International law, I regret to say, had little influence except as it may have influenced world opinion. In the Vietnam situation law has had little influence, but applying my formula to the situation as it was in the summer of 1965 I concluded: "Hostilities in Vietnam are likely to escalate for a time, but eventually South Vietnam and the United States will win, unless mounting national and world opinion brings about a cease-fire or unless entry of the Soviet Union or China, or both, initiates World War III."

The idea, I believe, is in the mind of our Government, that if it exerts a little more pressure, the enemy will be ready to negotiate, gets little support from the cases I studied, nor does it, I think from a general study of history. If no strong national interest is felt on one or both sides, escalation may be avoided but if both sides feel a strong national interest, escalation is likely to continue until one side is obliged to surrender, as did our enemies in the two World Wars, or else a stalemate occurs because both suffer unbearable costs or a powerful public opinion demands peace.

Those are the two things which may bring about a cease-fire and a solution.

But military pressure when the other side believes that it is able to hang on, and that it has tremendous allies in the background, does not induce negotiation; it rather induces escalation.

That, I think, is the experience of history, and it is surprising to me that so few seem to realize that. It is commonly believed that there is a close positive correlation between the amount of military pressure and the willingness of the other side to negotiate. There is in fact a negative correlation until the point is reached where one side can fight no longer.

So I think that the bringing of world public opinion to bear on this situation through the United Nations might be a hopeful step.

Senator Morse. I want to thank you very much, Dr. Wright.

I am going to have the reporter put your prepared statement in the record following the testimony that you have given.

(The prepared statement of Dr. Quincy Wright follows:)

**Statement of Professor Quincy Wright Before the Committee on Foreign Relations on S. Con. Res. 44**

I favor this resolution because I consider U.N. consideration of the Vietnam situation (1) in the interest of the United States, (2) an obligation of the United States, (3) in the interest of the United Nations, (4) an obligation of the United Nations, and (5) in the interests of mankind.

1. The United States took a prominent part in the establishment of the United Nations and American Presidents and statesmen have said it is the major institution in the world devoted to peace and that it is a first interest of the United States to utilize it for this purpose. The United States is clearly competent under the Charter to lay the Vietnam situation before the United Nations (Art. 35) and if efforts toward peaceful settlement through negotiation or mediation have failed, it is a national interest to utilize the United Nations to this end.

2. Even more it is an obligation of the United States to press for action by the United Nations. The United States is obliged to "settle its international disputes by peaceful means" (Art. 2, para. 3) and "to fulfill in good faith the obligations assumed by it in accordance with the Charter." (Art. 2, para. 2). The Charter also provides that the parties to a dispute shall "first of all seek a solution by negotiation, mediation—or other peaceful means of their own choice" (Art. 33) but if these fail and the dispute "endangers international peace and security" (Art. 34) the dispute must be considered by the United Nations (Art. 39). The United States reported its first major action, alleged to
be in "collective self defense" of South Vietnam to the United Nations as the Charter required (Art. 51) and it has subsequently submitted the matter to the Security Council, but its obligations under the Charter require that it insist that the U.N. use its powers to the utmost.

3. The first purpose of the United Nations is "to maintain international peace and security" (art. 1). It is in its interest to utilize all its resources to carry out this purpose. Its prestige can not but be adversely affected if it by-passes situations which are clearly serious breaches of international peace and security. I am aware that some believe its prestige will be adversely affected if it attempts to deal with problems which it can not solve, and that Vietnam, for various reasons, is in this category. I do not agree. An institution grows by action. I am sure the United Nations would gain more by doing its best in this situation than by ignoring it.

4. The United Nations is not only competent to act in the Vietnam situation, it is under a positive obligation to do so. According to the Charter "The Security Council shall make recommendations or decide what measures shall be taken—to maintain or restore international peace and security." (art. 39). Furthermore if hostilities arise from an action said to be in "collective self defense against armed attack." "The matter must be immediately reported to the Security Council and—shall not in any way affect the authority and responsibility of the Security Council" under the Charter, (art. 51) If the Security Council neglects to utilize all its resources to restore peace it violates a positive duty. In case of failure by the Security Council to act, the General Assembly is competent to consider the matter (art. 11) and it has imposed upon itself the responsibility to do so by the "Uniting for Peace Resolution" of 1950. I believe a strong United Nations is in the interest of the United States and of the world. The United States should, therefore, do everything in its power to strengthen the United Nations by insisting that it utilize all its resources to carry out its purposes and to discharge its responsibilities in the Vietnam situation.

5. Finally I am convinced that full debate in the United Nations and every effort to restore peace is in the interest of mankind. The Vietnam war can easily escalate into nuclear war and all people have a vital interest in stopping it now. My statistical study of the escalation of hostilities, covering forty five cases since 1913. indicates that the major factors involved are the estimates by the belligerents of the magnitude of their national interests, of the immediate and ultimate armed forces available to each, of the immediate and ultimate costs to each if escalation continues, and of the pressures of world opinion for peace. Both sides believe a vital national interest is involved. President Johnson so considers the maintenance of a non-Communist South Vietnam and Ho Chi Minh so considers the union of Vietnam which he has struggled for since 1945 and which he thinks was promised him by the Geneva Conference of 1954. Escalation is therefore likely to continue until one side is totally defeated, until a stalemate is reached because each finds its present and potential costs do not justify further escalation, or until world opinion demands peace. (Journal of Conflict Resolution, Dec. 1965, vol. 9, p. 434 ff.) It is possible that United Nations debate will manifest such a consensus of world opinion that it will be effective.

