the war in Vietnam.

I do not see any other constitutional authority it could have, do you?

Mr. Richardson. Well, beyond what I have said, Senator, I can't really add very much. I think that it is related to the war in Vietnam for the reasons I have stated, and it does have the aspect of our participation in the Geneva Accords, and finally, perhaps as important as any of these points, is the continuation of an activity of which there has been an assertion of authority by the previous Administration and some awareness on the part of the Congress as to what was going on.

I might say that in regard to the resolution which you and Senator Church joined in sponsoring as an amendment to the current appropriation bill, one could conclude from its legislative history that it was adopted on a basis which was not designed to roll back or to—

Senator Case. To stop what was being done.

Mr. Richardson. Yes. What was currently being done.
Mr. Richardson. Well, Senator, I didn't think my answer to your question originally was addressed exclusively to the protection of the forces.

The Chairman. What was it? Maybe your answer should be enlarged. What else is the justification and authority?

Mr. Richardson. Well, I think the point is that under some actual or asserted basis of authority, the troops were introduced there in the first instance for various objectives which have been repeatedly stated to the Congress and to the American people by President Johnson.

The Chairman. That was the Gulf of Tonkin resolution. President Johnson pulled it out of his pocket every time the matter came up. Now you have said the Gulf of Tonkin resolution may be repealed and you are not relying on that at all. What are you relying on if it isn't just protecting troops and not the Gulf of Tonkin resolution?

Mr. Richardson. It is a combination of the protection of the troops there and their withdrawal under circumstances which contribute to a durable peace. We do have to have, we think, concern with the fundamental objective which we say justified their introduction in the first place and which justifies their being withdrawn over time rather than immediately, and that is as far as possible to assure the opportunity for self-determination by the people of South Vietnam.

And so we are in effect trying to combine the process of withdrawal with the process of Vietnamization so as to optimally at least assure that opportunity for the people of South Vietnam; and in any event, it doesn't seem to us that that combination of activity and these objectives require any new basis of authority beyond that which we found upon taking office, and certainly does not require any reliance on the Gulf of Tonkin resolution itself.

The Chairman. I don't want to take the Senator's time, but this leaves me a little up in the air. Go ahead.

Senator Cooper. I think the desire of most of us is to help the Administration if we can. I know that is my desire. And I can understand the constitutional claim of authority to be in Vietnam. But I cannot see any authority to be in Laos unless the Administration says that it is an integral part of the war in Vietnam and relies upon that. We do not want to get involved in any larger war. Why not withdraw the few troops we have in Laos? I know the Administration hasn't increased the number that has been involved there for several years. Those American forces that are there could not stand against an attack from North Vietnam. Why not withdraw them? What good—

Mr. Richardson. Well, Senator, as I emphasized earlier, our primary objective and certainly our hope with respect to Laos is that there can be a full restoration of the Geneva Accords which would result in the end of fighting and the restoration of respect for the jurisdiction of the Government—the Government set up under the Accords.

And since that is our objective and we are pursuing it through diplomatic means at the very moment, I think that for us to withdraw right now or to stop right now the activities in which we have been engaged could prejudice that effort by in effect, hastening or even bringing about the collapse of the neutralist government.
Senator Cooper. I read in the paper this morning Mr. Kosygin’s statement. Does the Administration consider asking for reconvening of the Geneva Conference to deal politically with the whole Southeast Asia situation—not just the Laos settlement? Is it possible to have a political settlement with North Vietnam, South Vietnam, Laos, and Thailand involved? And China?

Mr. Richardson. We hope so.

Senator Cooper. And China, without having a conference?

Mr. Richardson. Well, we think that the first step should be, first of all, a meeting between the cochairmen designed to discuss and decide upon measures that could bring about the restoration of the Accords. Such a meeting might well decide that the only way to do it would be a reconvening of the Conference itself, including all the countries that were signatories.

The other concurrent step which appears to have a better chance at the moment is discussions between the neutralist prime minister, Souvanna Phouma, and Souphanouvong, head of the Pathet Lao, and this also we think is a course that should be pursued.

Senator Cooper. I wish you success.

Mr. Richardson. Thank you, Senator.

The Chairman. The Senator from New York.

Senator Javits. Thank you, Mr. Chairman.

CONSTITUTIONAL POWERS OF CONGRESS

Mr. Secretary, you are a fine lawyer and I think you can help us and help the country more than we have been helped in the past. I would like to see if we can try to do that.

Is there any question in your mind that the powers granted by the Constitution are to declare war, to raise and support and regulate the armies, to approve treaties, and approve the appointment of diplomatic officers?

Mr. Richardson. These are the only explicit—

The Chairman. How about the regulation of the Armed Forces?

Senator Javits. That is included.

The Chairman. That is very important.

Senator Javits. To raise and support armies and “to make rules for the Government and regulation of the land and naval forces.” I will include that. Those are the five powers, including that specified by the chairman.

EFFECT OF NATIONAL COMMITMENTS RESOLUTION

Now, we tried to add another specific one and that is expressed in the commitments resolution, Senate Resolution 85. That resolution says, “It is the sense of the Senate.” Would you like to have that before you, Mr. Secretary? I think it would be a good idea.

Mr. Richardson. Yes. Thank you, Senator. I have it right here.

Senator Javits. Line seven, “It is the sense of the Senate that a national commitment by the United States 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 resolu-
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Now, insofar as we said treaty or statute, we have the power under the Constitution to make that. But insofar as we said concurrent resolution of both Houses of Congress specifically providing for such commitment, we were trying something new.

Now, does the Administration accept the fact that there is now another way in which the Congress can agree to the utilization of the use of Armed Forces or financial resources of the United States as specified in this resolution, to wit, by a concurrent resolution of both Houses of Congress specifically providing for such commitment?

Mr. Richardson. Well, I think, Senator, the question needs to be considered in two aspects. One, insofar as it purports, as your question implies, to deal with the way in which the Congress may act.

The other, insofar as it might be interpreted as limiting the way in which the executive branch may act.

Under the first heading, I would not have said that it undertook to add any new form of procedure or expression of congressional will to what it has previously understood that it could do.

In the very beginning of the hearing the chairman touched on this with respect to situations involving some use of military forces short of a situation amounting to all-out war, situations which might not call for a declaration of war but which could nonetheless make it appropriate or desirable for the Congress in some manner affirmatively to have given its approval. And a joint resolution certainly is a means of the Congress doing this.

So far as the other aspect of the commitments resolution is concerned, I think quite clearly it cannot and I take it, does not, purport to limit the constitutional powers of the President.

Senator Javits. So you really think we have accomplished nothing by the commitments resolution. We always have the power to pass a joint or concurrent resolution and if we haven't in any way affected the President's powers as Commander-in-Chief, even to the extent of defining it, defining its perimeters, what have we done, in your judgment?

Does the commitments resolution do anything?

Mr. Richardson. Well, we have quite fully expressed our views on this in the communications we submitted to the Committee on March 10 a year ago. I think that basically we recognize the potential value or actual value from the standpoint of the Congress and the executive branch, as well as the general public, of an effort to affirm and to qualify constitutional prerogatives and responsibilities in the area of national commitments, but I think we would have to say, and I think it is quite obvious on its face, that a Senate resolution, I should say not even a Senate resolution can enlarge the constitutional powers of the Congress, nor can it diminish the constitutional powers of the President.

