which under no circumstances comes under the interpretation of his powers as Commander in Chief. I don't think he could continue it without the approval of Congress.

Mr. SEIBERLING. Mr. Chairman, before we leave could I have your permission to comment on this, please?

Mr. ZABLOWSKI. Yes. You may even ask a question.

STATEMENTS OF EXPERTS AID IN CLARIFICATION

Mr. SEIBERLING. Well, Mr. Leigh first of all mentioned Raoul Berger. One of the papers I gave the committee contains an article by him. The article says:

Because opponents of the Constitution raised the specter of “detested” monarchical power, Alexander Hamilton downgraded the grant, explaining that the words “Commander in Chief” merely made the President “first General.”

Louis Henkin, professor of constitutional law at Columbia University, has justly observed that generals “even when they are ‘first’ do not determine the political purposes for which troops are to be used; they command them in the execution of policy made by others”—by the Congress, as the Founders made abundantly clear.

He goes on to say:

The paramount harm that flows from this fresh Cambodian adventure is the disruption of the constitutional allocation of powers, the invasion of powers confined exclusively to Congress. Approval by individual members cannot make such invasion constitutional.

So I don’t think Mr. Berger does support the position that Mr. Leigh has taken, and I must say that his view of the constitutional power of the President to commit U.S. troops regardless of congressional restraints puts the President in the position of an absolute monarch in this respect; which is the very thing in my reading of the Constitution that the Founding Fathers tried to take away from the President and give to Congress by giving it the war power and the appropriation power, but that is another question.

LANGUAGE OF COMMITTEE REPORT

I would like to get back to commenting on the specific comments of Mr. Leigh on this legislation. Mr. Leigh is obviously a sophisticated lawyer and it seems to me it is a little disingenuous for him to say that “inform” means consult in view of the very clear and explicit language at the bottom of page 22 and the top of page 23 of the committee print which sets forth the committee report. This was approved by the House and it says:

Rejected was the notion that consultation should be synonymous with merely being informed.

It goes on to use the language that the chairman himself adverted to and says:

Rather, consultation in this provision means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice and opinions and, in appropriate circumstances, their approval of action contemplated. Furthermore, for consultation to be meaningful, the President himself must participate and all information relevant to the situation must be made available.

I frankly don't see how that was done in this case.
Now the second point I would like to make in that regard is that I personally asked the Speaker of the House and the House majority leader, Mr. O’Neill, and the chairman of the International Relations Committee if they considered that they had been consulted and they said, “In no way were we consulted, we were merely informed.” The fact that they were given the opportunity after being informed of the President’s decision, to express their comments hardly seems to me to be carrying out the intent as expressed in the committee report.

FAILURE TO RELAY DECISION BASED ON SECURITY LEAKS

The third point I would like to make, and this raises a very interesting question, Mr. Leigh said that because of military security considerations the President felt that he could not tell Members of Congress before he made his decision because there might be security leaks. I think the committee ought to ask him whether he considers that the law, the wording “in every possible instance,” which implies an exclusion only where it is not possible, gives the President the right to not consult with the Congress where he thinks that there might be a security leak.

Finally, I would like to say that the thrust of his comments, it seems to me, is to say that the consultation provisions of this law are impractical, and I think that we ought to get his view on that. Perhaps he would like to answer those two last questions if the chairman feels so inclined.

Mr. LEIGH. Well, I can’t really speak in detail. When I was speaking about the President’s judgment of confidentiality, I was speaking in terms of an assumption on my part. I do not know what the President actually thought on this subject. I do know that he went to great pains to request the Members of Congress who came for the briefing in the Cabinet room that they maintain absolute security about this because breach of security might prejudice the carrying out of military operations. I can’t go beyond that.

Mr. SEIBERLING. Were you saying that if he thinks there might be a security breach he did not have to consult?

Mr. LEIGH. The second question I was going to come to. On that I would prefer to supply an answer for the record since this has not been a subject of specific discussion as far as I am aware.

Mr. ZABLOCKI. Supply it for the record.

[The information follows:]

CONSULTATION UNDER THE WAR POWERS RESOLUTION AND SECURITY CONSIDERATIONS

Section 3 of the War Powers Resolution has, in my view, been drafted so as not to hamper the President’s exercise of his constitutional authority. Thus, Section 3 leaves it to the President to determine precisely how consultation is to be carried out. In so doing the President may, I am sure, take into account the effect various possible modes of consultation may have upon the risk of a breach in security. Whether he could on security grounds alone dispense entirely with “consultation” when exercising an independent constitutional power, presents a question of constitutional and legislative interpretation to which there is no easy answer. In my personal view, the resolution contemplates at least some consultation in every case irrespective of security considerations unless the President determines that such consultation is inconsistent with his constitutional obligation. In the latter event the President’s decision could not as a practical matter be challenged but he would have to be prepared to accept the political consequences of such action, which might be heavy.
Mr. Zablocki. We have a record vote. Before we close, Mr. Leigh, I would point out that the record of your May 7 testimony is still open. If you wish to amend it to conform with your testimony today, you can do so. For example, on page 3 of the May 7 hearings you clearly state a position which today you appear to have modified.

Mr. Leigh. No, sir. With all due respect, what I was speaking about then was simply as to what was contemplated legally as to consultation and I don’t think my position is different today from what it was then.

Mr. Seiberling. Mr. Chairman, could I simply say that when I referred to his interpretation as disingenuous I didn’t mean to reflect on a fellow member of the bar, because, of course, lawyers have to argue sometimes cases that are weak, and I think he has a weak case here [laughter] and is making the best of it. I didn’t mean to make any personal—

Mr. Leigh. I take it that also applies to when you called me sophisticated. [Laughter.]

Mr. Zablocki. I have always known, and now it is confirmed, that the lawyers have a club, an association. [Laughter.]

Mr. Seiberling. That is true.

Mr. Zablocki. No trespassing on each other.

Thank you, Mr. Leigh. Thank you, gentlemen.

The subcommittee stands adjourned until further notice.

[Whereupon, at 5:12 p.m., the subcommittee adjourned.]
STATEMENTS SUBMITTED FOR THE RECORD

STATEMENT OF THE HONORABLE ROMANO L. MAZZOLI ON THE IMPLEMENTATION OF THE WAR POWERS ACT

Mr. Chairman and Members of the Committee, I appreciate this opportunity to express my views on the implementation of the War Powers Act, Public Law 93-148.

The essential objective of the War Powers Act, to ensure that the Congress meets its Constitutional responsibilities with respect to war powers, was resoundingly confirmed by the vote of the Congress to override a Presidential veto of the legislation.

This objective was not ignored by the Chief Executive during the implementation of the War Powers Act in the recent Mayaguez incident. But, two potentially serious problems did surface which need comment and recommendation from the distinguished Committee.

First, the War Powers Act requires that the legislative branch be consulted, not merely informed, in cases of the commitment of U.S. forces in combat abroad. This is particularly important because, in my view, a prior consultation requirement is the heart of this law.

In the Mayaguez case, U.S. forces were withdrawn before a formal review and approval or disapproval of their deployment by the Congress occurred. Therefore, the primary input of the Congress in the case of the Mayaguez incident was necessarily during the consultation process.

Moreover, I think it highly likely that this pattern will be repeated in the great majority of actions covered under the War Powers Act.

If the Executive Branch fails to interpret the War Powers consultation requirement as intended to apply to every instance, except the unarguable emergencies, where deployment of military forces is contemplated, and as intended to require a meaningful “give-and-take” in which the advice of Congress is solicited and considered, then the law should be amended to clarify this process.

Second, the Members of Congress to be informed and consulted must be a group of manageable size, yet must be representative of the body of Congress.

I do not believe it practical to require that the President seek the advice of every Senator and every Representative to satisfy the consultation provision of the Act. In emergency situations, as the situations under the Act are likely to be, the necessary speed of action cannot be satisfied by involving 535 persons.

But, at minimum, the primary officers of the House and Senate and of both parties in the House and Senate, and the Chairmen and ranking minority Members of the Senate Foreign Relations Committee and the House International Relations Committee should be involved.

It is my hope, Mr. Chairman, that this Committee will resolve these questions to ensure that the spirit of the War Powers Act will be met in future instances of its application. Apparently, we cannot rely upon the interpretation of the Executive Branch to ensure full and meaningful compliance with the War Powers Act.

I thank the Chairman and Members for their consideration of this vitally important matter.
APPENDIX

A CHRONOLOGY OF EVENTS IN THE MAYAGUEZ INCIDENT,1 PREPARED BY THE CONGRESSIONAL RESEARCH SERVICE, MAY 30, 1975

Monday, May 12, 1975

Early morning hours (early afternoon Cambodian time):
A Khmer motor torpedo boat fired a torpedo, anti-aircraft guns, and a rocket at the Mayaguez,2 which was sailing 81/2 miles southeast of the island of Poulo Wai.

Captain Miller stopped the motors of the Mayaguez, the torpedo boat came alongside, and seven armed men boarded the ship.

The ship's radio officer sent out two SOS messages.

Miller followed the gunboat at half speed for a delaying action, dropped anchor at Poulo Wai, and resisted efforts to move the ship to Kompong Som on the Cambodian mainland 60 miles away by feigning the malfunction of the ship's radar.

5:30 a.m.:

The State Department received the message from the Mayaguez, via the Delta Exploration Company in Indonesia and the United States Embassy in Jakarta, that the ship had been fired upon and boarded by Cambodian armed forces and was being towed to the Cambodian mainland.

7:40 a.m.:

The Deputy Director of the National Security Council, Major General Scowcroft, informed President Ford of the incident.

12:00 noon:

President Ford discussed the matter with the National Security Council at an emergency 45-minute meeting.

Afternoon:
Secretary of State Kissinger asked the Washington office of the Peoples Republic of China to help obtain release of the ship and the 39-man crew.

The U.S. directly delivered a message to the Cambodian embassy in Peking which asked for the immediate release of the ship and crew.

The aircraft carrier Coral Sea and other ships from the Seventh Fleet were ordered to set course for the Gulf of Siam.

P3 Orion reconnaissance planes from Thailand were ordered aloft to report on the location and situation of the Mayaguez.

The 3rd Marine Division on Okinawa was put on combat alert.

1,100 marines were ordered flown from Okinawa and the Philippines to the Utapao air base in Thailand.

Evening:

The Coast Guard issued a mariners warning for U.S. shipping to avoid the area where the Mayaguez had been captured.

Tuesday, May 13, 1975

Early morning hours (early afternoon Cambodian time):

The crew was taken off the Mayaguez and put on a Thai fishing boat and a Cambodian fishing boat, which were kept close to Koh Tang Island.

1 Hours given in Eastern Daylight Time (e.d.t.) Cambodian time is eleven hours later. The sources used were press accounts of the Mayaguez incident, Current News, a daily publication prepared for the Department of Defense, the Congressional Record, and Executive Communication No. 94-56.

2 A merchant vessel of United States registry with a U.S. citizen crew.

(105)
American reconnaissance planes located the Mayaguez near Koh Tang Island, 34 miles off the Cambodian coast, under guard of Cambodian patrol boats.

Two U.S. reconnaissance aircraft sustained minimal damage from small firearms in the course of locating the Mayaguez.

U.S. reconnaissance planes were joined by U.S. jetfighters flying over the Mayaguez.

6:20 a.m.:
In order to prevent the movement of the Mayaguez into a mainland port, U.S. aircraft fired warning shots across the bow of the ship and gave visual signals to small craft approaching the ship.

10:30 a.m.:
A second National Security Council meeting was held during which President Ford issued orders for U.S. forces to interdict any boat coming or going to Koh Tang Island, off which the Mayaguez was anchored.

Mid-day hours:
The Premier of Thailand, Kukrit Pramoj, warned that he would not permit the use of Thai air bases for American military operations against Cambodia.

Shortly after dark, (Cambodian time is 11 hours later than E.D.T.) one Cambodian soldier forced Miller and Miller's chief engineer to return to the Mayaguez in order to search it. As they stood on the deck of the ship, a U.S. plane released a flare overhead which frightened the Cambodian soldier; and all three returned immediately to the fishing boats.