I do not know how debate in the United Nations would move. It is desirable that the parties engaged in hostility be invited to attend as provided in the Charter (art. 35, para. 2) and these should include the governments in Saigon and Hanoi as well as the South Vietnam Liberation Front (Vietcong), and Mainland China. Any settlement requires agreement of all of them. It is to be recalled that the armistice in Korea was signed by North Korea and Mainland China not recognized by the United States. If, as is likely, some of these governments refuse to attend a United Nations meeting, it may be that the United Nations will have to content itself by proposing an outside conference such as that held in Geneva in 1954.

In any case debate will be enlightening and may contribute to mobilizing world opinion of such force as to start things moving toward settlement of the extremely dangerous war in Vietnam.

U.S.S.R. AND U.S. POLICIES IN MID EAST

Senator Morse: I have a few questions. Do you see any relationship between the Soviet Union's present policies in the Middle East by
aiding the Arab countries and possibly running the risk of overextending herself there and the U.S. policies in Southeast Asia, with the possibility of our overextending ourselves there? In other words are these situations where both powers are supporting totalitarian regimes?

Mr. Wright. Yes, I think that our policy in the Middle East has been greatly affected by the Vietnam war.

In the Middle East, we had far more commitments to Israel in regard to the Gulf of Aqaba than we ever had with South Vietnam. We did definitely commit ourselves in 1956 that we would see that the Straits of Tiran and the Gulf of Aqaba were kept open if Israel withdrew her troops. It was a positive commitment.

I think if we had acted, perhaps sending some naval vessels into the vicinity after Nasser had closed those straits, and it was quite clear that Israel was going to go to war unless they were opened, I think that we might have prevented the war.

We did not do anything, although President Johnson made a five-point statement in which he said that Israel should be permitted to go through the Straits of Tiran and through the Suez Canal, that there should be respect for the territorial integrity of all states in the area; and there should be a renunciation of belligerency against Israel by the Arabs and a settlement of the refugee problem.

I think it was a very good statement but nothing was done to support it and so we had a war.

We would probably have taken a more helpful position if we had not been tied up in the Vietnam war.

Senator Morse. I quite agree with your statement about what I think we may have prevented if we had insisted that the straits be kept open.

**Senator Morse's Senate Speech on Mideast**

You remember at that time I made a speech on the floor of the Senate, after we heard the Secretary of State before this committee for over three hours give us a State Department briefing, and as a result of that speech I was called a hawk on the Middle East and a dove on Southeast Asia, when what I said, in essence, was that here, too, we ought to insist that the United Nations move in to enforce international law; that we could not stand by and permit Nasser to violate our international law rights in the straits and in the gulf, and the international law rights of every other maritime power, and suggested that we ought to make very clear we were not going to permit him, with the Soviet Union behind him, to establish a new status quo which he could make use of in connection with certain international law procedures he might subsequently develop. To wit, I said, the United States should proceed immediately to send up a commercial ship, and if Nasser blocks that commercial ship and thereby transgresses upon our rights of sovereignty, our international law rights on the high seas, we should send through a naval ship.

Well, that was supposed to make me a hawk in the Middle East. I said, of course, my position has been exactly the same in Southeast Asia.

**Is United States Transgressor in Southeast Asia?**

The only difference is that in Southeast Asia it is the United States that has been the transgressor from the beginning, and the United Na-
tions ought to enforce international law against us. As I expressed this morning, I just think the international law is completely against us in regard to our course of conduct in Southeast Asia.

I think we have been the No. 1 aggressor, the No. 1 violator of international law, and the United Nations ought to have been holding us to an account long ago.

There is no reason, just because we are the most powerful nation in the world, that we should be allowed to get by with our outlawry in Southeast Asia. We have been an outlaw Nation over there vis-a-vis our obligations under international law from the very beginning.

You heard the question that Senator Pell put to Mr. Gross this morning. I am so glad he did because I think this is one of the great issues that before we get through with the settlement of the South Asia problem we are going to have to reach some conclusions about.

I prepared for the President, at his request, early in his presidency, an international law brief on this matter, for which he has always been very grateful, and even in the very recent past has commented on it in the conference that was held in which I took the position that we did violate the United Nations Charter, we did violate the Geneva treaty, and that we have committed one international violation after another.

U.S. Support of Diem

I am not asking for agreement. I am asking for the benefit of your expert opinion. I would like to have you make whatever statement you care to in the record, in view of the fact that the issue was raised this morning, what your view is in regard to whether or not we have stayed within the framework of the United Nations Charter and international law when we proceeded to support Diem who, as you know, was an exile in this country.

The Secretary of State did a good job indoctrinating him, along with the Defense Department and the CIA, and we took him back to Saigon.