Senator Javits. However, you will agree, will you not, Mr. Secretary, that this does involve a deep constitutional confrontation between the Congress and the President. Suppose the Congress tomorrow passed a resolution telling the President to get out of Vietnam. Wouldn't that present us with an enormous constitutional question if the President should decide he didn't want to?
Mr. Richardson. I would say it would present us with a congressional relations problem, Senator.

Senator Javits. It couldn't present us with a constitutional problem?

Mr. Richardson. No.

APPROPRIATIONS AS SOLE LIMIT ON PRESIDENTIAL ACTIONS IN VIETNAM

Senator Javits. In other words, is the contention of the Administration that notwithstanding the actions of the Congress, the President of the United States can continue present operations in Vietnam unless we deprive him of the money?

Mr. Richardson. I think this is true. I think it would require action to deprive him of the money.

Senator Javits. Now, I would like to submit to the Administration that there is no inadvisable to compel us to take so drastic a remedy in order to correct the situation which the Constitution leaves loosely defined and yet in which the Congress feels strongly enough to ask the Administration or the President to desist, to make us under those circumstances do so drastic a thing as to cut off the money.

I think that represents a very rigid attitude which is not good for the country. I just submit that to the Administration. I think that the Administration ought to make it possible for the Congress to manifest its will in an effective way without so drastic a remedy as cutting off money.

I have been personally opposed to legislation of my own colleague from New York because I considered it too drastic, but if the Administration gives Congress no other choice, then he may be right, that the only way Congress can act with effect is to cut off appropriations.

Mr. Richardson. Senator, I didn't mean to suggest that my suggestion did imply that the Administration would ignore the resolution, which is what I mean, in effect, by saying we would have a congressional relations problem, but your question, I thought, was directed toward an answer with respect to the legal effect of the resolution.

Senator Javits. It was.

EFFECT OF CONGRESSIONAL RESOLUTIONS

Mr. Richardson. And I can only say on that score that the resolution would not be self-executing.

Senator Javits. Would not have legal effect. Now, would you agree—

Mr. Richardson. It would have legal effect insofar as it did what it purported to do and that is to express the sense of the Congress that we ought to get out.

Senator Javits. But it would be the sense of the Congress, and the Congress has important powers under the Constitution with regard to warring—powers more clearly specific than the President's.

Mr. Richardson. But it couldn't have legal effect on its face, it seems to me, and I doubt if it could be argued that it would by its very operation make unlawful or unconstitutional the continued presence of U.S. forces in Vietnam.

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President can disregard us? It is only a sense of the Congress resolution? Suppose we are positive, to wit, we pass a concurrent resolution of both Houses of Congress specifically providing for such commitment, to wit, to put in troops. Now, is that legally operative; does the President then have a power which he may not have had before?

Mr. Richardson. I think there may be situations in which an express grant of authority can be operative insofar as it removes doubt, but I think that we really are dealing here in an area as I think Senator Case suggested earlier, in which there is probably some constitutional overlap between the powers of the Congress on one side and the executive branch on the other.

At any rate, whether or not there is overlap, there is certainly no clear line, and I think quite clearly our system can work effectively only where there is a substantial degree of understanding and communication between the executive branch and the Congress. I think that if we are in a situation or ever reach one in which these issues will become matters of constitutional adjudication, as distinguished from mutual understanding, we are in deep trouble and in this sense, therefore, congressional expressions, whether of approval or disapproval, should and do carry great weight with the executive branch, as well as with the people.

Of course, they are expressing the views of the American people or they wouldn't be enacted in the first place.

In this sense, I don't wish to seem to be expressing a position that is in any sense lacking in respect for such a congressional expression of views. I was dealing solely with the bare bones of the constitutional issues themselves.

Senator Javits. Mr. Secretary, I respect that and you have been very helpful. I think it is very important to our whole Nation and our future that this be as clear as possible. So I ask you this question.

CRITERIA FOR CONGRESSIONAL ACTION CONCERNING HOSTILITIES ABROAD

Isn't it a fact that you, yourself, and the Department of State advise against any declaration of war in these situations as, for example, in Vietnam and Laos?

Mr. Richardson. We haven't had to render such advice since I have been in the Department, but I think certainly there are situations, of which those may have been in the first instance appropriate examples, where to declare war could tend to trigger a series of consequences under the terms of a mutual defense treaty that may be more far-reaching than it is desirable to do under the circumstances. In other words, if what is hoped for through the use of American forces is to prevent a situation from deteriorating badly, it may be desirable then to rely on the constitutional authority of the executive branch in consultation with the Congress, falling short of a declaration of war.

Senator Javits. Well, I agree with that, but then don't we have to have some way in which the Congress can manifest its concurrence and aren't we leaving too much to the executive if we let him judge when he has had enough consultation with the leadership and committees and he has the support of Congress, with its own authority? Don't we have to have some concrete way in which the Congress says yes or no?
Mr. Richardson. Well, certainly in many instances this would be desirable and as our report on the pending resolution states, we can visualize the possibility of fresh crises in which it would be desirable to seek resolutions of the kind that it is now proposed to be repealed.

This goes back to the question of approval of Congress as it applies to the introduction of ground combat forces in Laos. I am not in a position to say that we would consider that the adoption of a joint resolution or concurrent resolution was a necessary and indispensable means of obtaining congressional approval.

Senator Javits. And even if you sought one, you would still not say it was either necessary or indispensable?

Mr. Richardson. I would think that from a constitutional point of view this would be true. Whether there might be involved the exercise of some authority which the President or the executive branch wouldn't otherwise have I think is a matter that could only be judged in the circumstances.

Senator Javits. Well now, are the circumstances to which you referred in your letter, to wit, "should circumstances warrant," circumstances which are connected with the size, intensity, cost and time duration of hostilities? The words "significant hostilities," for example, were used. The words "broader action" were used. The words "small beginnings," and then as it grew in scale, all these words were used in the colloquy between yourself and Senator Fulbright.

Now, is that the constitutional question? If you have hostilities it is the criteria based on duration, intensity, cost and significance, that is, order of magnitude, that determines whether or not you do or don't go to the Congress?

Mr. Richardson. Well, I think you fairly stated or listed major factors that would and should be taken into account in reaching that decision.

**ADVERSE IMPLICATIONS OF REPEALING AREA RESOLUTIONS**

Senator Javits. Now, I notice with great interest that your letter itself is not unqualified and I don't think you have testified to this question. If you have, the Chair will please help me by telling me so. But I notice in the letter you say:

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.

Now, do you wish to tell us what those are, because that seems to be not entirely consistent with your apparent neutrality on the question of "We neither advocate nor oppose congressional action", of repealing.

Are we to take that as being some modification of that view and, if so, what is it? I think we ought to know before we are moved to act that you do have a reason for one position or another.

Mr. Richardson. Senator, I think you are quite correct in identifying the passage in question as being a qualification of our neutrality on the issue of repeal. Indeed, were it otherwise, the Administration might well have proposed repeal.

Our position basically is that we don't rely on the resolutions as a basis for carrying out any present action or any contemplated action,
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President can disregard us? It is only a sense of the Congress resolution? Suppose we are positive, to wit, we pass a concurrent resolution of both Houses of Congress specifically providing for such commitment, to wit, to put in troops. Now, is that legally operative; does the President then have a power which he may not have had before?