The crew spent the night aboard the fishing boats.

The Peoples Republic of China returned to the United States the U.S. message to Cambodia which had demanded the immediate release of the ship and crew. However, American authorities were convinced that the Cambodians were aware of the American demand for the Mayaguez's release.

5:30 p.m.:
White House aids contacted approximately 17 congressional leaders (including Senators Hugh Scott, Mansfield, Byrd, Griffin, Sparkman, Stennis, Thurmond and Eastland) to inform them of the plan to use some form of force.

8:30 p.m.:
The White House reported that the Cambodians were apparently attempting to move the crew to the mainland.

10:20 p.m.:
The third National Security Council meeting was held during which the President ordered an air attack on the Cambodian gunboats located near the Mayaguez and Koh Tang Island.

The President also ordered that appropriate Navy, Marine Corps, and Air Force units be put on a one-hour alert.

Wednesday, May 14, 1975

1:00 a.m.:
U.S. aircraft, sunk a Cambodian patrol craft which had attempted to leave the island. Thereafter, two other Cambodian patrol craft were destroyed, and four other were damaged and immobilized.

(This attack was not announced in Washington for eleven hours.)

6:00 a.m.:
All the Mayaguez crew members were put in the Thai fishing boat and taken to Kompong Som. During the four-hour trip, American jets, trying to force the fishing boat to turn back, rocketed and strafed within ten feet or so in front and on all sides of the vessel. At an altitude of 70 feet, the jets tear-gassed the boat and enveloped it with tear gas. The boat succeeded in reaching Kompong Som after efforts to turn it around without injury to the passengers failed.

10:00 a.m.:
The crew was taken to the island of Rong Sam Lem, a few miles west of Kompong Som, where the crew was fed and spent the night.
Late morning:
The destroyer escort *Holt* reached Koh Tang Island.

Thai Premier Kukrit Pramoj demanded, by formal protest, that American marines be removed from Thailand by Thursday morning, May 15.

12:00 noon:
Department of Defense spokesman announced that U.S. aircraft had sunk three Cambodian gunboats. (see above)

1:00 p.m.:
John Seali, United States representative to the United Nations, formally asked Secretary General Waldheim to do what he could to help obtain the release of the ship and crew.

3:30 p.m.:
The Senate Foreign Relations Committee, in closed session, received a briefing from Deputy Assistant Secretary of State for East Asian and Pacific Affairs, J. Owen Zurchellen on the current situation resulting from the Cambodian seizure of the *Mayaguez* and subsequent U.S. retaliatory actions.

3:52-5:40 p.m.:
The fourth National Security Council meeting was held.
At 4:45 p.m. orders for the military operations off Cambodia were issued to the U.S. forces in the Gulf and in Thailand. The operations were to be threefold: (1) two waves of marines from Thailand, arriving by helicopter, were to land at Koh Tang and rescue the Americans that might be held there; (2) other marines aboard the destroyer *Holt* were ordered to pull along side the *Mayaguez* and recapture her; (3) in addition to continued fighter and gunship coverage of the Koh Tang area, the above marine activities were to be supported by tactical aircraft from the *Coral Sea*, striking the military airfield at Ream and other military targets in the area of Kompong Som.
At 5:14 assault forces began operations.

6:40 p.m.:
President Ford and the National Security Council briefed 17 congressional leaders on the military plans.

7:00 p.m.:
The Phnom Penh radio was overhead in Bangkok announcing that the Khmer Rouge government would release the ship, but no mention was made of the crew. (White House received this message later, see below.)
The transcript of the broadcast gave the Cambodian version of the incident.

7:20 p.m.:
Approximately 135 marines landed at Koh Tang under heavy fire.

8:06 p.m.:
Foreign broadcast information service report of Cambodian broadcast was received by Secretary Kissinger, who in turn informed President Ford.

9:00 p.m.:
Marines, boarding from the *Holt*, took possession of the *Mayaguez*. The ship was found empty.

9:15 p.m.:
A White House statement was issued on a military broadcast channel, probably monitored by Cambodia, saying that the United States would call off military operations as soon as the crew had been freed unconditionally.

9:20 p.m. (some sources cite 8:20 p.m.):
The *Mayaguez* crew and 5 Thai fishermen were released by the Cambodians to make their way back to the *Mayaguez*, which was 30 miles away, in a small Thai fishing boat. (This fact was learned later by Washington, see below.)

10:45 p.m.:
The destroyer *Wilson* reported a small boat approaching flying a white flag.

10:53 p.m.:
The *Wilson* sent word to the Pentagon that at least 30 Caucasians were aboard the boat.
11:00 p.m.:
The first strike by carrier planes from the Coral Sea was begun at Ream, an airfield near Kompong Som on the mainland. These air attacks destroyed approximately 17 Cambodian airplanes and some amphibious craft.

11:14 p.m.:
Defense Secretary Schlesinger informed the President that all the crew were safe and accounted for.

11:16 p.m.:
President Ford ordered all offensive operations to cease and the withdrawal from Koh Tang to begin.

11:30 p.m.:
The entire crew of the Mayaguez was taken aboard the Wilson.

Thursday, May 15, 1975

12:31 a.m.:
President Ford appeared on television to announce that the rescue was completed and that withdrawal had begun.

Early morning:
President Ford, in compliance with the War Powers Act, sent a written report to Congress concerning the use of U.S. forces in the Mayaguez incident.

7:13 a.m.:
First lift of marines from Koh Tang was begun under fire.

9:20 a.m.:
The last marine helicopter reached the Coral Sea.
May 12, 1975

3:18 a.m.: Mr. John Neal of the Delta Exploration Co. in Jakarta, Indonesia received a May day call from the Mayaguez. Messages stated “Have been fired upon and boarded by Cambodian armed forces at 9 degrees 48 minutes north 102 degrees 53 minutes east. Ship is being towed to unknown Cambodian port.”

4:00 a.m. to 5:00 a.m.: Mr. Neal lost communication with the ship, gave up trying to reach the ship and informed the U.S. Embassy in Jakarta of the incident.

5:02 a.m.: U.S. Embassy in Jakarta informed Washington of the incident.

7:30 a.m.: Pentagon orders CINPAC to send reconnaissance aircraft to find ship.

9:57 a.m.: U.S. reconnaissance aircraft were dispatched to area to attempt to locate the ship and verify the report.

12:05 p.m.: The President chaired a meeting of the National Security Council.

1:50 p.m.: White House press briefing and statement concerning seizure of the ship and U.S. demand for its release.

4:30 p.m.: A representative of the Liaison Office of the People’s Republic of China summoned to the State Department was given a message for the Cambodian authorities, demanding the release of the ship. The PRC representative refused to accept the message.

9:16 p.m.: U.S. reconnaissance aircraft made a positive identification of the ship and observed it being escorted by Cambodian gunboats. The aircraft was fired at and hit, sustaining minor damage.

May 13, 1975

12:10 a.m.: A representative of the United States Liaison Office in Peking delivered a message to the Cambodian Embassy there. A message was also delivered to the Foreign Ministry of the People’s Republic of China.

1:25 a.m.: U.S. reconnaissance aircraft observed the Mayaguez anchoring one nautical mile north of Koh Tang Island. The aircraft was fired at but not hit.

6:04 a.m.: The Mayaguez crew was observed being transferred from the ship.

6:18 a.m.: The Pentagon ordered the Air Force to maintain surveillance of the Mayaguez and prevent its movement into port on the Cambodian mainland. Warning shots were fired across bow of Mayaguez to signal it not to move. Specific orders were given not to attack the Cambodian gunboats.

6:54 a.m.: White House press briefing on location of ship and U.S. surveillance effort.

7:55 a.m.: The crew is observed on the island but it cannot be ascertained how many men have been moved. Therefore, it is not certain that the entire crew has left the ship.

3:05 p.m.: A C-130 aircraft received small arms fire from the island.

1 All times are Eastern Daylight Saving Time.
3:20 p.m.:
Four Cambodian gunboats at island fired anti-aircraft weapons at C-130.

5:50 p.m. to 6:35 p.m.:
Congressional leadership contacted by telephone and advised that President had directed military actions to prevent the Mayaguez and its crew from being transferred to the Cambodian mainland and to prevent reinforcement from the mainland of Cambodian forces detaining the Mayaguez vessel and crew.

7:04 p.m.:
Three patrol boats move from the island. Warning fire from USAF planes turn them back to Koh Tang.

9:43 p.m.:
Cambodian patrol boat ignores warning fire from U.S. aircraft and continues to move. Boat is attacked and set afire.

9:52 p.m.:
Patrol boat spotted with possible crew members on it. U.S. aircraft fires in front of it in order to turn it back. Boat continues to move toward the mainland.

10:03 p.m.:
A different patrol boat moves and is engaged and set afire by air strikes.

11:00 p.m.:
The President chaired a meeting of the National Security Council.

11:00 p.m.:
The vessel believed to be carrying crew members reaches the mainland.

May 14, 1975

12:29 a.m.:
Three other patrol boats are engaged by U.S. aircraft. One is sunk, other two damaged. A subsequent strike damages two other patrol boats.

7:15 a.m.:
U.S. Liaison Office in Peking reported that PRC Foreign Ministry returned the message for the Cambodian authorities.

11:00 a.m.:
USS Harold E. Holt arrives in the area.

11:00 a.m.:
Congressional leadership notified by telephone that three Cambodian boats had been sunk and four damaged by U.S. air strikes.

11:50 a.m.:
DOD press briefing and statement about U.S. attacks on Cambodian boats.

1:00 p.m. to 2:00 p.m.:
A letter regarding this action was delivered to UN Secretary General Waldheim by Ambassador Scali, requesting UN Secretary General to take any steps in his ability to secure safe return of Mayaguez and crew.

3:00 p.m. to 5:00 p.m.:
State Department officials briefed members of the House International Relations Committee, Senate Foreign Relations Committee and House Armed Services Committee.

3:52 p.m.:
President chairs NSC meeting in the Cabinet Room.

4:45 p.m. to 5:10 p.m.:
Orders are issued to begin the military operations for the recovery of the SS Mayaguez and crew including air attacks against military facilities near Kompong Som to prevent reinforcement and support from the mainland for Cambodian forces detaining the ship and its crew.

5:14 p.m. to 5:20 p.m.:
U.S. assault forces take off from stations.

6:40 p.m. to 7:40 p.m.:
President meets with Congressional leadership to inform them of the actions he has ordered to recover the ship and the crew.

7:00 p.m.:
Marine assault force arrives at USS Holt.

7:07 p.m.:
Phnom Penh domestic radio service carries a broadcast in Cambodian that states that the Cambodian Government will order the Mayaguez to withdraw from Cambodian territorial waters. No mention is made of the crew.

7:09 p.m.:
Assault force arrives at Koh Tang Island and comes under fire.
7:15 p.m.: A helicopter in the assault force against Koh Tang Island is hit and downed.
7:45 p.m.: Another helicopter crashes on the island.
7:46 p.m.: Approximately 100 Marines are on Koh Tang Island.
8:06 p.m.: The Cambodian broadcast, monitored by the Foreign Broadcast Information Service and translated into English, was carried on the FBIS wire.
8:15 p.m.: Insertion of the first assault wave on Koh Tang Island was completed, 135 Marines now on beach.
8:15 p.m.: The President is informed of the FBIS wire report by Secretary Kissinger.
8:30 p.m.: White House press briefing and statement on the actions ordered by the President.
8:45 p.m.: Support aircraft arrive and commence operations against military installations near Kompong Som.
9:05 p.m.: Marines from the USS Holt board and take control of the SS Mayaguez. They find evidence that the vessel had been occupied until just before their arrival.
9:15 p.m.: White House issued press release on message being sent to Cambodian authorities offering to stop military operations if crew is released.
9:33 p.m.: Mayaguez is secured and U.S. colors are raised.
10:28 p.m.: A boat was reported near Koh Tang Island flying a white flag.
11:07 p.m.: The USS Wilson takes aboard the occupants of that boat. The occupants were determined to be the entire crew of the SS Mayaguez.
11:16 p.m.: The order was given to cease all offensive operations and begin to withdraw. The Commander of the forces on the island requests additional ground forces to provide security for a successful withdrawal.
11:31 p.m.: White House statement on recovery of ship.
11:45 p.m.: The additional ground security forces arrive at Koh Tang Island.