He sat out the war in Washington, D.C., and in New York City. We made him our boy and took him back to Saigon, set him up in government, financed him and militarized him, and then committed ourselves to him. That is where the commitment came from, from our own diplomatic illegitimate offspring, in my judgment, and that does not meet the tests according to my legal sights of compliance with international law or with the charter.

U.S. Intervention Under SEATO

Remember the SEATO afterthought of Secretary Rusk, who apparently never thought of it in 1965 when he submitted his white paper seeking to rationalize State Department actions vis-a-vis international law. It was after that that he fell back upon some language in SEATO which he thought justified our course of action.

I replied to that, as other lawyers have, pointing out that a protocol state under SEATO does not justify our military intervention in the name of self-defense but rather indicts us with intervention, contrary to any of our international legal rights.
This great historic debate has been going on in this forum up here for quite some while, in addition to the academic forums of the country and in the conference of international lawyers.

This, in broad brush strokes, lays out the viewpoint of your chairman.

**IS U.S. ACTION IN VIOLATION OF INTERNATIONAL AGREEMENTS?**

I always welcome people who disagree with me as well as those who may share my point of view. I think in view of the fact that Senator Pell raised this question this morning, it would be very helpful to this committee if you would give us the benefit of your response to this question, as to whether or not you think the course of action that we have followed in Vietnam has been in violation of the United Nations Charter.

I would add to it a subsidiary question of whether or not you think our course of action in Southeast Asia has, in fact, transgressed upon the articles of the Geneva understanding to which the President of the United States and even Dulles at the time said that they would respect as tenets of international law.

I would like to have your comment on any of those observations.

Mr. Wright. In regard to SEATO, I recall the Department of State brought that up as a second thought. SEATO was made after the Geneva agreements, and was made in connection with the efforts to destroy the Geneva agreements. It was referred to by the Control Commission as a quasi-alliance that Diem had made. He was not a party to it, but South Vietnam was within the area protected by the treaty. The Control Commission to supervise the cease-fire said that by the acceptance of this protection from SEATO, Diem had violated the cease-fire agreement.

So, far from justifying U.S. intervention, the agreement itself was a violation.

I think I have stated my legal position and I entirely agree with you. It is impossible to reconcile our behavior in Vietnam with our obligations under the United Nations Charter, or under the general principle of international law forbidding intervention in the internal affairs of another country. Those are basic principles.

**STATES SHOULD OBSERVE INTERNATIONAL LAW**

I have been teaching international law all my life so perhaps I am prejudiced, but I think we are not going to have a better world until states recognize that their national interests will be better preserved by observing the law than by violating it.

I think it is going to be a long time, before we can get a world federation because of the strong sentiments of nationalism and the great diversity of ideologies in the world. I am interested in the World Federalists, but I think it is a very long time development, and that the first step is to get states to appreciate in the nuclear age what their real national interests are. It is obvious, that if all states carried out their obligations under the United Nations Charter, there would not be any war, there would not be any nuclear war. All of them are bound by the charter "to refrain in their international relations from the threat
or use of force against the territorial integrity or political independence of any state.” If every state were a member of the United Nations, and all of them observed that clear obligation there would not be any war, there would not be any danger of nuclear war. The building of confidence that states will observe the law is the first step to disarmament and cooperation to protect human rights and promote human welfare.

GREAT POWERS HAVE VIOLATED THEIR OBIGATIONS

These observations apply primarily to the great powers. Great Britain and France violated their obligations in invading Suez in 1956. President Eisenhower, I remember, said over television we all ought to live up to our obligations under the charter, and, with parallel action by the Soviet Union, the United Nations brought about a withdrawal from Suez.

I do not think there is any doubt that China violated the obligation of the charter, although Communist China was not represented in the United Nations, when it invaded South Korea in 1950 and India in 1962. I think we violated the charter when we intervened in Vietnam. The situation was entirely different from our action in Korea because the cease-fire line was valid and the United Nations had found that South Korea was the victim of aggression and called on members to act.

I do not think there is any doubt that the Soviet Union violated the charter when it invaded Hungary in 1956.

Great powers, all of them, have violations against their names, and this has induced little powers to think they can do likewise.

When I was in India just after the Goa episode, I wrote an article on Goa in which I was very critical of the Indians, and I said, “You are doing in Goa exactly what you objected to the Chinese doing in your northern frontier.” The Chinese said they were simply taking back territory that had been taken from them by imperial aggression during the British regime in India.

The argument the Indians made in going into Goa was that it was taken by the imperial aggressions of Portugal in 1415, 500 years earlier.

I talked with a member of the Indian Foreign Office, and he said, “Of course, we violated the charter in going in there.”

There have been violations of the charter, and they have led to a lack of confidence in law and this serious situation threatening escalation to nuclear war. I think that the powers do realize that nuclear war would be suicidal and are not likely to deliberately initiate the use of nuclear weapons in war. I doubt whether we are anxious to use them against China, although some persons in the Pentagon may want to. But I do not think the Chinese want to be involved in a war which might bring this upon them.

There is mutual deterrence in the nuclear situation. But the danger of escalating smaller wars, such as the Vietnam war is very great if both sides think they have a strong national interest in the issue.