Mr. Richardson. I think there may be situations in which an express grant of authority can be operative insofar as it removes doubt, but I think that really we are dealing here in an area as I think Senator Case suggested earlier, in which there is probably some constitutional overlap between the powers of the Congress on one side and the executive branch on the other.

At any rate, whether or not there is overlap, there is certainly no clear line, and I think quite clearly our system can work effectively only where there is a substantial degree of understanding and communication between the executive branch and the Congress. I think that if we are in a situation or ever reach one in which these issues will become matters of constitutional adjudication, as distinguished from mutual understanding, we are in deep trouble and in this sense, therefore, congressional expressions, whether of approval or disapproval, should and do carry great weight with the executive branch, as well as with the people.

Of course, they are expressing the views of the American people or they wouldn’t be enacted in the first place.

In this sense, I don’t wish to seem to be expressing a position that is in any sense lacking in respect for such a congressional expression of views. I was dealing solely with the bare bones of the constitutional issues themselves.

Senator Javits. Mr. Secretary, I respect that and you have been very helpful. I think it is very important to our whole Nation and our future that this be as clear as possible. So I ask you this question.

CRITERIA FOR CONGRESSIONAL ACTION CONCERNING HOSTILITIES ABROAD

Isn’t it a fact that you, yourself, and the Department of State advise against any declaration of war in these situations as, for example, in Vietnam and Laos?

Mr. Richardson. We haven’t had to render such advice since I have been in the Department, but I think certainly there are situations, of which those may have been in the first instance appropriate examples, where to declare war could tend to trigger a series of consequences under the terms of a mutual defense treaty that may be more far-reaching than it is desirable to do under the circumstances. In other words, if what is hoped for through the use of American forces is to prevent a situation from deteriorating badly, it may be desirable then to rely on the constitutional authority of the executive branch in consultation with the Congress, falling short of a declaration of war.

Senator Javits. Well, I agree with that, but then don’t we have to have some way in which the Congress can manifest its concurrence and aren’t we leaving too much to the executive if we let him judge when he has had enough consultation with the leadership and committees and he has the support of Congress, with its own authority? Don’t we have to have some concrete way in which the Congress says yes or no?
but that they nonetheless do in certain instances contain recitals of policy which remain valid and that to repeal them, therefore, would undoubtedly give rise to questions in the areas affected as to whether or not the repeal means more than we think it really would in terms of the shift in policies.

I have testified already today to this general effect. I have not, however, up to this point, beyond mentioning Thailand and Taiwan, gone into any detail as to the kind of repercussions which we think could result from the repeal.

I would be glad to do this if you and the committee would care to have me do so.

Senator JAVITS. Well, I would certainly like it. I must appeal to the Chair and we certainly don't want you to divulge anything you don't want to divulge publicly.

Mr. RICHARDSON. Well. I don't need to go into great detail, simply to make the point that, for example, in the case of the Cuban resolution there is language which is still declaratory of the present policies of the Administration, indeed, of policies adopted by the Organization of American States as a whole.

President Nixon in his address to the Inter-American Press Association on October 31, as our letter pointed out, restated this position as it applies to Cuba.

Now, to repeal the resolution could give the impression in Latin America that we had changed our policy toward Cuba. A quick reading of a headline might give rise, therefore, to questions which leaving the resolution, in effect, does not give rise to.

In the case of Taiwan, there is involved the commitment of the United States under the Mutual Defense Treaty of 1954. These, incidentally, are commitments which we would carry out only in accordance with our constitutional processes. But in any event, the resolution having been enacted in the first instance in the light of the then serious threat of all-out attack against the offshore islands, its repeal could give rise to the question whether the United States had in some manner redefined its commitments under the Mutual Defense Treaty of 1954, and we want to make very clear that if the Congress should see fit to repeal the resolution, that this would not reflect any change in our interpretation of our obligations under that treaty.

In the case of Thailand, there is involved a vaguer kind of possible connotation which has to do generally with whether or not the United States is prepared to carry out its commitments in Southeast Asia, in the case of Thailand under the SEATO Treaty, and we would want to make very clear that there was no impact on our commitments in the area as a consequence of the repeal of the Tonkin Gulf Resolution or of these resolutions taken as a whole.

From that standpoint, it is more helpful than otherwise that they are brought together as a group because it becomes then more easily possible for us to make clear that no implications are to be attached with respect to our policies in the areas concerned.

STATE DEPARTMENT POLICY CHANGE TOWARD TERMINATION OF GULF OF TONKIN RESOLUTION

Senator JAVITS. Mr. Secretary, I notice a very interesting point which I wish you would enlighten us on. Together with Senator Pell
of Rhode Island, I introduced a resolution on October 14, 1969, calling for termination of the Gulf of Tonkin Resolution. The Mathias Resolution was not introduced until December of 1969. Therefore, on December 4, 1969, which is prior to the introduction of the Mathias Resolution, the Department commented on the resolution introduced by myself with Senator Pell and that comment—I will read the following sentence:

Further, we oppose the repeal of the Tonkin Gulf Resolution at this time.

Now, in your letter to us of March 12, 1970, you take another attitude and you say:

We neither advocate nor oppose Congressional action.

Question: Has there been a change of policy on the part of the Department with respect to the termination of the Gulf of Tonkin Resolution and, if so, why?

Mr. Richardson. The answer is there has been a change and this change of position has been communicated, as you know, with respect to the resolution filed by yourself and Senator Pell on the same date as our letter addressed to the Mathias Resolution.

The Chairman. I didn't understand that, Mr. Secretary. You say you sent a letter to the committee other than the main letter?

Mr. Richardson. We had filed the earlier letter from which Senator Javits quotes in December, which said we opposed the repeal of the Tonkin Gulf Resolution, and so since his resolution dealt with the repeal of the Tonkin Gulf Resolution and had been filed earlier than the Mathias Resolution, we thought that in responding to the committee on the subject of the Mathias Resolution, we should also file a report on the other resolutions which undertook to repeal the Tonkin Gulf Resolution.

And so our letter on that score contains the substance on this subject of the letter on the Mathias Resolution.

As to why we changed our position, the most significant reason, Senator, is that on careful examination of the issue, we came to the conclusion that there was no reason from the standpoint of any legal authority presently being exercised by the Administration for reliance on the resolution and that for us to fight for its preservation, in effect, could give rise to the misleading impression that we were relying on it or intended to rely on it.

This left as the only reason for opposing it, that is, opposing the repeal, the one I mentioned, that it could give rise to the question on the part of Thailand or other countries with whom we are on friendly terms in Southeast Asia, whether the Administration was, in effect, pulling out, or the United States was pulling out; and, as I have said, we think we can make clear that we do not have that intention, that we do intend to carry out our commitments in the area by other means than through the continued presence of this resolution on the books.

It was the combination of these two things which led us to feel that we should move away from the position taken in the earlier letter.

Senator Javits. Mr. Secretary, I have just one other question, with the Chair's permission. I am sorry I have taken so long.

I hope it has been useful.

The Chairman. Very useful.
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I was going to ask you this question: If we should repeal these resolutions or should we terminate the Gulf of Tonkin pursuant to the now revised letter, would the Administration think it either necessary or desirable that we substitute some other resolution as to the policy of the Congress on the war in Vietnam? We have quite a few pending, and we could act affirmatively at the same time that we act negatively?