May 15, 1975

12:10 a.m.: Airstrikes at Kompong Som terminate.
12:25 a.m.: The Mayaguez crew is returned to its vessel.
12:30 a.m.: The President’s statement on recovery of ship and crew.
12:45 a.m.: DOD press briefing on military actions.
1:21 a.m.: A helicopter is hit during effort to remove troops from the island.
2:00 a.m. to 2:30 a.m.: A report consistent with the War Powers Resolution from the President was transmitted to Speaker of the House and to President Pro Tempore of the Senate.
4:40 a.m.: Mayaguez underway.
6:15 a.m.: Commencement of operation to evacuate last elements of marines on Koh Tang Island using helicopters and USS Wilson and USS Holt.
7:17 a.m.: Final extraction of U.S. ground forces completed.
12:21 p.m.: Last aircraft departed the area.
The Mayaguez incident began for the US Armed Forces at 5:12 AM on 12 May 1975, when the National Military Command Center (NMCC) received a report from the American Embassy Jakarta that a US merchant vessel, SS Mayaguez, had possibly been boarded. The vessel had been fired on, boarded, and seized in international waters at about 21 minutes past midnight, 12 May while traversing a standard sealane and trade route. (All times used are Eastern Daylight Time. To convert to Gulf of Thailand time, add eleven hours.)

At 7:30 AM, a reconnaissance aircraft was directed to be launched from Utapao, and early that morning a P-3 took off to begin coverage of the area. By mid-afternoon other reconnaissance aircraft joined the surveillance coverage. A total of 45 reconnaissance sorties provided continuous surveillance until the end of the operation. The first minor battle damage was incurred when a P-3 was hit by small arms fire from a gunboat at 9:16 PM. During the afternoon, the destroyer, USS Holt, the support ship, USS Vega, the USS Coral Sea Carrier Task Group, and the destroyer, USS Wilson had been directed to proceed to the vicinity of Kompong Som from various locations in the Western Pacific. By midnight the Mayaguez had moved from the vicinity of Poulo Wai Island to near Koh Tang Island.

All of these ships were to play a significant role in the operations on 14-15 May. On 13 May at 6:55 AM, Commander in Chief Pacific (CINCPAC) was directed to maintain fighter/gunship cover over Mayaguez to keep it away from the Cambodian mainland and to isolate the area. At about 6:20 AM, an A-7 reported placing ordnance in the water in front of Mayaguez to signal it not to get underway. During the remainder of the morning, several small boats were observed moving to Mayaguez and between the ship and Koh Tang. At 8:30 PM another A-7 sank a Cambodian patrol boat after attempting to divert the craft.

At 12:10 PM CINCPAC was directed to move all available Air Force helicopters to Utapao, and to temporarily move two reinforced Marine platoons from Subic Bay to Utapao. These preparations were completed by about 3:00 AM on 14 May. At 3:33 PM on 13 May an Okinawan-based Marine battalion was directed to travel to Utapao in case it was needed. This movement was completed early the following day.

During the remainder of 13 May and into early evening of the 14th, efforts continued to prevent Mayaguez from leaving Koh Tang until sufficient US forces could be positioned in the event diplomacy failed. During this period a boat was seen leaving the island proceeding towards Kompong Som with some possible Caucasians aboard. It was not known whether this represented some or all of the US crew. Attempts to turn back this boat, including use of warning shots and riot control agents, failed and the boat was allowed to proceed.

It has been subsequently determined that the entire crew was probably on this boat. At midnight on the 13th discretionary authority was given to attack and sink all small craft in the vicinity of Koh Tang. Up until that time, the decision to sink any vessel had to be taken in Washington by the NCA.

The military operation to effect the recovery of SS Mayaguez and crew from Cambodian control began with the issuance of an order at 3:59 PM on 14 May. This order followed extensive planning and prepositioning of forces. The initial order directed CINCPAC to conduct the assault using Marines placed aboard the destroyer USS Holt to seize and secure Mayaguez and sail or tow the ship to sea as soon as possible and also directed a Marine helicopter assault on Koh Tang Island to free US crewmen thought to be there. Tactical aircraft from Thailand and the carrier USS Coral Sea were authorized to provide support for the operations as required, as was naval gunfire. Riot control agents in a defensive mode were authorized to reduce civilian casualties.

At 5:14 PM on 14 May, the first troop-carrying helicopter took off from Utapao Airfield, Thailand, where all available USAF helicopters and the Marine Ground Security Force had been prepositioned. At about the same time, tactical aircraft
began to launch to provide continuous coverage for the operation, and an airborne command post assumed on-scene control. Three helicopters carrying about 50 Marine Ground Security Force combat troops, 6 US Navy explosive ordnance disposal technicians, and a linguist arrived at USS Holt at about 7:00 PM. These forces, together with 6 Military Sealift Command personnel to crew Mayaguez, were all transferred to Holt by 7:22 PM. Holt came alongside Mayaguez at 8:45 PM, and 20 minutes later reported that the Marines were in full control of the ship. No one was found on board Mayaguez at the time of boarding, but food found on the dining table and a warm kettle on the stove suggested a recent, hasty departure.

The assault on Koh Tang began when the first three of eight USAF helicopters with Marine assault forces took off from Utapao. One of the first helicopters reported hostile ground fire at 7:09 PM, and the flight mechanic was wounded. A second helicopter was reported hit and burning some six minutes later. Another helicopter from this flight crashed nearby on the beach at about 7:45 PM. Thirty minutes later insertion of the first assault wave had been completed. Of the eight helicopters in the first wave, three crashed on the beach or in the water, and two were disabled, one landing on a Thai island for fuel before proceeding to Utapao and the other returning directly to Utapao. The Marine Ground Force Commander had consolidated his position in the vicinity of the main landing zone by about 9:45 PM. The force received sporadic but heavy automatic weapon fire, together with claymore mine detonations. Across the island from the main force, 22 personnel, whose helicopter had been hit and crash-landed, were isolated.

CINCPAC had been directed at 5:18 PM on 14 May to commence cyclic strike operations from the aircraft carrier USS Coral Sea on military targets in the Kompong Som-Ream complex with first time on target specified at 8:45 PM to coincide with the estimated time of recapture of Mayaguez. The first cycle was to be armed reconnaissance with Cambodian aircraft and military watercraft as principal targets. Subsequent flights were to make maximum use of precision guided munitions to attack targets of military significance. The tactical armed reconnaissance cycle did not expend ordnance. The second cycle struck the Ream Airfield. The runway was cratered, numerous aircraft were destroyed or damaged, and the hangars were badly damaged. The third and final cycle struck the Naval Base at Ream damaging the barracks area. Naval facilities in Kompong Som, including a POL storage area, were also struck during the cycle, damaging two warehouses in the port and scoring a direct hit on a large building in the marshalling yard. This bomb damage assessment is based on pilot reports and some photography. In all, 15 attack sorties expended munitions. Operations against the mainland terminated about midnight on 14 May.

These operations against the mainland were designed to ensure the island was not reinforced, to put pressure on the Cambodians to release the crew and to ensure the safe withdrawal of the Marine Ground Support Force.

At about 7:15 PM, a domestic broadcast from Cambodia had indicated that the Government intended to release the vessel at some future time. No mention was made of the crew. The broadcast was monitored, translated, and transmitted to Washington where it was passed to the Secretary of Defense in the White House some time after 8:00 PM. This information received after the launch of the force, the landing of the Ground Security Force, and the infliction of most US casualties was not deemed sufficiently definite to call for a ceasefire, which would risk the crew and the Marines on the island.

At 10:23 PM a boat was reported approaching the island flying a white flag. The destroy USS Wilson picked up the occupants and reported at about 11:15 PM that the entire crew of Mayaguez was accounted for and that all were in good condition. A fishing vessel with a five-man Thai crew had brought Mayaguez's crew to Wilson from Koh Rong San Lem. The Thais requested food and fuel for their boat, and upon receipt of these supplies, they departed. By 25 minutes past midnight, on 15 May, Mayaguez's crew had been returned to their ship. At about midnight, the order was given to cease all offensive operations and begin to withdraw. At that time, additional ground security forces were requested by the Ground Force Commander in order to provide sufficient firepower for a successful withdrawal under fire. The second Marine assault wave had begun to arrive in the area of Koh Tang Island at about 11:45 P.M. on 14 May. The helicopters received ground fire, and one of the first two was
damaged. At eight minutes past midnight, after augmentation by a portion of the second wave, the Marines were reported in good position with the opposition forced back. At 1:21 A.M. on 15 May, a second helicopter from the second assault wave was hit at the island, and, along with two other helicopters, it returned to Utapao without disembarking the Marines.

Initial efforts to withdraw forces from the island concentrated on extracting the 22 isolated personnel. The main body of the Marine Ground Security Force with a strength of approximately 215 personnel was unable to reach the 22-man Marine force. It was felt there would be considerable risk to this small force if left overnight. The first helicopter making the attempt was hit by ground fire at 3:34 A.M. and landed on USS Coral Sea.

The reduction in numbers of operational helicopters, the intensity of enemy ground fire received by each inbound helicopter and the approach of darkness complicated the extraction. Small boats from USS Hall and USS Wilson began efforts to approach the beach at 6:15 AM, but aborted due in part to ground fire. Working with naval gunfire and tactical aircraft support, the extraction continued into darkness. Helicopters recovering to Coral Sea were able to finally clear all USMC personnel from the island by about 9:15 AM, 15 May. The small group near the downed helicopter had been the first extracted, some two hours earlier.

Reports now available indicate that there were 15 killed in action, 50 wounded in action, and 3 missing in action for whom there is little hope. Final reports are still not available. Most of the fatalities were personnel aboard the CH-53 helicopter that crashed and burned during the initial landing on Koh Tang. We believe that hostile casualties inflicted by the ground security forces are in the neighborhood of 25 to 30. No precise estimate of total hostile casualties can be reasonably made although the nature of the mission and the ordnance employed should ensure that civilian casualties on the mainland were minimal.

At the approximate time of the extraction of the last Marines from Koh Tang Island, it was directed that the residual force of 789 Marines at Utapao be returned to their home station. The first C-141 aircraft with 150 Marines lifted off Utapao at about noon with the last aircraft departing at a little after 5:00 PM, 15 May. Marine forces aboard the USS Coral Sea were taken to Subic Bay by the Naval Task Force and arrived Tuesday morning, 20 May 1975. The Armed Forces of the United States in the Pacific area have reverted to routine operations.

SS MAYAGUEZ/KOH TANG ISLAND OPERATION

<table>
<thead>
<tr>
<th>Service and type of aircraft</th>
<th>Sorties</th>
<th>Targets</th>
<th>Loss/damage</th>
</tr>
</thead>
<tbody>
<tr>
<td>USAF</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F-4</td>
<td>164</td>
<td>Close air support vicinity Koh Tang</td>
<td>1 damaged—hole in ramp.</td>
</tr>
<tr>
<td>A-7</td>
<td>44</td>
<td>Close air support vicinity Koh Tang</td>
<td>1 damaged—hole in wing.</td>
</tr>
<tr>
<td>F-111</td>
<td>45</td>
<td>Close air support vicinity Koh Tang</td>
<td></td>
</tr>
<tr>
<td>AC-130</td>
<td>19</td>
<td>do</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>272</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SS MAYAGUEZ/KOH TANG ISLAND OPERATION

TAC AIR OPERATIONS FROM CARRIER CORAL SEA AND BOMB DAMAGE ASSESSMENT, MAINLAND STRIKES

<table>
<thead>
<tr>
<th>Service and type of aircraft</th>
<th>Sorties</th>
<th>Targets</th>
</tr>
</thead>
<tbody>
<tr>
<td>USN</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A-7</td>
<td>5</td>
<td>Ream/Kompong Som Airfield.</td>
</tr>
<tr>
<td>A-6</td>
<td>2</td>
<td>Do.</td>
</tr>
<tr>
<td>A-7</td>
<td>2</td>
<td>Ream Naval Facility.</td>
</tr>
<tr>
<td>A-7</td>
<td>4</td>
<td>Kompong Som Naval Facility.</td>
</tr>
<tr>
<td>A-6</td>
<td>2</td>
<td>Ream Naval Facility.</td>
</tr>
<tr>
<td>F-4</td>
<td>18</td>
<td>Cap/escort</td>
</tr>
<tr>
<td>A-6</td>
<td>4</td>
<td>Close air support Koh Tang Island.</td>
</tr>
<tr>
<td>A-7</td>
<td>10</td>
<td>Do.</td>
</tr>
<tr>
<td>Total</td>
<td>47</td>
<td></td>
</tr>
</tbody>
</table>
Kepmang Som Port Complex.—Two warehouses damaged and fires noted; POL facility hit; railroad marshalling yard building hit, no fire or secondary explosions noted.