If they take the position that there is no substitute for victory, as General MacArthur said, then when escalation gets started it may escalate to the limit.
General von Clausewitz, who was the great writer on war in the post-Napoleonic period, said that every war tends to be absolute, that is, tends to escalate until each side is using all the forces and weapons it has.

So we must recognize the very real danger of escalation into a nuclear war which would do us all in.

Senator Morse. I think this last point you make is so important, namely, that most wars become absolute. I think that is the great threat that hangs over the American people and mankind in Southeast Asia today.

EFFECT OF U.S. LAND INVASION OF NORTH VIETNAM

That comment causes me to raise this hypothetical question and I hope it always hypothetical, but I would like to have your judgment on it.

Let us assume that it is decided by our Government to have a land army invasion of North Vietnam. Do you think that would greatly increase the risk and create the probability that China might come into the war?

Mr. Wright. Yes, sir; I do.

As you know, in the Korean affair, the Indian Government, which had an ambassador in Peking, told the United Nations and the United States that, “If you send a land army across the 38th parallel, China will come in.”

General MacArthur said he had better information, and so he went in and China came in. I think that China in that war was motivated primarily by defensive considerations. It feared that if we went across the 38th parallel into North Korea, the next step would be into Manchuria, and then into China as a whole.

The assistance to North Korea before that had been primarily by the Russians. It was, at that time, their policy to expand into Korea, and not the Chinese. The Chinese did not come in until we moved north of the 38th parallel, and then they thought they were under a defensive necessity.

Well, they have intimated that they would likely go in if we send land forces into North Vietnam, north of the cease-fire line, and I think they probably would.

I think they would not start using nuclear weapons, which they have now in limited supply, but they have enormous land armies, and if they sent their armies into North Vietnam and we tried to deal with them we would be in trouble.

EFFECT OF NUCLEAR BOMBING OF CHINA

Senator Morse. That might, because of the trouble that it would create, because of the large number of American troops needed if we were going to meet that land army in China, also cause those who follow the principle you enunciate that every war eventually becomes an absolute war, to advocate the dropping of nuclear weapons on China, would it not?

Do you think that the dropping of nuclear bombs on China—and still as a hypothetical—might have the result of bringing the Soviet Union in?

Mr. Wright. I think it might.
There is trouble between China and Russia, particularly on the northeast frontier.

China does not like Soviet control in Mongolia and Sinkiang Province. I have seen on Chinese Communist maps shaded areas which they regard as having been taken from China by what they call imperialistic aggression during the 19th century. The largest such area is in Siberia. That is an objective, and the Russians know it, so there are serious difficulties on the frontier areas between China and Russia. That is very important. There is also rivalry in respect to Communist leadership in Southeast Asia and elsewhere, and there is conflict over interpretation of doctrine.

On the other hand, if the United States used nuclear weapons to bomb China, I do not know what the Hussians would do. I think that it would be extremely difficult for them to see the other great Communist country in the world bombed out of existence.

So I would not be too sure that such a bombing would not bring China and Russia together.

Senator Morse. I have waited a long time to have you before this committee. You have made a wonderful record this afternoon for this committee to dig into and to consider all of its implications. In behalf of the whole committee, I thank you most sincerely for the contribution that you have made.

Thank you very much.

Mr. Wright. Thank you.

(From the American Journal of International Law, vol. 60, October 1966)

LEGAL ASPECTS OF THE VIET-NAM SITUATION

(By Quincy Wright, of the Board of Editors)

The Viet-Nam hostilities arose and have escalated because of the radically different perceptions of the situation by the principal parties. A settlement might be possible if each side understood the image perceived by the other. An analysis of the interpretation of the situation which would result from an impartial application of international law, presumably reflecting the consensus of world opinion, might also be helpful.

The United States position has been repeatedly stated by the President and the Secretary of State and was expounded in a fifty-two-page memorandum, published on March 4, 1966, by the Legal Adviser of the Department of State, entitled "The Legality of United States Participation in the Defense of Viet-Nam."


The United States holds that the cease-fire agreement of 1954 established a boundary between what became virtually independent states of North and South Viet-Nam, that North Viet-Nam, by infiltrating men and supplies to assist the Viet-Cong, was guilty of "armed attack" upon South Viet-Nam in violation of international law and the cease-fire agreement, that South Viet-Nam was justified in using force in self-defense, and that the United States was justified, under international law and Article 51 of the United Nations Charter, in assisting South Viet-Nam at the request of "collective measures against armed attack," including the bombing of installations in North Viet-Nam. It concludes, I believe correctly, that, in spite of the express limitation of Article 51 to defense against armed attack upon "a Member of the United Nations," the principle of the article, affirming a principle of customary international law, applies equally to a non-Member even if it is not a wholly independent state. Furthermore, the United States points out that it reported its action to the United Nations as required by Article 51, and that organization, by failing to take any action to restore international peace and security in accord with the authority and responsibility given it by Articles 39 and 51, has tacitly approved the United States position. Express approval of the United States position was given by the SEATO Council at its meeting in Canberra, Australia, on June 29, 1966, with the French representative abstaining and the Pakistan representative reserving.