Question: Is it necessary or desirable?

Mr. Richardson. I would say that it was certainly not necessary. Whether or not it would be desirable, Senator, is a question I would have to reserve until I saw the terms of the resolution because obviously we would not consider it desirable if the language of the resolution were inconsistent with the policies which the President has declared.

Senator Javits. Well, assuming the latter, would it be desirable?

Mr. Richardson. If it were consistent?

Senator Javits. Consistent.

Mr. Richardson. I think it would be desirable.

Senator Javits. And the Administration would count that as an affirmative aspect of the foreign policy of the Nation?

Mr. Richardson. Yes, I think in this connection it would be important insofar as, of course, part of the possibility of negotiation, or, to put it slightly differently, the possibility of negotiation depends in part upon the other side's reading of the resolve of the American people and their support of the Administration.

CONGRESSIONAL RESOLUTION ON LAOS

Senator Javits. Now, with respect to Laos, on which opinions have been voiced with which I concur, especially by Senator Cooper, would you consider it necessary or desirable that there be a Congressional resolution considering the present state of hostilities?

Mr. Richardson. I would think in the case of Laos that it would be, again, certainly not necessary and probably not desirable for the reason primarily of the existence of a situation in which our role is quite limited.

In the light of the problems that I have already touched upon, this hearing and the Geneva Accords, and because a resolution might seem to be enacted as a basis for doing more than we currently are intending to do.

Senator Javits. Well now, that last is very important—"than we currently are intending to do." You would feel free to say that—I don't know that you are and I don't want to entrap you into any answers that are inimical to our interests in the world—but is one of
the reasons why you wouldn't consider it desirable because you don't contemplate any major involvement?

Mr. Richardson. That is one of the reasons. To put it the other way around, I think so far as Laos is concerned, that any resolution should await a situation, which I trust does not arise, in which we might seek Congressional approval for doing substantially more than we are now doing.

Senator Javits. And could you tell us that you would, if you planned to do substantially more?

Mr. Richardson. Well, this brings us back to the question of the form of approval on which we had a bit of discussion earlier, and I just don't feel in a position to give any clear-cut answer to that question because the possible circumstances and the degree of activity, and so on, are such as to make a categorical answer impossible. I can only repeat that we would engage in consultation in a meaningful sense of that term which means more than a merely nominal representation of the Congress would be involved in the constitutional process and that the answers we got would make a difference to the course we then followed. Among the questions on which consultation presumably would take place would be the question of the form of any further action that might then seem to be appropriate.

Senator Javits. Well, are we to assume if we didn't approve what you propose to do, you would then tell us we shouldn't pass any resolutions?

Mr. Richardson. I can't say what the response of the President or the Administration would be in a situation where the reaction of the Congress was negative, but I think I can say that when we use the word "consultation", we don't mean merely notice to the Congress of what we intend to do anyway. To take another example in another part of the world, the reason that the President's assurances of consultation with our NATO allies have been so warmly received is that when he uses the word "consultation", he means a discussion on a basis in which we really want to know what you, in that case, our NATO allies, think and will weigh it seriously in reaching any decision.

Senator Javits. Mr. Chairman, as I am the last in line I would like to say that I think we have heard historic testimony as to a major constitutional issue and I think we all owe a debt of gratitude to the Under Secretary for his frankness and his highly professional skill.

Mr. Richardson. Thank you.

The Chairman. Thank you, Senator.

PRESIDENT'S AUTHORITY TO COMMIT FORCES TO VIETNAM

Before I call on the Senator from Maryland, I have one question for the record that is prompted by this last exchange.

In March of 1966 the legal adviser of the Department of State wrote to the Committee as follows:

There can be no question in present circumstances of the President's authority to commit U.S. Forces to the defense of South Vietnam. The grant of authority to the President in Article II of the Constitution extends to the actions of the United States currently undertaken in Vietnam.

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Mr. Richardson. Well, I can't really comment very intelligently on the first point—the view of the legal adviser with respect to what he believed to be the constitutional powers of the President as of the beginnings of our involvement in Vietnam. I haven't attempted to reach a personal conclusion, nor has the Department attempted officially to reach one—

The Chairman. I know.

Mr. Richardson. —since this Administration came in. So I really can't comment on that aspect of it.

I think at the time the President was speaking he could very well take the position that the resolution was not necessary. I certainly agree with him that it was desirable.

**PRESIDENTIAL POWERS UNDER ARTICLE II OF THE CONSTITUTION**

The Chairman. I agree with you that it isn't exactly your situation, but for the record, I wish to put in at this point, a description of the powers of the President as Commander-in-Chief by Alexander Hamilton in 1769 and Thomas Jefferson's comments in a letter of 1789. I won't take the time to read them, but I commend both Hamilton and Jefferson to you as good authorities as to what Article II means. I am glad that you didn't in a casual manner line up with the legal adviser of the Department of State in 1966.

(The information referred to follows.)

**COMMENTS OF PRESIDENT ALEXANDER HAMILTON**

The President is to be commander in chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy, while that of the British king extends to the declaring of war and to the raising and regulating of fleets and armies—all which, by the Constitution under consideration, would appertain to the legislature.¹

**COMMENTS OF THOMAS JEFFERSON**

We have already given in example one effectual check to the Dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay.²

I want to ask the Senator from Maryland, who introduced this resolution, if he would care to either ask some questions or make a comment.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., U.S. SENATOR FROM MARYLAND

Senator MATHIAS. Thank you very much, Mr. Chairman.

First of all, I would like to thank you and the members of the committee for giving me the opportunity and great privilege of sitting with the committee this morning and listening to this very interesting colloquy.

I would like to express my personal thanks to Under Secretary Richardson, not only for his thoughtful presentation of the Administration's views today, but for what I know have been many hours of study and consideration and discussion on the subject of the resolution that I have cosponsored with Senator Mansfield.

I think that as the distinguished senior Senator from New York has pointed out, the Department has been moving and I am sure that this motion reflects the thoughts of so many people but on none more than Secretary Richardson himself, and I am very grateful for that.

I have been enlightened on the constitutional issues here and I would just like to ask the Secretary if he doesn't feel that the colloquy that we have had today which has dealt so largely with the constitutional issues involved in these matters of war and peace doesn't allay the fears of the Department to some extent that other parts of the world will misunderstand the thrust of the resolution; whether or not this hearing won't emphasize the point that you make on page two of your letter, that there will be misunderstanding abroad as to what we are about.

Mr. RICHARDSON. Well, I thank you, Senator, for your preliminary remarks, and on this question I think quite clearly that the colloquy in this hearing will help to allay any such concern should the Congress see fit to adopt a resolution. I can only hope that commentators on the action of the Congress will have seen the transcript of the hearings or at least reports of it sufficiently complete so as to remove any misunderstanding.

Senator MATHIAS. I think, Mr. Chairman, that the hearings conducted at this level in this direction can be of very great value; and as we were earlier discussing, on the question of where power lies, where it has lain in the past, I am reminded a little of a letter I once saw by Queen Victoria at the end of her long reign in which she claimed she had never conceded an ounce of executive prerogative.

Of course, this was sheer fantasy and I think that it is much more important to seek the reality of where power lies; and I think that as Thomas Bailey pointed out in the book “Presidential Greatness,” a great President is not necessarily one who does everything possible to strengthen the powers of the Presidency but one who does everything possible to strengthen constitutional government, and I think that the Secretary's testimony has reflected that philosophy.