Ream Naval Base.—Barracks destroyed; POL fires noted.

Ream Airfield.—Numerous A/C destroyed; 5 A/C damaged; hangars damaged; runway cratered; large POL fire; active 37 mm AAA site damaged.

SS MAYAGUEZ/KOH TANG ISLAND OPERATION, COMBAT SUPPORT AIRCRAFT OPERATIONS

<table>
<thead>
<tr>
<th>Service and type</th>
<th>Sorties</th>
<th>Mission</th>
</tr>
</thead>
<tbody>
<tr>
<td>USAF:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OV-10</td>
<td>4</td>
<td>Forward air controller.</td>
</tr>
<tr>
<td>EC-130</td>
<td>6</td>
<td>Airborne command and control center.</td>
</tr>
<tr>
<td>HSO-130</td>
<td>8</td>
<td>Search and rescue control and HH-53 refuelers.</td>
</tr>
<tr>
<td>CH/HH-53</td>
<td>3</td>
<td>Search and rescue.</td>
</tr>
<tr>
<td>KC-135</td>
<td>49</td>
<td>TACAIR refuelers.</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>70</strong></td>
<td></td>
</tr>
<tr>
<td>USN:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>KA-5D</td>
<td>6</td>
<td>Refueler.</td>
</tr>
<tr>
<td>KA-7D</td>
<td>2</td>
<td>Do.</td>
</tr>
<tr>
<td>E1-B</td>
<td>4</td>
<td>Airborne early warning.</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>12</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Grand total</strong></td>
<td><strong>82</strong></td>
<td></td>
</tr>
</tbody>
</table>

SS MAYAGUEZ/KOH TANG ISLAND OPERATION, HELICOPTER SORTIES LOST/DAMAGED

<table>
<thead>
<tr>
<th>Service</th>
<th>Helos employed</th>
<th>Sorties</th>
<th>Loss</th>
<th>Damage</th>
<th>Cause</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>8 HH-53</td>
<td>15 HH-53</td>
<td></td>
<td>6 HH-53</td>
<td></td>
</tr>
<tr>
<td>USN</td>
<td>2 SH-34</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>USMS</td>
<td>None</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Does not include deployment/redeployment sorties within Thailand. Air Force security forces were collected at Utapao for the event it was considered necessary, because of time constraints, to use them to secure Mayaguez. This option was not exercised as Marines were utilized on this mission. A force of 75 USAF Security Police was directed to move to Utapao from various bases in Thailand, 18 of the 23 men killed in the CH-53 crash of Apr. 13 were part of this force.

SS MAYAGUEZ/KOH TANG ISLAND OPERATION

RESULTS OF ATTACKS AGAINST CAMBODIAN NAVAL VESSELS

Following is a recapitulation of the results of reported strikes on Cambodian naval vessels.

SINKINGS TO PREVENT MOVEMENT OF SS MAYAGUEZ TO KOMPONG SOM

<table>
<thead>
<tr>
<th>Date/Time of Incident</th>
<th>Struck by</th>
<th>Type of vessel</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>132020 May 1975</td>
<td>A-7</td>
<td>Patrol boat</td>
<td>Sunk northeast Koh Tang Island.</td>
</tr>
<tr>
<td>140460 May 1975</td>
<td>F-4</td>
<td>2 small boats</td>
<td>Sunk between Mayaguez and Koh Tang Island.</td>
</tr>
<tr>
<td>144460 May 1975</td>
<td>RC-190</td>
<td>Patrol craft</td>
<td>Sunk 2 mi southeast Koh Tang Island.</td>
</tr>
</tbody>
</table>

SINKINGS TO PROTECT USMC FORCES ON KOH TANG ISLAND

<table>
<thead>
<tr>
<th>Date/Time of Incident</th>
<th>Struck by</th>
<th>Type of vessel</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>150100 May 1975</td>
<td>F-4</td>
<td>Large barge</td>
<td>Sunk North Koh Tang Island.</td>
</tr>
<tr>
<td>150410 May 1975</td>
<td>A-7</td>
<td>Patrol craft</td>
<td>Sunk 6 mi south Kompjng Som.</td>
</tr>
<tr>
<td>150410 May 1975</td>
<td>F-130</td>
<td>2 small boats</td>
<td>Sunk south Koh Tang Island.</td>
</tr>
<tr>
<td>150540 May 1975</td>
<td>U.S.S. Wilson</td>
<td>8 patrol craft and 1 large barge</td>
<td>Sunk north Koh Tang Island.</td>
</tr>
</tbody>
</table>
COMPARISON OF THREE CHRONOLOGICAL SUMMARIES OF THE MAYAGUEZ INCIDENT, BY MARJORIE NIEHAUS, CONGRESSIONAL RESEARCH SERVICE, JULY 22, 1975

The following report is a comparative study of three chronological summaries of the Mayaguez incident which were prepared at the request of the House Committee on International Relations, Subcommittee on International Security and Scientific Affairs by the Department of State (State), the Department of Defense (DoD), and the Congressional Research Service (CRS). All times used are Eastern Daylight Time (EDT). Cambodian time is 11 hours later. This study compares the information provided in each chronology concerning the following headings:

1. National Security Council (NSC) Meetings.
2. Diplomatic Attempts to Recover Mayaguez and Crew.
3. Congressional Members Informed of Mayaguez Incident.
5. Recovery of Crew and Ship.

The narrative summary prepared by DoD did not contain information regarding headings 1, 2, and 3.

1. NSC MEETINGS

Both the CRS and State chronologies record the following three NSC meetings:

May 12-12:00-12:45 p.m.; May 13-10:20 p.m.; and May 14-3:52-5:40 p.m. In addition, the CRS chronology noted a NSC meeting held at 10:30 a.m. on May 13.

2. DIPLOMATIC ATTEMPTS TO RECOVER MAYAGUEZ AND CREW

Both the CRS and State accounts noted that on the afternoon of May 12 a message was given to a representative of the Liaison Office of the People’s Republic of China (PRC) in Washington requesting conveyance to Cambodian authorities demanding release of the Mayaguez and crew. According to the State Department account the PRC representative decline to accept the message. The CRS chronology recorded that the message was returned mid-day on May 13. Both chronologies mention that the United States directly delivered a message, asking immediate release of crew and ship, to the Cambodian Embassy in Peking (CRS—afternoon of May 12; State 12:10 a.m. of May 13). However, only the State chronology recorded that a message was also delivered to the Foreign Ministry of the PRC at 12:10 a.m. May 13, and that at 7:14 a.m. on May 14 the U.S. Liaison Office in Peking reported that the PRC Foreign Ministry returned the message for the Cambodian authorities.

The CRS and State chronologies both recorded that at 1:00 p.m. on May 14 Ambassador Scali requested the United Nations Secretary General to help obtain the release of the ship and crew.

3. CONGRESSIONAL MEMBERS INFORMED OF MAYAGUEZ INCIDENT

The CRS and State chronologies noted the following times at which members of the executive branch informed congressional members of the events of the Mayaguez incident:

May 13, 5:30 p.m.—White House aides contacted congressional leaders to inform them that the President had directed orders for military actions which could involve the use of force.

May 14, 3:00-5:00 p.m.—State Department officials briefed members of the House International Relations, Senate Foreign Relations, and House Armed Services Committees concerning the Mayaguez.

May 14, 6:40 p.m.—President Ford and members of the NSC informed congressional leaders of the military actions the President had ordered to recover the ship and crew.

(116)
May 15, 2:00 a.m.—President Ford transmitted a written report to the Speaker of the House and to the President Pro Tempore of the Senate concerning the use of U.S. forces in the *Mayaguez* incident.

In addition to the above the State chronology recorded that congressional leaders were notified by telephone at 11:00 a.m. on May 14 that three Cambodian boats had been sunk and four damaged by U.S. air strikes.

4. MILITARY OPERATION TO RECOVER *MAYAGUEZ* AND CREW ORDERED AND BEGUN

The DoD account recorded that the military operation to effect the recovery of the *Mayaguez* and crew began with the issuance of an order at 3:50 p.m. on May 14. Both the CRS and State chronologies gave the time 4:45 p.m. May 14 that the orders were issued to begin the military operation.

Each of the three accounts stated that at 5:14 p.m. on May 14 U.S. assault forces departed stations to begin operations.

5. RECOVERY OF CREW AND SHIP

Each of the three chronologies recorded that:

Marines landed on Koh Tang Island between 7:00-8:00 p.m. on May 14 under heavy fire.

At about 7:00 p.m. a domestic radio broadcast from Cambodia had indicated that the Khmer Rouge Government would release the ship, but no mention was made of the crew. The Cambodian broadcast, monitored by the Foreign Broadcast Information Service and translated into English, was received by Secretary Kissinger about 8:06 p.m., who in turn informed President Ford and Secretary Schlesinger.

At 9:00 p.m. on May 14 U.S. marines, boarding from the USS *Holt*, took possession of the *Mayaguez* which was found with no one on board.

According to the Defense narrative, Commander in Chief Pacific (CINCPAC) had been directed at 5:18 p.m. on May 14 to commence cyclic strike operations from the aircraft carrier USS *Coral Sea* on military targets in the Kompong Som-Rem complex with first time on target specified at 8:45 p.m. The State Department chronology noted that support aircraft commenced operations against military installations near Kompong Som at 8:45 p.m. The CRS chronology recorded that at 11:00 p.m. the first strike by carrier planes from the USS *Coral Sea* was begun at Remam.

About 10:30 p.m. (State and DoD—10:23 p.m.; CRS—10:45 p.m.) the USS *Wilson* reported a small boat approaching Koh Tang Island flying a white flag. According to the CRS chronology the *Wilson* sent word to the Pentagon at 10:53 p.m. that at least 30 caucasians were aboard the boat. The State account noted that at 11:07 p.m. the *Wilson* took aboard the occupants of the boat, who were determined to be the entire crew of the *Mayaguez*. The DoD narrative stated that at 11:15 p.m. the *Wilson* reported that the entire crew of the *Mayaguez* was accounted for and that all were in good condition.

Both CRS and State chronologies stated that at 11:16 p.m. President Ford ordered all offensive operations to cease and the withdrawal from Koh Tang to begin. According to the DoD account the order was given to cease all offensive operations and begin to withdraw at about midnight.
Deciding on the Final Withdrawal From Vietnam

[From the Washington Post, April 30, 1975]

(By Lou Cannon and Michael Getler)

The end began with a brief, whispered conversation.

Shortly after 6 p.m. Monday, Lt. Gen. Brent A. Scowcroft slipped into the Cabinet room of the White House where President Ford was presiding over a meeting of his energy advisers. Scowcroft, the President's deputy national security adviser, handed Mr. Ford a note and then conferred with him in whispers about the death of two U.S. Marines in a Communist rocket barrage at Saigon's Tansonnhut airport.

Panic was growing, Mr. Ford was told. Evacuation was becoming more difficult hourly.