The North Vietnamese Government under Ho Chi Minh has been less explicit in defining its position but it seems to hold that the Democratic Republic of Viet-Nam, proclaimed in September, 1945, with Ho as its head, and recognized as a "free state" by France and Bao Dai, who had abdicated as Emperor of Annam, is one state; furthermore, that Ho, as the leader of Vietnamese nationalism, was justified by the principle of "selfdetermination" in resisting the French effort in 1946 to re-establish Bao Dai as head, not of an independent Viet-Nam, but of a "free state" within the French Community. It points out that after Ho's forces in a seven-year war had defeated France at Dien Bien Phu in 1954, Ho was in a position to establish his authority over the whole of Viet-Nam and that he agreed to the cease-fire line, established by the Geneva Conference of 1954, because the compromise settlement would prevent further foreign intervention and the temporary division of Viet-Nam would be terminated by an election to be held in July, 1956, which would result in union under his government.

4 It has been argued that the Charter intended to permit "collective self-defense" only of "members of the United Nations" in order to prevent third-party intervention in behalf of a revolting community or colony whose independence the intervening state may have recognized. International law, however, permits defensive alliances. Art. 2, par. 4, of the Charter forbids armed attack upon any "state," and a valid cease-fire line forbids such attack in the territory protected by it. It would, therefore, appear that a state can exercise "the inherent right of collective self-defense" (Art. 51) in behalf of any country independently of "the state" the victim of "armed attack" in violation of Article 2, par. 4, or even an imperfectly independent state protected by an internationally valid cease-fire line. The United States most reasonably assumed it could collectively defend non-Members of the United Nations when it admitted Portugal (before it was a Member) and West Germany to NATO and when it made defensive alliances with Japan (before it was a Member) and South Korea. The Soviet Union made a similar assumption in making defensive alliances with certain of its "satellites" in Europe before they were Members.

5 New York Times, June 30, 1966, p. 12. The International Commission to supervise the Geneva Cease-Fire in Viet-Nam considered the de facto alliance of the Southern Zone of Viet-Nam with the United States and SEATO a violation of the cease-fire agreement. See 8th Report, 1957-58, par. 30; Special Report, 1962, par. 20 (Gettlemann 173, 183); and below, notes 53 and 63. Endorsement of the United States position by SEATO has no weight in international law. The Harvard Research in International Law suggested that aggression could not be attributed to a state unless "duly determined by a means which that state is bound to accept" (33 A.I.L. Supp. 871 (1939)). While a necessity of self-defense permits a temporary nullilateral determination of aggression by armed attack, such determination, whether by a state or an alliance, is not authoritative in international law because the other side is not bound to accept it. Failure of the United Nations to act cannot be assumed to indicate tacit approval of defense measures under Art. 51, unless the reasons for this failure so indicate.

On the basis of these facts, North Viet-Nam contends that the Diem Government in South Viet-Nam succeeded to the obligations of France under the Geneva Agreement (Article 27), even though Bao Dai's representative reserved on them at Geneva, and that it violated those obligations by refusing to implement the provisions concerning elections and by accepting United States military contingents in South Viet-Nam and establishing a de facto alliance. Ho Chi Minh is therefore convinced that these continuing violations of provisions of the Geneva Agreement which had induced him to accept it, justified him by 1958 in considering the cease-fire line suspended and in continuing his efforts, begun against France in 1946, to unite Viet-Nam by force. Ho Chi Minh, in short, contends that after he was defrauded, by a conspiracy of Diem and the United States, of the opportunity pledged by the Powers at Geneva to extend his government by peaceful means over the whole of Viet-Nam, then recognized as a single state, he became free to consider the cease-fire line suspended and to assist the Viet-Cong, his supporters in the south, in hostilities against the Diem and subsequent South Vietnamese governments which opposed the Geneva political settlement. The situation was therefore, in Ho's opinion, one of "civil strife" within the domestic jurisdiction of Viet-Nam, and the United States violated international law, the United Nations Charter, and the Geneva agreements by intervening with armed force.

The United States has replied to this position by asserting that, while ultimate unification of Viet-Nam by free elections is not ruled out, the Geneva Powers could not have really intended that Viet-Nam be united by an election in 1956 because conditions for "free general elections by secret ballot" to establish "fundamental freedoms guaranteed by democratic institutions," called for by the Geneva resolutions, could not be established by that date, especially in Communist North Viet-Nam. Consequently the failure to hold the elections did not suspend the cease-fire agreement which the United States insists was violated by North Viet-Nam first. Referring to the Geneva prohibition (Articles 16, 17) of Viet-Nam's production in South Viet-Nam of troop reinforcements and new military equipment (except for replacement and repair) and of adherence of either zone to any military alliance, and the use of either zone for the prosecution of hostilities or to "further an aggressive policy," the United States seeks to justify its establishment of forces and bases in South Viet-Nam as replacements of personnel and equipment, as assistance to the South Vietnamese Government to fight Communism in its zone, or as resistance to infiltration or invasion from the north in violation of the Geneva Agreement. For the latter justification it cites: "the international law principle that a material breach of an agreement by one party entitles the other at least to withhold compliance with an equivalent, corresponding, or related provision until the defaulting party is prepared to honor its obligations."
It therefore contends that the systematic violation of the Geneva Accords by North Viet-Nam justified South Viet-Nam in suspending compliance with the provision controlling entry of foreign military personnel and military equipment. 11