QUESTIONS TO BE SUBMITTED FOR THE RECORD

Mr. Chairman, rather than ask the Secretary to comment at length on several questions on horseback, although he has been as eloquent on horseback this morning as his compatriot Paul Revere was many years ago, I do have several questions he might like to consider and if the
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PRESIDENTIAL POWERS UNDER ARTICLE II OF THE CONSTITUTION

The Chairman. I agree with you that it isn't exactly your situation, but for the record, I wish to put in at this point, a description of the powers of the President as Commander-in-Chief by Alexander Hamilton in 1769 and Thomas Jefferson's comments in a letter of 1789. I won't take the time to read them, but I commend both Hamilton and Jefferson to you as good authorities as to what Article II means. I am glad that you didn't in a casual manner line up with the legal adviser of the Department of State in 1966.

(The information referred to follows.)

Comments of President Alexander Hamilton

The President is to be commander in chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the King of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy, while that of the British king extends to the declaring of war and to the raising and regulating of fleets and armies—all which, by the Constitution under consideration, would appertain to the legislature.

Comments of Thomas Jefferson

We have already given in example one effectual check to the Dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay.

I want to ask the Senator from Maryland, who introduced this resolution, if he would care to either ask some questions or make a comment.

committee agrees, I think it would be useful for him to comment on them later in a supplementary letter.

The Chairman. I will say to the Senator, I have a number of questions which are written out. Many of them are technical and in the interest of time I will also submit them. I think that is a very proper way to do it.

Senator Mathias. If the Chairman would like me to state them now—

The Chairman. Yes. If you care to state them now, I think that would be very useful.

PRESIDENTIAL DECLARATION OF STATE OF NATIONAL EMERGENCY

Senator Mathias. There has been little discussion this morning on the question of the resolution or the portion of the resolution which deals with the emergency originating with the Truman proclamation of 1950 during the Korean war and so for the record, let me just ask the Secretary, let me say that when we drafted the resolution I was thinking totally of emergency powers which might have derived from the act of 1917 as amended by the act of 1938.

But I am asking the Secretary on what authority does the President base his declaration of a state of national emergency? Is it by such explicit authorization of law or is it considered to be one of the prerogatives that is inherent in the Presidency?

(The information referred to appears in pp. 360–61.)

Secondly, aside from laws that are triggered by such a proclamation of emergency, what authority does the President feel he acquires by the act of proclaiming a state of national emergency?

(The information referred to appears on p. 361.)

Thirdly, since we are now in a state of national emergency which is of 20 years' duration, is it the Administration's view that the current situation in fact is such an emergency, and if so, what is the nature of that emergency?

(The information referred to appears on p. 361.)

And, finally, Mr. Chairman, I think it might be useful to have a breakdown of the effect of a declaration of war by the Congress and of the effect of the proclamation of national emergency, both directed at what such acts do to the powers of the Presidency. Or, put it another way, what is the State Department's understanding of the powers which are conferred upon the executive by a declaration of war or a declaration of national emergency?

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Once again, Mr. Chairman, I am very grateful to you and to the committee, and particularly to Secretary Richardson for an opportunity to participate today.

The Chairman. Thank you very much.

Do you wish to comment on those questions at all this time?

Mr. Richardson. No, thank you. I am relieved that the lateness of the hour has spared me.

ADMINISTRATION'S ACTIONS IN SUPPORT OF CUBAN SELF-DETERMINATION

The Chairman. I want to join Senator Javits in saying I think you have been very helpful this morning and the discussion has been very
useful. I regret the lateness of the hour. I have a number of questions, which I will submit. One example is the Cuban resolution and your comment in your letter:

The resolution expresses a determination to work in support of self-determination of the Cuban people. This policy remains the policy of this administration.

What exactly is the Administration doing now in support of self-determination of the Cuban people? I didn't know you were doing anything. I wondered what you have in mind there that you would not like to see the Cuban resolution repealed. Are you doing anything on self-determination of the Cuban people?

Mr. Richardson. Well, we think that the general policies adopted by the Organization of American States work in the sense—in one sense of the word, in that direction, insofar as they encourage the evolution of the government there in a less authoritarian direction and in a direction less given to intervention in other people's affairs.

The Chairman. Didn't I notice within the month a movement sponsored by two members of OAS to change the relation with Cuba? The idea, as I read it in the newspaper, was that we way to bring them back to a more amicable relationship than anyone would want to admit them to OAS? I think Colombia was one of the countries.

Mr. Richardson. Yes, I think they did.

The Chairman. I thought that was a rather useful movement, if you could bring them back.

I don't want to pursue it. It is too late. I will submit additional questions along with the Senator from Maryland. The staff will get together with your staff for comments. There are some questions about the bilateral agreements with Iran, Pakistan, Turkey, among others. There are a number of incidental questions that arise out of this that are very interesting.

ACTION OF MASSACHUSETTS LEGISLATURE

I also wish to put in the record a reference to the bill on undeclared war in Massachusetts, which was mentioned in the early part of the hearing. I want to put a short statement from the newspaper in in order to make my reference intelligible.

I want my compliments to the great Commonwealth of Massachusetts to have some significance. I think they are showing great leadership and hope other States will follow.

(From the Washington Evening Star, Mar. 13, 1970)

BILL ON UNDECLARED WAR GAINS IN MASSACHUSETTS

Boston—The Massachusetts House has given preliminary approval to a bill which would prevent the state's citizens from fighting in undeclared wars such as Vietnam.

The measure was approved on a tight 116-110 vote yesterday at the end of more than three hours of dramatic debate. It was expected to come before the chamber for final passage Monday.

Under the legislation, the state attorney general would be required to represent Massachusetts citizens in court if they refuse to serve in combat zones during undeclared wars. Supporter of the measure say the U.S. Supreme Court would be forced to decide if the President can commit troops without a formal declaration of war.
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"Today's vote again places Massachusetts in the forefront of the fight for personal liberty and the fight for government run under the rules laid down by the Constitution," Barley said.

"I must stress that this is a constitutional issue which has never yet been answered by the highest court, and it is an issue which the Congress itself has declined to pursue."

Opponents of the measure said it was unconstitutional and an improper means of raising a constitutional issue.

Rep. Peter C. McCarthy, D-Peabody, a freshman legislator, said sponsors of the bill were perpetrating "a cruel hoax on the younger generation."

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The State Department's report last week on Sen. Charles McC. Mathias's proposal to repeal the Tonkin Gulf, Middle East, Formosa (Taiwan) and Cuban resolutions rests squarely on the premise that "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."

The Katzenbach declaration raised a storm in the Senate. Indeed, Sen. Eugene McCarty later was to say that it impelled him to go after the Democratic presidential nomination. Senators repeatedly threw the statement back at the Johnson administration as they sought to reassert Congress' legislative prerogatives in the realm of foreign affairs.

NO SUBSTITUTE

The statement on which Richardson's testimony will be based disavows any intention of depending on any of the four 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." Richardson was prime architect of the statement.

At the time of Katzenbach's declaration, his boss, Secretary Dean Rusk, was at total odds with Senate Foreign Relations Committee Chairman J. W. Fulbright and his fellow Vietnam doves. Today Richardson's boss, Secretary William P. Rogers, is on such excellent personal terms with Fulbright that they play golf together at the Burning Tree Club.