Without interrupting the meeting the President whispered instructions to Scowcroft, who left the room. He returned a few moments later for another whispered conversation. The President's action at that moment set in motion an emergency National Security Council meeting and triggered a chain of events that was to lead to the final American withdrawal from Vietnam.

Mr. Ford had been aware for the past several days that there was impatience, both at the Pentagon and in Congress, with what seemed to be the slowness of the U.S. evacuation. Now, as an aide recounted it later, he realized that time was running out.

This was the sequence of events in the next 12 hours as 14 years of American involvement in the Vietnam war reached its conclusion:

7:12 p.m.—President Ford ended the energy meeting without making any decision on whether the administration would seek to reimpose oil import tariffs. He left the Cabinet room and walked across the hall into the Roosevelt Room where his National Security Council already was gathering.

National security adviser Henry A. Kissinger was there along with Scowcroft. So were Defense Secretary James R. Schlesinger, Central Intelligence Director William E. Colby and Gen. George S. Brown, chairman of the Joint Chiefs of Staff.

7:23 p.m.—The NSC meeting began. The only topic of discussion was whether it was now time for the final evacuation to begin. At this point, said one White House official, it was unclear how much longer C-130 planes could land at Tansonnhut because of milling refugees and the restricted landing space for fixed wing aircraft.

8:08 p.m.—The NSC meeting concluded without a firm decision. Participants were told that it would not be known for another hour if the C-130s could land. An order was given to evacuate the 450 Americans in the Defense Attache's Office at Tansonnhut, but there was no order for the final evacuation. The President wanted to fly the C-130s for another day if they can get into the airport and out again safely.

8:18 p.m.—President Ford, walking with his hands in his pockets, returned to his residence. An aide described his expression as grim. The President stopped briefly to chat with White House physician William Lukash, then took the elevator to his second-floor living quarters. He greeted Betty Ford with a kiss, sat on the couch and put his feet on the coffee table. He drank a before-dinner martini.

8:30 p.m.—Kissinger arrived for a meeting with the President. They conferred for a few minutes. At 8:34 p.m., the two men were joined by Scowcroft, who told them that the situation at Tansonnhut was becoming more desperate.

Kissinger's wife, Nancy, dressed in a full-length evening gown, arrived to take her husband to the theater where they were to spend the evening seeing the Noel Coward revival, "Present Laughter." But Kissinger shook his head.

8:43 p.m.—Kissinger and Scowcroft left the residence without a final decision being made on the evacuation.

(118)
9:15 p.m.—President and Mrs. Ford ate supper in the family dining room. The menu included oyster cocktail, corned beef and cabbage, carrots, a beet salad and black cherry Jello.

10 p.m. (approximate)—About the time the President was finishing up his dinner two C-130s that had been sent from the Philippines to Saigon to take out the defense attache’s staff circled Tansohnhut, trying to determine if it was safe to land. No planes had landed on the airfield since earlier that afternoon when the rocket barrage was under way and another C-130 had been shot down.

High-level military men were angered at the danger posed to the C-130s because the White House, fearing congressional reaction, had refused to allow Air Force fighter escorts for the planes. Gen. Homer Smith, the top military man in the Defense Attache’s Office, had sent some U.S. soldiers in his office on reconnaissance patrols around the field to see if the perimeter was safe.

10:15 p.m.—Gen. Smith radioed the C-130 pilots that the situation was a little rough but that it seemed okay to land. The planes dropped to 10,000 feet, and Smith told them to start their 14-minute landing approach. Ten minutes into that situation Smith got back on the radio and ordered the planes not to land. Scouting reports had brought back the news that two platoons of North Vietnamese infantry were in a cemetery just one-half mile from the airfield. A South Vietnamese pilot had landed his F-5 fighter on the field and abandoned it with its engine running. Other Vietnamese had run a jeep in front of a Vietnamese C-130, blocking its path to the runway. Crowds of some 3,000 Vietnamese at the field were becoming unruly.

Smith called Adm. Noel Gaylor, commander of U.S. forces in the Pacific based in Honolulu. He told Gaylor that the situation seemed to be getting out of control.

10:25 p.m.—Kissinger called the President and told him of the situation at the Tansohnhut airport. At approximately the same time Smith was calling Graham Martin, the U.S. ambassador in Saigon, and telling him he didn’t see any way to evacuate the remaining Americans except by helicopter. This was he so-called “option four” of the evacuation plans. The first three options involved fixed-wing planes and ships.

Martin reportedly gave no indication of whether he accepted Smith’s assessment. But he told Smith and Gaylor that he would call Kissinger.

10:35 p.m.—Kissinger called Gen. Brown, who reportedly favored immediate evacuation.

10:38 p.m.—Schlesinger joined the conversation. Reflecting the concerns of the military, he also favored evacuating the remaining Americans.

10:45 p.m.—Though events had nearly reached a climax, the President still wanted to hear Martin’s recommendation before he ordered the final evacuation. Kissinger called Martin at this time. “Let’s go with option four,” Martin told Kissinger.

10:45 p.m.—Kissinger called the President again to pass on the recommendation from Martin. The President concurred immediately and ordered the evacuation to begin.

11:31 p.m.—Kissinger called Schlesinger to pass on the directive.

11 p.m.—Kissinger called Martin back to order the evacuation. By now, dozens of aids were on call at the White House, the State Department and the Pentagon. Lawrence S. Eagleburger, executive assistant to Kissinger, was in bed leafing through New York magazine when he got a phone call, at 11 p.m., to come back. He showed up, slaved and went to the State Department operations room, where he ate a leftover egg roll.

11:32 p.m.—Kissinger called Vice President Rockefeller and informed him of the decision to evacuate.

11:36 p.m.—The President left his living quarters, headed for the Oval Office. He met Kissinger there and the two men walked into the top-secret Situation Room. Kissinger spread out a map of Saigon and outlined the evacuation route for the President.

12:05 a.m. Tuesday.—The President returned from the Situation Room to his living quarters. On the way he was hailed by CBS reporter Phil Jones. "Working late?" Jones asked him. "With good reason," replied Mr. Ford.

12:23 a.m.—Kissinger telephoned the President, brought him up to date on the evacuation and discussed the wording of the evacuation announcement.

12:25 a.m.—The President retired.

12:43 a.m.—Kissinger phoned the President with the wording of the evacuation order. Downstairs, some of Mr. Ford’s top aids were meeting in chief of
The group included Rumsfeld, his top aide, Richard Cheney, press secretary Ron Nessen, Assistant Press Secretary William Greener, congressional liaison John O. Marsh and his top assistant, Max Friedersdorf. Marsh and Friedersdorf have been calling congressional leaders to tell them of the news.

The group sat around Rumsfeld's writing table, devouring three pizzas, which had been brought in by an assistant press secretary.

12:43 a.m.—Two hours after the order for the evacuation, the first wave of 36 Marine Corps and Air Force helicopters took off from the U.S.S. Hancock and headed for Tansonnhat. The helicopters were scheduled to land just after 2 a.m. EDT. Inexplicably, the helicopters received a call over a secure radio channel delaying their landing for an hour.

Immediately the channels were jammed with calls from Adm. Gaylor and other high-level military officials demanding to know who gave the order for the delay. Late yesterday the Defense Department still didn't know who was responsible. Defense officials suspected that someone simply got confused in translating time zones.

But the wrong order delayed all but the lead helicopter from landing before 3 a.m. The lead helicopter, commanded by Marine Brig. Gen. Richard Curry, got in at 2:05.

1:08 a.m.—Kissinger again telephoned the President and told him that the evacuation was proceeding and that there was nothing more that could be done for the present.

1:30 a.m.—Mr. Ford finally went to sleep. In the next hour his senior aides would follow his example. Many of them would lie down for a few hours of sleep in the couches in their offices.

2:05 a.m.—Kissinger went home but not immediately to sleep. He was called by Eagleburger at 3 a.m. and told that the first helicopter had made it into Saigon.

3:12 a.m.—It was late afternoon in Saigon when the first helicopter, with 50 people aboard, left the airport. By 4:30 a.m. Washington time, with 81 helicopters now in use, 2,000 people had come out. By 9 a.m. the number had swelled to 4,500. All but about 450 of these were South Vietnamese. The large numbers of South Vietnamese that were evacuated plus thunderstorm activity in the area caused what had been estimated as a 3½-hour evacuation to take 16 hours.

5 a.m.—The first Marine helicopter began lifting Americans and still more South Vietnamese from the embassy area. But the evacuation was delayed because the helicopters went back to Tansonnhat to bring some of the Marines back to the embassy to beef up the guard there.

5:27 a.m.—The President woke up after four hours' sleep and telephoned the White House operator for messages.

6:30 a.m.—Kissinger called the President to tell him that the evacuation was proceeding smoothly, though more slowly than expected.

7:30 a.m.—With darkness closing in on Saigon, Gen. Smith, aware that some Americans were having trouble getting either to the embassy or the airport, ordered helicopter pilots to pick up people from the rooftops of their homes if they spotted a stranded American.

7:40 a.m.—The President arrived at his office. Nessen talked with him and found that Mr. Ford was concerned but pleased with the progress of the evacuation. “If we get all these people out safely...” he said and then trailed off.

Later in the morning Mr. Ford would express the same idea, more completely, to his Cabinet.

“The fact is we did not panic and we handled it carefully,” the President said. “We came out of a very difficult situation better than we had any right to expect.”

Kissinger spoke to the same meeting of the Cabinet, saying that “we maintained our honor by taking out these Vietnamese.” He would say this again an hour later in a meeting with congressional leaders.

Then at 5:30 p.m. he would face the American people over television and deliver the eulogy for the long, long war that had finally come to an end.
CONGRESS AND WAR POWERS

[From the Washington Post, May 25, 1975]

(By David S. Broder)

The Mayaguez incident gave Congress and the President their first test of how an international dispute could be handled under the strictures of the War Powers Act. The example raises some unsettling questions—particularly about Congress.

Under the provisions of that law passed in 1973 over the veto of President Nixon, the Chief Executive is required “in every instance possible . . . (to) consult with Congress” before taking actions risking hostilities. Any commitment of armed forces must end within 60 days unless their further use is endorsed by Congress.

In a seminar on Congress sponsored by Time Magazine last week, political scientist Alton Frye argued persuasively that the War Powers Act had come through well. The Mayaguez incident, he said, showed that despite all the complaints of Henry Kissinger and his deposed former leader, the executive branch of the American government is not hamstrung by the law.

Second, Frye, said, the President, by meetings and phone calls to congressional leaders and a written message to the entire Congress, delivered within the prescribed 48 hours of the initiation of the incident showed it is possible to comply with the “consultation” requirements.

There has been some dispute on the second point, with Senate Majority Leader Mike Mansfield (D-Mont.) and others strongly insisting that “we were informed, not consulted.”

But that seems more of a semantic argument than one of substance. The War Powers Act was not intended to take the initiative in foreign affairs away from the President. Rather, its purpose was to make certain that presidential decisions involving the use of force would be subject to timely review by the legislative branch.

That is what Sen. Jacob K. Javits (R-N.Y.), one of the principal authors of the War Powers Act, meant when he said, on the second day of the Mayaguez incident, that the law “doesn’t take away any of the President’s powers, but it does give Congress the power to stop him if he feels he’s going too far.”

That notion of Congress serving as a calm review body would be more plausible, had not the chairman of the Senate Foreign Relations Committee, John Sparkman of Alabama, already put himself on record, by the time Javits spoke, as saying the ship should be recovered “any way we can.”

Indeed, rereading the record of that week shows a clear pattern of congressional hip-shooting, often on the basis of the most fragmentary information.

On the second day, when Mr. Ford was positioning Marines for possible use, Senate Armed Services Committee Chairman John Stennis was urging Mr. Ford to “be as severe as necessary.” Assistant Majority Leader Robert C. Byrd was calling for a 48-hour deadline.

On the third day, when three Cambodian gunboats were sunk in a prelude to the recapture of the Mayaguez, The Washington Post’s Senate correspondent, Spencer Rich, wrote: “A handful of members questioned whether military action should have been delayed a bit. . . . But there wasn’t any doubt that a strong tide was running in Congress all day for a forceful solution. . . .”