It has been widely believed that Ho Chi Minh's activity has been motivated less by a nationalistic policy of uniting Viet-Nam than by a policy of expanding Communism to South Viet-Nam and other states; 12 and that the United States intervention has been motivated less by love for, or obligations to, the South Vietnamese people than by the Truman doctrine of containing Communism and preventing the fall of dominoes. 13 Whatever motivations may have been influential, it is clear that international law does not recognize ideological differences, and that intervention by a state in the internal affairs of another state, even on invitation of the government which it recognizes, whether in behalf of a Communist faction to assist its "war of liberation" or in behalf of an anti-Communist faction to "contain Communism," violates traditional international law and the United Nations Charter. 14 Consequently these possible motivations have not been referred to in the legal arguments. Cold War ideologies have undoubtedly been important in the Viet-Nam hostilities, but other political motives have also played a part—both nationalism and humanitarianism. Ho Chi Minh, although a Communist, was accepted by both Communists and anti-Communist Vietnamese as the leader of Vietnamese nationalism during the struggle against Japan and France, and during the Geneva Conference the representatives of both Ho Chi Minh and Bao Dai claimed to be the head of a single Vietnamese national state. The United States had given extensive educational and economic aid to South Viet-Nam, establishing friendly ties especially during the Dien period, and was shocked by the reports of purges and barbarities in North Viet-Nam and the flow of refugees, mainly from the North, after the Geneva Conference. 15

14 See Settleman 32.

Nearly a million refugees, mostly Roman Catholics and dependants of the colonial army left North for South Viet-Nam after Geneva, and the land reform program in the North led to the National Gallup. Communist forces in Viet-Nam. In a speech of Oct. 31, 1956, admitted that the North Vietnamese government in this program had "executed too many honest people," resorted to "terror which becomes far worse than the former," and that there was an attempt to destroy the "institutions of freedom of faith and worship in many areas." "Attacked tribal chiefs too strongly," reducing "the prestige of the government" instead of education and torture came to be regarded as a normal practice during party reorganization." These oppressions resulted in serious revolts among the peasants of Ho Chi Minh's home province and led to the fall of the regular army. (See U.S. Legal Brief, p. 35; Bernard Fall, New York Times Magazine, July 10, 1966, n. 52.) Even worse brutalities were reported in the American press. Whether if such statements were worse then in the North during the Dien regime has been controversial. See Friends Service Committee note 13 above, p. 45; Scheck, note 7 above, pp. 26 ff. 54 ff.; DeVilbiss, note 16 below, Settleman 222 ff.
The legal issues, clarification of which might contribute to a judgment of the validity of the diverse images of the Viet-Nam situation, may be stated as follows:

1. Are the hostilities between North and South Viet-Nam international hostilities or civil strife, i.e., is Viet-Nam two states or one?

2. Was the requirement for an election in 1956 dependent on the development of conditions assuring that the election would be free and fair?

3. Was the requirement concerning elections in the resolutions of the Geneva Conference such an integral part of the Cease-Fire Agreement between France and the Democratic Republic of Viet-Nam (Ho Chi Minh) as to permit suspension of the cease-fire when the elections were frustrated?

4. If it is assumed that the cease-fire line continued in operation, was North Viet-Nam guilty of "armed attacks" upon South Viet-Nam justifying the United States bombing attacks north of the cease-fire line, which began in February, 1965, as measures of "collective self-defense"?

The following issues of international law and United States Constitutional law have been discussed, but are of less importance in clarifying the different images of the situation.

5. Did the reprisals undertaken by the United States in the Gulf of Tonkin episode of August, 1964, violate international law?

6. Did the Congressional Resolution of August 7, 1964, after the Tonkin episode authorize the extensive military action ordered by the President since February, 1965?

7. Did the United States have a binding commitment to use armed force in defense of South Viet-Nam before February, 1965?

1. The evidence suggests that Viet-Nam is one state and that the hostilities of Ho Chi Minh's government against the Saigon Government would be civil strife within its domestic jurisdiction unless forbidden by the cease-fire Agreement.

During the hostilities between the "Democratic Republic of Viet-Nam" under Ho Chi Minh and France, supporting the "Republic of Viet-Nam" under Bao Dai from 1946 to 1954 and during the Geneva Conference, both sides regarded Viet-Nam as one state, the legal issue being whether it was an independent state or a "Free State" within the French Community. When the hostilities ended with French defeat, large areas of the south were occupied by Ho Chi Minh's forces, the Viet-Minh, and areas in the north by forces of France and Bao Dai. The Cease-Fire Agreement of 1954 signed by representatives of France and the Democratic Republic of Viet-Nam provided for the withdrawal of these forces.
across the cease-fire line, substantially the 17th parallel, and very explicitly declared that this line was not an international boundary but a "provisional military demarcation line" and that the territories at each side were not states but "zones." The final resolutions of the Conference declared that "the independence, unity and territorial integrity" of Viet-Nam should be respected, and provided that elections "shall" be held in July, 1956, to determine the government of Viet-Nam. These resolutions did not constitute a formal treaty and were not signed by any of the delegates. They were, however, accepted by all of the delegations except those of the United States and Bao Dai's Republic of Viet-Nam. Both of whom made statements "noted" by the Conference. In regard to the reservation by Bao Dai's representative, the Chairman at the final session of the Conference, Anthony Eden, said, "We cannot now amend our final act, which is the statement of the Conference as a whole, but the Declaration of the Representative of the State of Vietnam will be taken note of."