The change in the executive branch's tone toward the legislative branch thus is evident and it is important. But it also is evident that Messrs. Nixon, Rogers and Richardson are no more prepared to surrender the vague though historic inherent powers of the presidency in foreign affairs than were Messrs. Johnson, Rusk and Katzenbach.

The new administration's memorandum to Fulbright on the repeal of the resolutions states:

"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 decisionmaking 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."

NO THING SURREN DERED

These carefully worded sentences give an aura of willing executive cooperation with the legislative branch. But in fact they surrender nothing of the claims made by one President after another of his dominant role in foreign affairs, including the right to send troops into combat without a congressional declaration of war.

The net result is to give Congress no commitment that in another Korea or another Vietnam—and "fresh crises" are conceded to be at least possible if not probable—the administration will ask for a declaration of war. The most that is promised is that another resolution might "indeed" be sought from Congress.

A Foreign Relations Committee staff report issued in January declared that "while the Constitution states that the President 'shall be Commander in Chief of the Army and Navy of the United States' . . . this broad grant of power is not defined. On the other hand, the Constitution gives Congress authority which, in a number of respects, bears upon the President's power such as the power 'to make rules' for the armed forces, to declare war and to 'lay and collect taxes' and disturb the revenue to support the armed forces.

The fact is, as the report added, that "the exact line of authority between the President and the Congress" has been "in doubt for the past 160 years."

Katzenbach's "functional equivalent" remarks was one of the spurs which led the Senate to pass the so-called national commitments resolution last year, declaring that such a commitment can result only from affirmative acts by both the legislative and executive branches.

That resolution and the current Mathias repealer of the Tonkin and other resolutions in large part reflect congressional efforts to recapture authority that Congress has granted to the President—or let flow to him—in the past quarter century.

The Mathias repealer also contains language designed to shove the administration in the dovish direction on Vietnam policy. And, as its House sponsor, Rep. Bradford Morse (R-Mass.), put it last week, it also is a device to clear away "the debris of the Cold War." But these are ancillary concerns.

The thrust of the State Department response makes it clear that what most concerns the administration is that Congress not diminish those vague but powerful prerogatives of a President.

The CHAIRMAN. Is there anything else? Do you have anything further, Mr. Secretary?

Mr. Richardson. No. Thank you very much, Mr. Chairman and members of the committee, and Senator Mathias. I appreciate the opportunity to be here and I hope and believe that this discussion has been useful.

The CHAIRMAN. I think it has been useful and I think this resolution is a very useful one. I think it will deserve and will receive very sympathetic treatment by the committee and I hope by the Senate.

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(Whereupon, at 12:50 p.m., the committee adjourned.)

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Hon. J. W. Fulbright,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEPARTMENT OF STATE,

Dear Mr. Chairman: We are pleased to provide responses for a series of questions that you and Senator Mathias raised concerning the Department's position on S.J. Res. 106.

Here follows the questions together with our answers.

1. The Department's reply states on page 4 that President Kennedy's 1962 order to interdict Soviet missile deliveries to Cuba "cited as authority only the Constitution and Statutes of the United States .... 

Do you believe that President Kennedy was acting within his Constitutional authority?

This Administration has not undertaken a review of the determination made by President Kennedy as to the scope of his powers under the Constitution to respond to the Cuban missile crisis of 1962, but we know of no reason to question the Constitutionality of the measures taken by the United States Government in that emergency.

2. The letter states on page 6 that "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 letter goes on to say that 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."

What is the source of this commitment? I am unaware of any mutual security treaty between the United States and any country in the Middle East. I am, in fact, unaware of any treaty obligations to Middle East countries except for our common obligations under the U.N. Charter, Article 2, Paragraph 5 which obligates all members to "give the U.N. any assistance in any action it takes in accordance with its present Charter. ..."

If, however, the United States is in some way committed to the "preservation of independence and integrity" of Middle East nations, is it the Administration's view that the United States is in some way committed to compel Israel to restore the Arab states the territories seized in the 1967 war?

Greece and Turkey are members of NATO. The Department's letter of March 12, 1970 was not intended to imply that the United States has a mutual security treaty with any other country in the Middle East.

Our commitment to the preservation of independence and integrity of the nations in the Middle East is a continuation of long-standing United States foreign policy. It expresses continuing United States interest and concern for the independence and integrity of the countries in the area. It is not a formal obligation to take particular actions in particular circumstances.

In addition to our treaty obligation to support Article 2, Paragraph 5 of the U.N. Charter, we are also bound to support other basic U.N. principles stated in Article 2 of the Charter including the sovereign equality of all its members (paragraph 1), the obligation of all members to settle international disputes by peaceful means (paragraph 5), and the obligation of all members to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state (paragraph 4).

With respect to the Middle East, the United States voted for and has continued to give strong support to all parts of Security Council resolution 242 of November 22, 1967. This resolution makes clear the need for "guaranteeing the territorial inviolability and political independence of every state in the area" as essential to the establishment of a just and lasting peace in the Middle East.

The President and the Secretary of State have made clear that in fulfilling our obligations as a permanent member of the Security Council, the United States will continue to work for a just and lasting peace in the Middle East in accordance with Security Council resolution 242. The Secretary's speech of December 9, 1969, made the following specific references to our position on territorial integrity:

"Our policy is ... to urge the Israelis to withdraw from occupied territory when their territorial integrity is assured as envisaged by the Security Council resolution.

Executive Branch statements embodying this policy are listed at page 26 of the Senate Report 91-120."
"Any changes in the preexisting lines should not reflect the weight of conquest and should be confined to insubstantial alternations required for mutual security.

"We support Israel's security and the security of the Arab states as well."

Our objective is to work with other U.N. Members, including the parties to the conflict, for a just and lasting peace which will enable withdrawal to take place in accordance with the Security Council's resolution. The United States has no obligation to act unilaterally to compel Israeli withdrawal.

3. References are made on page 6 to bilateral agreements with Iran, Pakistan and Turkey under which, in the event of aggression, the United States would take "appropriate action, including the use of our armed forces."

Are these agreements, treaties or executive agreements?

The bilateral agreements with Iran, Pakistan and Turkey were entered into as executive agreements. At the time they were entered into, the agreements were based on the legislative authority of the Middle East Resolution and the Mutual Security Act of 1954, as amended. The latter act has been succeeded by the Foreign Assistance Act of 1961 as amended.

The principal U.S. obligation in Article I of each agreement is to take "in accordance with the Constitution of the United States of America ... such appropriate action, including the use of armed forces, as may be mutually agreed upon."

Since this undertaking is clearly within the President's Constitutional authority, reference to the Middle East resolution was not essential to the validity of the executive agreements. (Emphasis added)

4. On page 5 of its comments the Department states that, "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." The letter goes on to cite the Mutual Defense Treaty between the United States and Taiwan as the basis of our commitment and goes on to assert that repeal of the resolution would not alter this commitment.

The pertinent provision of the Treaty of December 2, 1954 reads as follows:

"Each Party recognizes that an armed attack in the West Pacific Area directed against the territories of either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes." How, in the event of a crisis, would you propose to implement that language?