Rep. Wayne L. Hays of Ohio, third-ranking Democrat on the House International Relations Committee, said he was “only sorry they didn’t sink 17 (ships), rather than three.” And the Senate Foreign Relations Committee unanimously supported the President’s use of force.

The fourth day, when the crew was retrieved, the only question for most members of Congress was how to get their words of praise on record fast enough to be noticed. (A notable exception was Sen. Gaylord Nelson (D-Wis.), who

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continued to question the handling of the Mayaguez incident, as he had, from the earliest days, questioned U.S. policy in Vietnam.) Sen. Henry M. Jackson (D-Wash.), who had opposed the use of force on the second day of the incident, flip-flopped and declared, "The President deserves high marks, and I would be the first to commend him."

Five, six and seven days after the incident began, the kind of information on which Congress ought to base its judgment finally started to emerge. It was learned that the Marines had landed on the wrong island, that casualties had been far heavier than first indicated, that the biggest non-nuclear weapon in the American arsenal had been dropped on a patch of jungle, that a mainland Cambodian oil dump had been attacked some time after the crew had been released, and that B-52s had been alerted for further unspecified massive air attacks. These are matters that deserve examination, because the next challenge to American rights and interests may be more serious and sustained than the Mayaguez incident. But there is so far no sign that Congress will take them up. That kind of careful appraisal can come only from a Congress that demonstrates considerably more self-restraint than this one did.
MAP OF GULF OF SIAM SHOWING POINTS OF CONFLICT
High Pentagon officials, backed by the Joint Chiefs of Staff, argued strongly during President Ford’s secret deliberations with the National Security Council (NSC) for rock-bottom minimum use of U.S. military power—less than the President finally ordered—in the rescue of the pirated Mayaguez.

Mr. Ford rejected their argument for strict application of the “rule of proportionality”—meeting an enemy’s force with no more than the minimum required counterforce. The President opted instead for “a higher degree” of American counterforce, or what some military analysts call “equivalence plus.”

This shows that often-maligned Pentagon hawks, operating within new congressional restrictions on the use of military force, are now more conscious of political backlash than their counterparts in the State Department and Central Intelligence Agency (CIA).

This was no bare-knuckle, backroom brawl. Nor did it convert the austere cabinet room of the White House, where the NSC held its deliberations, into a debating society.

Rather, the threads of the pro-and-con discussion over what kind of military action the United States should take led to no villains, no heroes. Those threads do reveal that the President ruled in favor of “equivalence plus”—but also overruled at least one State Department suggestion for American bombing of the civilian-military Cambodian airfield outside Phnom Penh.

That bombing proposal—opposed by the Pentagon—stemmed from a diplomatic effort to milk maximum psychological advantages form a case of piracy on the high seas. It was cloaked, of course, in conventional military argument—that the Cambodians might use the airfield against the American force in the Gulf of Siam. But it would have been a clear case of overkill.

Whether Secretary of State Henry Kissinger favored it is not known. But the President vetoed it as provocative.

Thus, Mr. Ford asserted his own will in a crisis that, with only a little mismanagement or a bit of bad luck, could have escalated to extremely dangerous proportions. As one administration insider told us: “Don’t think this was a Kissinger or (Defense Secretary James) Schlesinger extravaganza. It was pure Ford.”

Among all the considerations behind the President’s rejection of a strict “rule of proportionality” was the looming problem of South Korea. He chose to employ slightly more military force than required in order to signal the Communist government of North Korea that any military probe across the demilitarized line into South Korea would not only be turned back; it would assure punishment of North Korea.

The thesis: No distinct, unprovoked act of aggression should be given a free ride. Simply righting the wrong would not discourage similar acts in the future. The needed increment: punishment, to make the aggression more costly to the aggressor than to the victim.

The backdrop of Mr. Ford’s planning was a virtual blackout of accurate intelligence, a factor that made the decision to intervene far more risky than it actually turned out to be, which was risky enough.

At the time Mr. Ford decided definitely that he would use force to recover the Mayaguez and its crew, the vessel was reported by U.S. intelligence to be somewhere in the sprawling harbor of one of Cambodia’s most populated cities: Kampong Som (formerly Sihanoukville). The truth was far different. The vessel actually had been towed to Koh Tang Island, a fact not known to the Pentagon until late Monday.
Yet, Mr. Ford's decision to seize the boat wherever it was had already been taken on the logical grounds that to wait supinely for deliverance at the hands of the bizarrely revolutionary Cambodian government would make intervention progressively harder. In the background was Mr. Ford's refusal to let the Maya-guez become another Pueblo, whose crew languished in a North Korean prison for 11 months in 1968.

Any repetition of the humiliating Pueblo affair was ruled by the President as utterly unacceptable. Steering his thin line between State Department hawks, aiming for maximum political effect, and Pentagon doves, fearful of another outburst of anti-military animus from Congress, he followed his own convictions and wrote a bold new chapter of history.
Is Richard Nixon really in San Clemente? Or back in the White House? The Mayaguez affair was handled with that unforgettable Nixon touch. The overwhelming concern behind it was not the safe recovery of the ship's crew but a fear that prolonged negotiations over it would be "humiliating," would show us to be—in Nixon's plaintive phrase—a "pitiful helpless giant." This fear of impotence was the dominant Nixon neurosis in foreign policy, and its marks are so clear in the White House response to the ship seizure as to make one wonder who's really in the Oval Office. Ford's public relations men are trying to sell him as a second Truman, but he's unmistakably vintage Nixon; the bottle may carry a new label but the content is from the same era.

Ford's main victory in the Mayaguez affair was not over Cambodia but over Congress. The most important casualty was the War Powers Act of 1973. Nixon's bitterest defeat in foreign policy was the vote with which Congress overrode his veto of that act. What Nixon could not block, the successor—in one swift stroke—has emasculated. The act requires a president, before sending troops into action, to "consult" with Congress. The Mayaguez affair has reduced this salutary restraint on trigger-happy executives to a dead letter.

What does consult mean? The word may be imprecise, in that it leaves open the question of who will make the final decision, and how; but it is not without meaning. Webster's defines it, "To seek the opinion or advice of another; to take counsel; to deliberate together; to confer." In the Mayaguez affair congressional advice was neither invited nor taken.

A select handful of congressional leaders—mostly the old-boy network—were told; they were not consulted. With Ford's version of consultation, the Imperial Presidency of Nixon is back, full blown. The constitutional war-declaring power of Congress is again in deep freeze. Once again, in Kissinger's word for it, the executive can be "flexible" and once again the country may be plunged into military adventures in Asia or elsewhere without full debate or even full knowledge of the facts. The Cambodians may not have been frightened, but we had better be.

With the old Nixon-Kissinger finesse, Ford went through all the motions but reduced consultation to a sly caricature. The decision to engage in military action was arrived at in a National Security Council meeting on Tuesday morning, May 13. But "consultation" with congressional leaders did not begin until 5:55 PM when the troops were already in motion, and only an hour and thirty-five minutes before the first shots were fired.

When the act was passed, everyone assumed not only that "consultation" would be before decision but that it would involve direct contact with the president. But Ford did it with a series of telephone calls. The calls were made by White House staffers so far down the bureaucratic totem pole that few news men in this town had ever heard of them. The form "consultation" took was the reading of a formal statement announcing the president's decision; the procedure left as much room for discussion with the decision makers as if were done by office boys or the White House telephone operators.

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1 Since their valiant efforts, according to Ron Nessen, produced "a strong consensus of support and no objections" (would the troops have been recalled if they hadn't?), we give their names here for the future historian, since only one newspaper seems even to have printed them. The triumvirate of presidential stand-ins were Max Friedersdorf, Bill Kendall, and Pat O'Donnell. "The President," the Washington Star reported from the White House Wednesday afternoon, May 14, "did not speak personally to any members of Congress but their [the eighteen congressional leaders'] comments were conveyed to the Oval Office by White House aides." Thus all was constitutionally carried out à la rigueur. Even Nixon never staged better comedies.
Even according to the official chronology the last call—to Senator Eastland—was at 8:30 PM, just ten minutes before we began our glorious little war. In fact both Eastland and House Minority Leader Rhodes said at one point that they weren’t notified until after gunboats had been sunk. This is an ominous precedent.

Congress rapped as easily as it did in the Tonkin Gulf affair. This time there was no Morse and there was no Gruening to speak up sharply, clearly, and unequivocally. Johnson’s Tonkin Gulf resolution at least gave Congress a chance to vote. Ford’s selective phone calls—there were just eighteen of them—saved the Senate’s demoralized doves from having to stand up this time and be counted.

McGovern, however, on May 14 called the administration’s actions “not a policy but a spasm conducted by officials who want to prove their toughness.” The questions he raised were not only ignored, but he was wrongly quoted by The Washington Post two days later as saying, after the crew was released, “I’m glad he [Ford] did it.” He made no such statement. Nelson of Wisconsin was also clear and sharp in opposition. Kennedy was muted in his reaction, and Jackson first attacked the military moves as provocative and then, after the crew’s release, gave Ford “high marks.”

Among the outstanding casualties were senators like Javits, who had sponsored the War Powers Act and looked the other way when it was being destroyed. Senators Case of New Jersey and Church of Idaho, who had written into successive appropriations acts specific bars against the introduction of American military forces into Indochina, now felt that they did not apply!

Their position circumnavigated their own statute and came to rest at the same point as the White House, in the proposition that the president has inherent powers, irrespective of congressional prohibition, to protect American lives and property abroad. This was the classic excuse for American imperialism in Latin America before World War I and the seed from which the Imperial Presidency grew.

The softening-up process had begun before the seizure of the Mayaguez. The week before the incident somebody (and who but Kissinger?) had been directing a Nixon-era “con” job on the Hill. In the House the results surfaced by coincidence the day of the seizure in a statement from fifty-six congressmen hitherto regarded as unflappable critics of military and diplomatic nonsense. They released for publication a bit of Germanic military-Hegelian mysticism (very much à la Kissinger, on the day he wears his field marshal’s hat) saying “Let no nation read the events in Indochina as the failure of American will.” Les Aspin of Wisconsin led this extraordinary procession of suckers; he has been making a reputation picking at million-dollar nits in the Pentagon budget yet he swallowed whole a line that State and Pentagon have been putting out to get us ready for a new Asian adventure, this time quite possibly in Korea again.

Among the liberal fall guys who joined him were Bingham of New York, Reuss of Wisconsin, Brademas of Indiana, Ron Dellums of California, Mrs. Sullivan of Missouri, Harrington of Massachusetts, Moorhead of Pennsylvania, Frank Thompson of New Jersey, Walter Fauntroy of Washington, D.C., and Andrew Young of Georgia.

Implicit in the statement is a new revisionist history of Vietnam which will come in handy if and when we find ourselves once more bombing the Asian mainland, crossing the thirty-eighth parallel in Korea, or fighting guerrillas to keep Marcos in power in the Philippines. Can anyone believe that we learned the lesson of Indochina when fifty-six liberals sign a statement with a picture as bland as any Nixon ever painted of the prolonged agony that military and diplomatic folly imposed on the Indochinese and ourselves? “During the late 1950’s and early 1960’s,” their statement said, “we set out to help a government in Saigon. We did so with a high sense of national purpose, but tragedy followed.” And now, it added, “the war in Indochina is removed as a reason for divisiveness in our society, we believe the US will be more likely, not less, to honor longstanding ties and treaty commitments.” That spells K-O-R-E-A. Are we to have no cause for reflection? Must they enlist so soon?

The real demonstration of national will was the awakened humanity and good sense that forced the retreat from Vietnam. Should America ever be attacked, its people will never lack the will to defend themselves. But they must also have the will to protect themselves and their resources and world stability from
adventures motivated by considerations of military "face" and imperialist inertia. Peacefuls who do not see this are frauds, ready to fold up not only in any emergency but even before one happens.