It seems clear that the Conference recognized Viet-Nam as one state and provided that it should be united by one government in 1956. After the Geneva Conference and frustration of a four-year effort by Ho Chi Minh to have the elections held, the Southern Zone, now under Ngo Dinh Diem, supported by the United States, declared itself independent and was recognized by some governments, placed under the protection of SEATO, and permitted to represent Viet-Nam in some international organizations, but it was not admitted to the United Nations. Ho Chi Minh, the Communist states and many unaligned states, including India, did not accept this situation. In 1956, Diem began to be actively resisted by the Viet-Cong, the name given to the Viet-Minh in the Southern Zone, and after 1955 Ho Chi Minh's government began to assist it by infiltrations of men and supplies from the Northern Zone. Diem's government, although supported by United States economic, educational and military aid, was not able to eliminate the Viet-Cong, which in 1960 organized the "South Vietnam National Liberation Front" in control of much of the Southern Zone.

37 There was active debate at Geneva over the location of this line and the agreement put it further north than Ho's delegate wanted. The United States has argued that this indicates an opinion on both sides that the line would mark a division for a long time, probably beyond 1956, but it can also be argued that Ho gave way in spite of his strong military position because he thought the line would last for only two years. "The Vietminh was reluctant to agree to this partition, which left it slightly less than half of the territory of Vietnam. Despite the fact that at the time it controlled three-quarters, however, Ho Chi Minh's government was under strong Soviet and Chinese pressure to give way on this point. The control of China and probably also the Soviet Union, was that a continuation of the war might be a military disaster for the United States armed forces, and that it would help push a course of action which the United States did in fact come very close to taking. The Vietminh accepted this temporary loss because of the explicit promise in both the armistice agreements and in the Geneva Declaration that the period of two years national elections would be held to unify the country. They had every reason to believe that these elections would take place because the agreements stipulated that France, the other party to the armistice, was to maintain control of civil administration in the South until elections were held. (Article 14 of the armistice agreement.) In effect, then, the elections and the military truce were interdependent." (Friends Service Committee op. cit. note 18 above, p. 41.) This accorded with the expectation of most of the Powers at Geneva (see note 16 above).

38 Gettlemen 159.

39 The U.S. Legal Brief (p. 12) says: "The Republic of Viet-Nam in the South has been recognized as a separate international entity by approximately 60 governments in the world over. It has been admitted as a member of a number of the specialized agencies of the United Nations. Most of these sixty governments, including the United States, recognized the Republic of Viet-Nam (Bao Dai) before the Geneva division, though they accepted the Saigon Government as its representative after the division. A number of states recognized the Democratic Republic of Viet-Nam (Ho Chi Minh) before the Geneva separation and continue to accept the Hanoi government as its representative. Eight or nine states have signed the United Nations Charter under both the National Liberation Front (Viet-Cong) in South Viet-Nam. (George A. Carver, Jr., 44 Foreign Affairs 347 at 367 (1966).) The Republic of Viet-Nam was admitted to UNESCO and WMO before Geneva, and to ILO, WHO, and FAO in 1950, and the Saigon Government has continued to represent Viet-Nam in these international organizations. These facts do not prove that South Viet-Nam is a "separate international state" any more than the recognition by many states and the United Nations of the Republic of China, represented by the Government at Taipei (Chiang Kai-shek), proves that Taiwan is a separate political entity, though other facts may support this contention. The U.S. Legal Brief also cites "The United Nations of the United States of South Viet-Nam for membership in the organization, and its admission was frustrated only by the veto of the Soviet Union in the Security Council." The brief does not notice that this admission was considered a "nullification" (Friends Service Committee op. cit. Gettlemen 220), which the United States opposed, as it has opposed "two Chinas." The United States has also suggested that the extension of SEATO protection to South Viet-Nam soon after Geneva indicates that the Western-oriented states did not believe Viet-Nam would be united under a Communist government in 1956; but see notes 5 and 18 above.
outside of the major cities. Diem became increasingly dictatorial and unpopular and was assassinated on November 1, 1963. The succession of unstable governments which have followed him have never controlled half of the territory of South Viet-Nam.

South Viet-Nam was clearly regarded as part of Viet-Nam before 1954 and as a “zone” of that state separated by a temporary cease-fire line by the Geneva Conference, and it seems not to have acquired sufficient governmental authority, stability, public support, or recognition to become an independent state under international law since then. Consequently, apart from the Cease-Fire Agreement and American intervention, hostilities in Viet-Nam should be regarded as civil strife.