It is not possible to predict in advance just what actions might be necessary in the event of a new crisis in the Formosa Strait. The relevant consideration, so far as our Treaty Commitment is concerned, would be whether hostile actions amounted to an armed attack "directed against Taiwan or the Pescadores. In the event it was determined that our Treaty Commitment was involved there would probably be a wide range of actions that would be considered depending on the precise circumstances of the situation. The Administration would wish to consult the Congress as fully as circumstances would permit in considering these actions.

5. Referring to Section 4 of the Mathias-Mansfield resolution, which would call on the South Vietnamese leaders of various sections to form a government capable of gaining popular support, the Department states on page 8 of its comments that "It is the policy of this Administration to support and encourage as broadly representative a government as possible in South Viet-Nam."

How at all can this statement be reconciled with the refusal of the United States Embassy in Saigon to make any effort to restrain the Thieu Government from its persecution of Tran Ngoc Chau? Chau, as you know, was a deputy who was sentenced to 10 years imprisonment in a kangaroo trial after being illegally stripped of his parliamentary immunity for the offense of meeting with his brother, who was a North Vietnamese agent. The Embassy refused to assist Chau, although it is known on both sides that his meetings with his brother were reported to the CIA and the U.S. Embassy.

How under these circumstances can it be said that this Administration is "supporting" and "encouraging" a broadly representative government in South Viet-Nam?

There should be no doubt that it is our policy to support and encourage broadly representative government as possible in South Viet-Nam. We have made our general views on this subject known to the Vietnamese authorities in an appropriate manner. We also support specific efforts the Vietnamese government is making to broaden its base of popular support, such as the new land reform program and the effort to strengthen locally-elected village and hamlet
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The principal U.S. obligation in Article I of each agreement is to take "in accordance with the Constitution of the United States of America . . . such appropriate action, including the use of armed forces, as may be mutually agreed upon."

Since this undertaking is clearly within the President's Constitutional authority, reference to the Middle East resolution was not essential to the validity of the executive agreements. (Emphasis added)

4. On page 5 of its comments the Department states that, "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." The letter goes on to cite the Mutual Defense Treaty between the United States and Taiwan as the basis of our commitment and goes on to assert that repeal of the resolution would not alter this commitment.

The pertinent provision at the Treaty of December 2, 1954 reads as follows:

"Each Party recognizes that an armed attack in the West Pacific Area directed against the territories of either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes."

How, in the event of a crisis, would you propose to implement that language? It is not possible to predict in advance just what actions might be necessary in the event of a new crisis in the Formosa Strait. The relevant consideration, so far as our Treaty Commitment is concerned, would be whether hostile actions amounted to an armed attack "directed against" Taiwan or the Pescadores. In the event it was determined that our Treaty Commitment was involved there would probably be a wide range of actions that would be considered depending on the precise circumstances of the situation. The Administration would wish to consult the Congress as fully as circumstances would permit in considering these actions.

5. Referring to Section 4 of the Mathias-Mansfield resolution, which would call on the South Vietnamese leaders of various sections to form a government capable of gaining popular support, the Department states on page 8 of its comments that "it is the policy of this Administration to support and encourage as broadly representative a government as possible in South Viet-Nam."

Now if at all this statement be reconciled with the refusal of the United States Embassy in Saigon to make any effort to restrain the Thieu Government from its persecution of Tran Ngoc Chau? Chau, as you know, was a deputy who was sentenced to 10 years imprisonment in a kangaroo trial after being illegally stripped of his parliamentary immunity for the offense of meeting with his brother, who was a North Vietnamese agent. The Embassy refused to assist Chau, although it is known on both sides that his meetings with his brother were reported to the OIIA and the U.S. Embassy.

How, under these circumstances, can it be said that this Administration is "supporting" and "encouraging" a broadly representative government in South Viet-Nam?

There should be no doubt that it is our policy to support and encourage as broadly representative a government as possible in South Viet-Nam. We have made our general views on this subject known to the Vietnamese authorities in an appropriate manner. We also support specific efforts the Vietnamese government is making to broaden its base of popular support, such as the new land reform program and the effort to strengthen locally-elected village and hamlet
DEPARTMENT OF STATE,

HON. J. W. FULLERIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We are pleased to provide responses for a series of questions that you and Senator Mathias raised concerning the Department's position on S.J. Res. 166.

There follows the questions together with our answers.

1. The Department's reply states on page 4 that President Kennedy's 1962 order to interdict Soviet missile deliveries to Cuba "cited as authority only the Constitution and Statutes of the United States...."

Do you believe that President Kennedy was acting within his Constitutional authority?

This Administration has not undertaken a review of the determination made by President Kennedy as to the scope of his powers under the Constitution to respond to the Cuban missile crisis of 1962, but we know of no reason to question the Constitutionality of the measures taken by the United States Government in that emergency.

2. The letter states on page 6 that "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 letter goes on to say that reap of the Middle East Resolution "would not affect our continued commitment to the preservation of independence and integrity of the nations in that area."

What is the source of this commitment? I am unaware of any mutual security treaty between the United States and any country in the Middle East. I am, in fact, unaware of any treaty obligations to Middle East countries except for our common obligations under the U.N. Charter, Article 2, Paragraph 5 which obligates all members to "give the U.N. any assistance in any action it takes in accordance with its present Charter...."

If, however, the United States is in some way committed to the "preservation of independence and integrity" of Middle East nations, is it the Administration's view that the United States is in some way committed to compel Israel to restore the Arab states the territories seized in the 1967 war?

Greece and Turkey are members of NATO. The Department's letter of March 12, 1970 was not intended to imply that the United States has a mutual security treaty with any other country in the Middle East.

Our commitment to the preservation of independence and integrity of the nations in the Middle East is a continuation of long-standing United States foreign policy. It expresses continuing United States interest and concern for the independence and integrity of the countries in the area. It is not a formal obligation to take particular actions in particular circumstances.

In addition to our treaty obligation to support Article 2, Paragraph 5 of the U.N. Charter, we are also bound to support other basic U.N. principles stated in Article 2 of the Charter including the sovereign equality of all its members (paragraph 1), the obligation of all members to settle international disputes by peaceful means (paragraph 3), and the obligation of all members to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state (paragraph 4).

With respect to the Middle East, the United States voted for and has continued to give strong support to all parts of Security Council resolution 242 of November 22, 1967. This resolution makes clear the need for "guaranteeing the territorial inviolability and political independence of every state in the area" as essential to the establishment of a just and lasting peace in the Middle East.

The President and the Secretary of State have made clear that in fulfilling our obligations as a permanent member of the Security Council, the United States will continue to work for a just and lasting peace in the Middle East in accordance with Security Council resolution 242. The Secretary's speech of December 9, 1969, made the following specific references to our position on territorial integrity:

"Our policy is... to urge the Israelis to withdraw from occupied territory when their territorial integrity is assured as envisaged by the Security Council resolution."

1Executive Branch statements embodying this policy are listed at page 29 of the Senate Report 91-139.
government. We will continue to take whatever action we properly can to carry out this policy.

In the particular case of Deputy Trân Ngọc Chau, Ambassador Bunker has discussed this with President Thieu. These discussions have, of course, been on a private basis. We consider that our actions in the matter have been entirely consistent with the policy noted above.

6. Discussing Section 4 of the Mathias-Mansfield resolution, the State Department letter says on pages 8 and 9 that the language is "... misleading in its implication that the present government is incapable of gaining public support and sustaining a durable political order."
The Department says that this is "misleading". What precise evidence is there of the capability of the Thieu Government to gain public support and form a stable government?