A similar "con" and a similar flabbiness were on display in that supposed citadel of pacific good sense, the Senate Foreign Relations Committee. On Wednesday afternoon, May 14, two days after the seizure, its members wrangled all afternoon and finally approved unanimously (where was McGovern?) a resolution of studied ambiguity if read closely, but a public relations plus for the White House.

In the headlines next day and the news summaries it figured simply as an ex-presidential outburst. The "resolution" was put forward by Sparkman, the toothless old tabby cat who succeeded Fulbright as chairman. Its prose style was his, but the hand behind it was Kissinger-slick.

Sparkman opened the meeting by saying that he thought the committee should have been consulted under the War Powers Act "prior to the decision to take retaliatory action" and that telephone calls the night before to two members did not constitute consultation. Yet the affair ended with a resolution not of protest but of support! Mansfield, an occasional volcano which too often seems extinct, took part in the charade and then outdid himself in evasion on ABC's "Issues and Answers" the following Sunday. If only the Pentagon could face such opponents in battle, our Asian "incursions" would never end in defeat.

Was the Mayaguez affair an accident, an "incident," or a provocation? Who knows. But Freud would say that accidents tend to happen to those who unconsciously seek them. Like individuals, bureaucracies often seem to stumble into the "incidents" they secretly desire. Kissinger, who talks reason but acts out a Bismarckian logic, has been grumbling off the record ever since the Thieu debacle about the need for an occasion to prove U.S. "toughness." He has a way of standing outside himself with a self-deprecatory humor that deflates criticism by anticipating it. Thus at his press conference May 16 he said he was not turning the Mayaguez rescue "into an apocalyptic affair" or "looking for an opportunity to prove our manhood." But this is exactly what he has been doing through he may deny it. One place in which this came out publicly in a direct quotation was after he told Tom Braden (see the latter's Washington Post column April 12), "The US must carry out some act somewhere in the world which shows its determination to continue to be a world power." Except for Liechtenstein or Luxembourg we couldn't have picked a safer target on which to demonstrate our toughness.

Among the other indications of how little we have learned from recent experience is that nobody suggested that the CIA might very well have been carrying on "dirty tricks" in Cambodia after Lon Nol's fall. Indeed there have been indications that agents had been dropped with transmitters for fake broadcasts to spread "disinformation."

It should surprise no one, after the Pentagon Papers, if CIA sabotage squads had been landing in Cambodia. It should at least be said that a country which engages widely in such activities and even boasts of them must expect its shipping to be watched with suspicion. But from a Congress in which both houses have been reverberating with attacks on CIA practices there hasn't been one astringent observation of this kind to temper US nationalistic resentment over the seizure with a little cooling reflection.

It is against this background that one must assess the failure of US intelligence to warn US shipping in an area where several other ships had been seized and examined. US agencies like NSA have been monitoring all Cambodia's internal and external communications closely since Lon Nol fell. The CIA's Foreign Broadcast Information Service, which circulates to a select list in the capital, monitored the seizure of a South Korean vessel May 5 in the same waters and next day reported that the South Korean government had warned its shipping to stay clear of the coastal zone. Yet despite a State Department regulation which required such warnings, none was issued by any US agency until after the Mayaguez got into trouble.

When Kissinger was asked about this at his May 16 press conference, he replied that "insurance companies had been notified." But the New York Journal of Commerce, which specializes in shipping news, carried a front-page story
May 19 rebutting Kissinger and quoting the head of the American Institute of Marine Underwriters as denying any such notification. Ford's cry of "piracy" was overkill. The Mayaguez was eight miles off a Cambodian island. Just one week later we seized a Polish vessel off San Francisco only 1.2 miles inside our own twelve-mile fishing limit.

The Mayaguez affair grows murkier from day to day. A key question—the danger that we might have killed our own crewmen in sinking those Cambodian gunboats—was put to Kissinger at the very opening of his May 16 press conference. Kissinger acknowledged that our own men might have been on board but said, "We had to balance this ... against the risk of their being taken to the mainland. . . . We wanted to avoid a situation in which the United States might have to negotiate over a very extensive period of time." So we preferred the risk of killing our own men to the risk of a "humiliating" negotiation. That admission has yet to register on the national consciousness.

Why have the casualty figures been treated in true Tricky Dicky style? The Pentagon had been insisting that there was only one known dead. But the captain of the Mayaguez when he reached Singapore May 17 told the press there were seven dead marines "on ice" on board the Wilson Thursday morning, when the operation still had twelve hours to go. Next day on ABC's "Issues and Answers" Secretary of Defense Schlesinger was asked about this. He said he thought the captain was in error but he revised the casualty figures upward to five dead, sixteen missing, and seventy to eighty wounded for a grand total of close to 100. How long would we have to wait for those revised figures if the captain had not put the Pentagon on the spot? A day later the Pentagon—perhaps under pressure from the White House—took the extraordinary step of overruling its own secretary and revising the number of wounded down to forty-nine. It now said some wounded were just "headache" and "band-aid" cases. But next day the Pentagon increased the number of those killed in action to fifteen, reduced the number of missing to three, and increased the number of wounded to fifty. What the Administration had been playing a self-serving numbers game with the casualty list all along became obvious on May 21, when it revealed that another twenty-three men had been killed in a helicopter crash while embarked for "possible use" in the Mayaguez operation.

What is the truth behind the leaks, apparently from the Pentagon, that Kissinger wanted B-52 raids on Cambodia in retaliation for the ship seizure, and proposed the Phnom Penh airport as one target? These surfaced in a column by Joseph Kraft on May 18 and one by Evans and Novak next day, and both gave the Pentagon credit for moderation.

The leaks found support in a Baltimore Sun dispatch May 19. It said an "official," and one guess is enough to identify him, speaking on board the plane taking Kissinger to Vienna "expressed anger" over these reports. He protested that a president must be able to look at all options "without having someone reveal the alternatives in order to take credit for preventing them from being implemented."

How close did we come to repeating the kind of bloodbath by bombing we imposed on Hanoi for Christmas 1973? In this readiness for overkill, this instinctive resort to terror, and the self-congratulatory jubilation in so puny a victory over so helpless a foe we see again the stance of Lyndon and Dicky. For a power which claims responsibility to maintain a balanced world, this is not a well-balanced way to act. If private persons acted out the silly ups and downs of the last few weeks in official Washington they would be regarded as manic-depressives.

Last time the war ended in Korea twenty-two years ago, Nixon rushed out to the Far East to keep the French war going in Indochina. Now that peace has come to Indochina we are "signaling" that we are ready if necessary for war again in Korea. The purpose of our "toughness" in Cambodia, the United States is being told, is to deter North Korea.

A headline in the Baltimore Sun May 20 reports, "North Korea says United States threatens nuclear war," and that indeed is a logical conclusion from Secretary Schlesinger's interviews in US News and World Report May 26 and on ABC's "Issues and Answers" May 18. Schlesinger told US News that if the North invaded the South we would be more "rigorous" in attacking than we were last time in Korea or in Vietnam because a conflict that lasts too long "is bound to
lose the support of the American public.” So Schlesinger wants less restraint this
time. Last time our bombers leveled just about everything standing between the
thirty-eighth parallel and the Yalu. The only restraint was not using the atom
bomb.

This is dangerous talk. We are already suffering from a serious depression and
inflation due to the Vietnam war. Another was in Asia could easily wreck the
economy. Last time we went into Korea to “contain” China and Russia. Now the
Pentagon line—believe it or not—is that we must be strong in the Far East to
protect China!

“Do you mean,” Schlesinger was asked by US News, “that the Chinese, who for
years have tried to drive the US out of the western Pacific, now are bent on keeping
us there?” Schlesinger answered, “I think that is correct.”

But last time Chinese “volunteers” intervened when we reached the Man-
churian border and pushed us back to the thirty-eighth parallel. It is hard to be-
lieve that China would not react again in a hostile manner if the North were oc-
cupied and US forces came up to the Yalu. China may—within limits—see the
US as a counterweight to the Soviet Union, but a Korean war would again risk a
war with China.

Do the American people want to drift—as we are beginning to—in this direc-
tion without full debate and understanding of what may be entailed? Almost all
of the postwar conflicts have been bred by countries divided after World War II.
Germany, China, Vietnam, and Korea have proven to be hotbeds of tension and
war.

The problem is not just to deter the North from an invasion but by patient
diplomacy to tackle the problem of this division and try to defuse the menace of
a new Korean war. Two rigid regimes glower at each other across that border
and can again threaten to draw the superpowers in. Washington, Peking, and
Moscow, and above all Tokyo, have an equal interest in preventing the outbreak of
a new Korean civil war.

The danger on our side lies not only in possible attack but in the internal situ-
ation in South Korea. The day that the Mayaguez was seized the Park regime
used the danger from the North—real or fabricated—as an excuse to do what
Syngman Rhee did a quarter of a century ago before the last Korean war. It
clamped down completely on opposition of any kind and ended all democratic
liberties. One of the lessons of Vietnam, where the Dien dictatorship and later
Thieu’s followed much the same course, is that such moves undermine the regime
they were intended to protect.

We still don’t know just how or why the other Korean war started and we
should be on guard lest Park, in desperation, stumble into war in order to assure
himself of American support if he fears that he might be overthrown. Thirty-eight
thousand American troops in Korea are his hostages.

On both sides of the border, fanatic dictatorships, equally ready to exploit
war alarms for domestic purposes, can drag their big power patrons to disaster
without anyone ever knowing what really happened to set the peninsula ablaze.
Do we want to get into another Korean war? Isn’t it as important to deter Park
as to deter Kim II Sung?

It is time to recall that the terms of the US-South Korean Mutual Defense
Treaty of 1953 are not automatic. They do not bind the Congress blindly to follow
the executive into some new Korean “police action.” Article III provides that in
the case of “armed attack” each signatory will “act to meet the common danger
in accord with its constitutional processes.” This was drafted to assure Con-
gress that it could not be sidetracked and would retain the final decision.

A quarter century ago, after the agony of the first Korean war, we said “never
again” to war on the mainland of Asia. We forgot this in Indochina and we
may be on the way to forgetting it again in Korea. The delusions of swift and
surgical victory by air power are evident again in the Defense and State De-
partments. Let's stop, look, and listen—debate and negotiate, and eschew bluster
for diplomacy before it’s too late.
How far can Congress go in shaping American foreign policy?

For many years, lawmakers largely failed to assert themselves adequately in this vital arena. Indochina was a tragic example. All too easily, with far too little questioning, Congress let presidents draw the nation deeply into that bog.

Recently, Congress has sought to be more active. Notably, in 1973 it barred all US combat activity in Indochina after Aug. 15 of that year. Later in 1973, Congress passed the War Powers Act, broadly aiming to assure “collective judgment of both Congress and the president” when military force is used overseas. On the whole, these were healthy developments. Yet two recent events—the Mayaguez Incident and the Vietnam evacuation—show the difficulty in achieving a workable partnership.

In the Mayaguez affair, President Ford was mindful of congressional pronouncements. He pondered the 1973 Indochina combat ban and concluded—quite reasonably—that it was not intended to bar the rescue of Americans captured in an act of piracy. As for the War Powers Act, Ford dutifully informed congressional leaders of what he had already decided to do about the Mayaguez and its crew. He also filed a prompt report with Congress after military action was completed. But did this really comply with the law, which says the president “in every possible instance shall consult with Congress before introducing US armed forces into hostilities”?

By all accounts, consultation was pretty thin—so thin that a regrettable precedent may have been set. But if Ford should have been more consultative, the slippery question is how much more. Certainly in situations where quick response, flexibility and surprise seem essential, extensive dialog in fine detail with 535 members of Congress is simply unrealistic.

The Vietnam evacuation further illustrates the problem. In the spirit of partnership, Ford asked Congress to provide both money and clear authority to evacuate endangered Vietnamese along with Americans. While South Vietnam crumbled, Congress wrangled. Dozens of amendments filled the air. Many a lawmaker played general, trying to link certain kinds of aid to certain military maneuvers under certain conditions. Finally, Ford was forced to rely on inherent presidential power and order evacuation without congressional action.

From all this, a pointed lesson emerges. On urgent foreign policy issues, the presidency is still the government’s decision making center—if only because it can move with a crisp singularity that a congressional multitude cannot hope to match.

This doesn’t mean that Congress should lapse again into being a weak and silent partner on international questions. On the contrary, it should set broad policy outlines. It should prod, question, demand that presidents justify actions abroad. It should strive to clarify procedures for consultation under the War Powers Act. But it is impractical—and probably hazardous—to think that intricate details of emergency moves in faraway places can be sensibly hammered out on the noisy floor of Congress.
The President’s order to recapture the merchant ship *Mayagüez* by force, his dispatch of Marine Corps contingents to Koh Tang Island, off the Cambodian coast, and his authorization of bombing raids on an airport and an oil depot on the mainland seem to have met with approval here and in most parts of the country. Coming so shortly after what many regard as the national humiliation over the “loss” of South Vietnam, any show of determination, particularly in Southeast Asia, was bound to have a bracing effect on those who feared that military timidity had overtaken our leadership, and it is believed that Ford has strengthened himself in his own party. It seems quite possible, though, that congressional investigations of the affair will reveal that there was neither much valor nor much discretion in what the President did. It has for several days been clear that the bombings and the airborne assaults were unnecessary for the return of the ship’s crew, and, apparently because of faulty communications and intelligence on the American side, nothing came of these actions except the killing of a number of Americans and Cambodians. (Had there been heavier or more prolonged Cambodian resistance, the ship’s crew might also have died, either by their captors’ fire or by that of their rescuers.) If the episode has helped the President’s standing here, there seems no reason to suppose that it has helped him much beyond our borders. The administrators of the South Korean dictatorship are jubilant, seeing in the action evidence that American forces will come to their defense if necessary, and there were some sympathetic words from the Shah of Iran, who happened to be the President’s dinner guest. No official disapproval has been expressed in allied capitals, but there have been references to “gunboat diplomacy” in the Western European press and some harsh criticism in the American press.

In justification, it has been said that the new Cambodian regime has shown a disregard for life and suffering even greater than is the rule in most Communist countries, so if the crew was to be rescued at all it had to be done quickly. By most accounts, the new Cambodian rulers have been a good deal more brutal in their hours of victory than the North Vietnamese and the Vietcong in theirs, and it may be that the thirty-nine seized would have been executed. But it is clear that our own dead were more than the one officially announced, and the total may reach or exceed the number of hostages returned, since “missing” troops often turn out to be dead ones. No figures on the combat have yet come out of Phnom Penh, but it seems more likely than not that our superior firepower and our sinking of the three ships resulted in at least as many Cambodian as American deaths and perhaps more. If it took forty or fifty lives to save thirty-nine, the ratio seems hardly satisfactory, especially since the assumption that the crew of the *Mayagüez* would have been killed is an assumption and nothing more. In any case, one can be sure that if Cambodia had been a more formidable power, sustained efforts at diplomacy would have been made. (When the crew of the intelligence-gathering vessel *Pueblo* was taken into custody in North Korea, in 1968, the notion of sending an expeditionary force to liberate its members was never seriously entertained.) Officials here say that diplomatic efforts were made; they asked Chinese help in approaching the Cambodian Embassy in Peking, they say, and the State Department did ask the Secretary-General of the United Nations to lend his good offices, but the request did not reach him until more than twelve hours after the sinking of the patrol boats. Sixty hours elapsed between the boarding of the *Mayagüez* and the Koh Tang Island assault.

Diplomatic initiatives intended to bring diplomatic results can hardly get under way in so short a period, and the process is likely to be particularly slow when dealing with a government as new to power as the one in Cambodia and one as yet unrecognized by our government and those of our allies. What seems most
reprehensible of all was Washington’s failure to notify the government of Thailand of our intentions; in his news conference yesterday the Secretary of State tried to explain this by asserting that advance notification or consultation was impossible, because the situation at hand was an “emergency,” and that, in any case, consultation would have involved “massive problems.” Had the situation been reversed—had some other nation surreptitiously used our territory as a staging area for operations against a third power—we would certainly not have tolerated “emergency” or “massive problems” as a defense. Now the Thai premier, Kukrit Praploj, has recalled his ambassador, and may, in time—either because of this affair or using it as a pretext—break all relations with the United States. That seems a problem at least as “massive” as any that Henry Kissinger may have foreseen last week.

The Cambodian government has described our role in last week’s events as “imperialist,” and not the defense of the freedom of navigation and the protection of nationals that Ford and Kissinger insist it was. At least a few people here share that view. If by “imperialist” it is meant, as the Cambodian communiqué seems to have it, that Washington was acting in support of some territorial or economic objectives or that it wished to resume the war in Southeast Asia, the claim seems lacking in merit. Even if the Ford Administration did seek either to annex territorial or to economic objectives, which is unlikely, Congress and the people would have no part of it. We do have economic objectives in that part of the world, but they are hardly to be achieved by a few skirmishes in Cambodia. On the other hand, the ethic that apparently underlies actions of this sort appears to betray an imperialist mentality. We have treated a small power with a contempt and a recklessness with which we would not approach a large one. Contempt showed most clearly when a CBS account of an interview with Senator Barry Goldwater had to delete the expletive used by Goldwater to describe the kind of “little nation” he thinks Cambodia is. Our aggressive military operations—the bombings and the landings—seemed carried out as much for purposes of punishment as for those of strategy. All the talk about not letting Americans be “pushed around” comes with remarkably poor grace from a nation that has lately done far more than its share of “pushing” and when the supposed “pusher” in this instance is a nation that, by its own acknowledgment, can protect its interests only within its own borders and has to yield quickly to a superior force only a few miles off its shores.

In time, the whole affair will be studied by the appropriate congressional committee. Hearings may or may not clear up in the mystery of whether the Mayaguez on political as well as a commercial mission. Evidently it was not gathering intelligence, because it is not the kind of vessel generally put to such use. (It should be possible to assume that if it had been monitoring Cambodian communications it would have learned of its own fate; however, the Pueblo is thought to have intercepted the orders for its own capture and, instead of evaluating them on the spot, passed them, along with everything else, back to Washington.) No doubt the investigators will try to learn something about the intensity of the diplomatic efforts. But the main focus, it is thought, will be on the working of the resolutions and statutes passed by Congress in 1973 and intended specifically to give Congress a role in decisions of the sort the President made earlier in the week. One attempt at legislative restraint of the President is the War Powers Act of 1973, passed over Richard Nixon’s veto. It calls upon the President to “consult” with Congress in “every possible instance” before ordering military action and also to “report” to Congress within forty-eight hours when time does not allow consultation. With such language, this statute is clearly no restraint at all. The White House says that it did “notify” Congress within the specified time, though as important a figure as Mike Mansfield, the Democratic leader in the Senate, says that no one tried to reach him. Another law passed in 1973 states that none of the funds approved by Congress for national defense shall, after August 15, 1973, be used to “finance directly or indirectly combat activities by United States military forces in or over or from off the shores of North Vietnam, South Vietnam, Laos, or Cambodia.” That law was clearly broken by the President earlier in the week.

In both major parties, there has for some time been considerable disaffection on both the left and the right. President Ford seems to suit neither conservative nor liberal Republicans; most of the leading Democratic prospects for a Presidential nomination are liberals, at least on domestic issues, but some of them
are too liberal to suit the right and not enough so to suit the left. In both parties, civil rights and foreign policy are divisive factors, and it has for some time seemed possible that two splinter parties might emerge from the 1976 Conventions—the Republican malcontents rallying behind Ronald Reagan, the Democratic ones behind George Wallace. Recently, however, there has been much talk of a union of the apostates in both parties to support a Reagan-Wallace ticket. In a recent Harris Survey, it was reported that such a ticket could get twenty-three per cent of the vote if Ford ran with Nelson Rockefeller and if Edward Kennedy ran with John Glenn as his candidate for Vice-President. The poll shows the Ford-Rockefeller ticket getting thirty per cent of the vote, the Kennedy-Gleam ticket getting thirty-eight. Kennedy seems to have the largest following of any potential candidate in either party, but he has said he will not run, and most people take him at his word. Presumably another Democratic candidate would do less well, which would probably mean more votes for Ford, but if no majority emerged in the Electoral College, the Constitution would require that the election be thrown into the House of Representatives, where each state would cast one vote.

There are at present in the House thirty-six state delegations in which Democrats have a majority, eleven of which Republicans prevail, and three in which representation is equal. It would appear, thus, that if Reagan and Wallace joined forces they would assure the eventual election of a Democrat, probably a liberal one. True, there are some Democratic states in the Solid South whose delegations might be attracted by a Wallace candidacy, particularly if the Governor was running for President. (This would not be because his fellow Southern politicians have much fondness for him; most of them don't, but they respect his power and might feel that their constituents would expect them to vote for him.) But the ticket that has aroused most speculation has Reagan for President, Wallace for Vice-President, and it is hard to see how a region would be satisfied by having a man it favors in an office as impotent as the Vice-Presidency. Moreover, Reagan's economic conservatism seems unlikely to be found congenial in the South, most of whose people have been enthusiastic supporters of the idea of a welfare state. But even if all three divided delegations voted for Reagan or Ford, and if eleven Democratic ones defected, the Democrats, assuming they kept anything like their present strengths—it seems more likely to increase than to diminish—would win. Assuming that neither Reagan nor Ford captured all the Republican delegations, there might be no winner on the first ballot. But on a second, almost certainly, the Democratic candidate would win.

Neither Reagan nor Wallace has yet conceded a willingness to run with the other. After all, no one announces ten months before the first primary that he is seeking the Vice-Presidency. But neither has repudiated the other or the suggestion that they run in tandem. What kind of platform they could agree on is hard to imagine. Unlike Reagan, Wallace is anything but a conservative in economic matters. He is a traditional Southern populist, who welcomes governmental intervention. He has accepted favors from private interests and has doubtless done some in return, but he can hardly be classified as a supporter of the free-enterprise system, which Reagan emphatically is. Wallace is a racist, though he has been a somewhat subordinated one of late; Reagan's record on civil rights is a good deal less than outstanding, but he has never, so far as is known, been a segregationist. On foreign policy, both men have supported Intervention in Southeast Asia and have faulted recent Administrations for insufficient belligerence. Since the major phases of the recent war are over, military policy is unlikely to be an issue unless our leaders involve us in some other part of the world. However, Wallace's recently reported statement to the effect that we fought on the wrong side in the Second World War, and that we would have had better served our own interests by allying ourselves with Germany, and Japan, introduces a new dimension to foreign-policy issues.

That conflict may be ancient history to a majority of voters, and many may not be interested in any politician's view of it. However, the suggestion that Nazi Germany, Fascist Italy, and Imperial Japan should have been rescued from defeat by us is, to say the least, not one that will attract many voters and is certain to repel some, especially in the South, which takes so much pride in its military heritage. One would expect that it would also repel Reagan, a patriot of the most militant sort and one who has found little to criticize in American history before
the last thirty years. But if it has offended him he has not said so publicly, nor have many of the proponents of a Reagan-Wallace ticket. In this week's *Newsweek*, Kevin Phillips—a conservative ideologue and the author of "The Emerging Republican Majority," one of the last decade's most unprophetic books—writes enthusiastically of the prospect and, in a punning mood, asserts that it would be logical to follow Franklin Roosevelt's New Deal and Harry Truman's Fair Deal with Reagan's and Wallace's Right Deal. Nor, it seems, does either Reagan or Wallace find unsettling the strong probability that their running together might assure the election of the sort of candidate they profess to despise most. Both seem capable of rising above the principles they proclaim.
CURRENT BIBLIOGRAPHY ON WAR POWERS


Campisi, Dominic J. Honored in the breach: presidential authority to execute the laws with military force. Yale law journal v. 83, November 1973: 130-152.


Han, William E. Inherent presidential power: protection or occupation? University of San Fernando Law Review v. 3, no. 1, 1974: 59-82.


Shaffer, Lewis A. Presidential powers to make war. Indiana law review v. 7, 1974: 900-924.