The present Government of Viet-Nam is an elected one, chosen in an election in which nearly 60% of the country's entire adult population voted. Since its inauguration in October 1967, it has handled a number of difficult problems and undertaken needed reforms in several fields despite adverse wartime circumstances. It has restored security, property, and local self-government to a large part of the countryside. It has mobilized the population in their self-defense and upgraded the armed forces to enable them to take on an increasing share of the fighting. It has handled quite effectively such war-related problems as post-Têt 1968 reconstruction and the resettlement or return of hundreds of thousands of refugees. It recently launched a revolutionary new land reform program designed to abolish tenant farming and make every rice farmer a landowner. And it has accomplished this within the framework of new and still somewhat unfamiliar democratic institutions.

There are undoubtedly shortcomings and imperfections in the government's performance. Nevertheless, we believe that, on balance, the government's record so far is an encouraging one and indicates that it is capable of gaining public support and sustaining a durable political order in South Viet-Nam. On the basis of this evidence, we reiterate that it would be misleading to claim that it was not capable of doing so.

7. In its comments on the Tonkin Resolution on page 7 the State Department says that the Administration is proceeding with efforts to end the war either by negotiation or by other means and that Congress "could, of course, draft and adopt a new resolution to complement and support that policy."

In lieu of a reference to "complement" and "support" the Administration's policy, would the Department welcome a resolution designed to improve and alter the Administration's policy?
The Department, of course, always welcomes any resolution which would be designed to improve the Administration's policy. However, since we believe that the present policy is sound, we would presume, as we stated in the original letter, that such a resolution would "complement" rather than "alter" that policy.

8. The State Department says on page 3 of its comments that in another crisis involving our "treaty commitments", the Department "would wish to see Congress at that time fulfill its proper role under the Constitution in the decision-making process." It is further stated that you would keep the "appropriate committees" and the Congressional leadership "fully informed." It was then asserted, if circumstances warranted, "we might indeed seek further Resolutions in fresh crises."

Am I correct in inferring from these statements that you regard it as a matter of option on the Executive's part as to whether it would or would not seek authority from Congress before undertaking new military actions abroad?

The President must determine in a particular situation what action he believes necessary and whether the pressure of events permits him to take no action while the matter is before Congress. This does not mean, however, that the President has an unfettered option in the matter. The Constitutional relation between the Executive and Legislative branches of Government is involved, as well as the practical effectiveness of major actions taken without Congressional approval.

A judgment about the precise nature of Congressional participation would be based essentially on the nature of the action contemplated in the light of all the facts and circumstances and after taking into consideration the views of the Congressional leadership and appropriate committees. We cannot predict in advance of a situation the decisions that might be reached.

9. The Department's reply states on page 3 that "as a functional matter" the resolutions have "no continuing significance in the foreign policy formulation process."
Is it correct to infer from this statement that the Department no longer holds the view expressed by former Under Secretary Katzenbach that the Tonkin Resolution and SEATO Treaty, taken together, constituted the "functional equivalent" of a declaration of war?

The Administration has made clear that it has not relied and will not rely on the Tonkin Gulf Resolution for any decisions that it has made or will make with respect to Vietnam or Southeast Asia. However, the Department does not wish to comment on the views expressed by former Under Secretary Katzenbach in 1967.

10. I welcome the fact that the Department does not oppose repeal of the Tonkin Gulf and other resolutions, but I am disturbed by the apparent reason for this lack of opposition. Specifically, the Department states on page 2 of its reply that:

"... 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."

On what legal authority then does the Administration base its conduct of the Viet-Nam war? Is it the Administration's contention that it has the power to engage in war without authorization by Congress?

The central fact, so far as the President's legal authority is concerned, is that the war in Viet-Nam was long underway when this Administration took office. The President has been doing his best to bring it to an end.

Putting aside the question of the President's general authority under the Constitution to deploy troops abroad, we consider that the President certainly has the constitutional authority to take all reasonable efforts to protect the troops once they have been committed and to bring about their withdrawal under circumstances that contribute to a durable peace. This, in essence, is the policy of the Administration. The Congress, for its part, has appropriated funds for the military operations involved. The President's policy does not depend upon any contention of general authority to engage in war without Congressional authorization.

11. Discussing the possible termination of the State of National Emergency, the State Department letter says on page 7 that the 1950 Proclamation makes operative some 170 statutes providing authority for "the continuation of which is important under present world conditions."

Can you at this time provide the Committee with any examples of the particular statutes and the particular authority which the Department regards as "important under present world conditions."

Examples of the authority made available pursuant to the 1950 Proclamation are the following:

The President is given special powers over transactions in foreign exchange and communication; he may relax or suspend, inter alia, provisions concerning Government contracts, hours of work, and inspection of plants and books; special provisions relating to security and the protection of defense information become operative; various properties may be detained and used by the United States; special provisions for facilitating defense transportation become effective; and several laws governing merchant shipping and the use of vessels become operative. In addition, a number of special provisions relating to the Armed Forces, the Reserves, and the National Guard come into effect. Other provisions governing appointments, promotions, enlistments, authorized strength and procurement of materials and services are relaxed.

Although the importance of different emergency powers may vary with time and circumstances, we believe this set of authority, in general, is important to the security of the United States. As we stated in our letter of March 12, 1970, commenting on Senate Joint Resolution 106 we have no objection to the creation of a committee to study the national emergency, and we would be pleased to cooperate with such a committee's work. We said: "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."

12. On what authority does the President base his declaration of a state of national emergency? Is it by such explicit authorization of law, or is it considered to be one of the prerogatives that is inherent in the Presidency?
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The proclamation of national emergency issued by President Truman on December 16, 1950, which is still in effect, was based on the powers of the President under the Constitution. That had also been the basis for proclamation of national emergency in 1939 and 1941.

13. Aside from laws that are triggered by such a proclamation of emergency, what authority does the President feel he acquires by the Act of proclaiming a state of national emergency?

The Department of State would not wish to speculate about the powers of the President under the Constitution to deal with national emergencies. However, we understand that the basic purpose of the 1950 proclamation was to make available to the Executive those statutory authorities expressly available only during a state of national emergency.

14. Since we are now in a state of national emergency which is of 20 years duration, is it the Administration's view that the current situation in fact is such an emergency, and if so, what is the nature of that emergency?

We believe the set of authority made available by virtue of the 1950 proclamation has been needed during the past two decades and is still needed. This continuing need results from the varied acts and threats of aggression which the United States and its allies have faced since 1950. This authority is required if the United States is to be able to deter and, if necessary, to respond adequately and promptly to such aggression in accordance with our commitments and national interests.

15. What is the State Department's understanding of the powers which are conferred upon the Executive by a declaration of war or a declaration of national emergency?

There are a great many statutes providing emergency powers. Most, by their terms, are available during a national emergency. A few are available only during time of war. A report to the Committee on the Judiciary of the House of Representatives, dated January 25, 1967 (87th Congress, Second Session) contains a summary of more than three hundred provisions of Federal statutes effective during time of war or emergency. Some examples of authority available pursuant to the 1950 proclamation are given in the answer to question 11 above.

If you have any further questions, please do not hesitate to let me know.

Sincerely yours,

H. G. Torbert,
Acting Assistant Secretary for Congressional Relations.