2. Diem and the United States have contended that it was understood at Geneva that the election called for by the resolutions could not be held until conditions assured that the election would be free and fair. It is true that the resolution referred to “free general elections by secret ballot” and that General Bedell Smith, reserving for the United States on the Resolutions, said:

“In the case of nations now divided against their will, we shall continue to seek to achieve unity through free elections supervised by the United Nations to ensure that they are conducted fairly.”

The conditions in Viet-Nam which might impair the freedom and fairness of elections were, however, well known to the members of the Geneva Conference when they provided categorically for the holding of elections in July, 1956, for their supervision by the International Control Commission, and for consultations to prepare for them beginning on July 20, 1955. The delay of two years was “in order to ensure that sufficient progress in the restoration of peace has been made and that all the necessary conditions obtain for free expression of the national will.” These political provisions resulted from compromises between the Western and Communist states represented at Geneva. They were believed necessary to achieve agreement and peace in Southeast Asia. Failure to observe their precise terms would, therefore, jeopardize the entire agreement, as subsequent events demonstrated.

It would appear, therefore, that Ho Chi Minh was entitled to regard the holding of elections in July, 1956, as obligatory on the parties to the Cease-Fire Agreement, including France and its successor in South Viet-Nam, Diem. The premature withdrawal from Vietnamese of the French, who were considered responsible for preparing for the elections in the Southern Zone has been criticized, but the government of the Southern Zone clearly succeeded to this responsibility. General responsibility for carrying out the political provisions of the Geneva Conference lay with the “Co-Chairmen (Britain and the Soviet Union) and the Geneva

21 The Viet-Cong were originally the supporters of Ho in the South when he was considered the symbol of Vietnamese nationalism, and the South Vietnamese National Liberation Front, which was formed in December, 1960, includes many non-Communist elements (note 18 above). Gentileman 229 ff.). The United States considers it a mere arm of Ho’s government which should not be independently represented at any peace conference. (See Secretary Rusk’s television statement, reported in the New York Times, Dec. 8, 1965.; The Front, however, Ho himself, other Communist states and some Americans like Senators J. W. Fulbright, Robert Kennedy, and the Friends Service Committee, credit it with an autonomous status which justifies its representation at any peace negotiation. The negotiating position stated by Premier Dong on April 8, 1965, and by the Front on July 29, 1965, appears to be a recension from Ho’s original position in that it recognizes that two Viet-Nams will exist until united by “the Vietnamese people themselves” and thus converges toward the United States position stated by President Johnson on April 7, 1965, and by Secretary Rusk on Aug. 3, 1965. (See note 8 above, and Friends Service Committee, note 13 above, p. 56 ff.)

24 This is controversial. The United States argues that, whatever may have been the situation in 1956, the de facto existence of South Viet-Nam and its wide recognition probably gave it a status of independence during the Diem period and since, but that in any case it had become a “separate international entity” which the United States could defend from aggression (Legal Brief, p. 14). See note 19 above.


24 General de Gaulle, at a news conference on July 23, 1966, said: “At the time everyone seemed to desire it (an end of fighting) sincerely.” Printed in Raskin and Fall 269. See also notes 16 above and 25 below.

25 Art. 27 of the Geneva Cease-Fire Agreement (Gentileman 146; 60 A.J.LL. 638 (1966)). At the same news conference (July 23, 1966) General de Gaulle referred to the “shock caused to the South by the withdrawal of our administration and our forces,” which he attributed to the “determination of the Americans to part with Indochina” because of their assumption of an anti-Communist mission throughout the world, their aversion “to any colonial work which had not been theirs,” and to the “natural desire in such a powerful people to ensure themselves of new positions.” Raskin and Fall 268.
The evidence suggests that the provisions concerning elections in the final resolutions of the Geneva Conference were considered essential elements in the Cease-Fire Agreement. This agreement, therefore, became suspendable when the elections were frustrated by one of the parties and the other party, Ho Chi Minh, was free to consider his obligation to respect the cease-fire line suspended and to continue his long efforts to unify Viet-Nam by force.

There can be little doubt but that Ho Chi Minh regarded the Geneva resolutions as a part of the settlement to which he agreed. Military unification of Viet-Nam was within his grasp after the defeat of France at Dien Bien Phu if external aggression, especially by the United States, could be avoided. It is incredible that he would have agreed to the cease-fire, even though he desired it, in the hope that it would prevent such intervention, unless he was convinced that unification would shortly be effected by the peaceful method of elections. A study of the diplomacy at Geneva suggests that the principal Powers except the United States were more interested in peace than in ideologies, and recognized that the political provisions of the settlement, which would probably result in a national Communist Viet-Nam, were the price of peace, and were therefore no less important than the military provisions.

The Department of State's legal brief emphasizes the principle of international law that:

"A material breach of an agreement by one party entitles the other at least to withhold compliance with an equivalent, corresponding, or related provision until the defaulting party is prepared to honor its obligations." 30

The brief used this principle to justify its escalation of hostilities in response to North Vietnamese infiltration contrary to the cease-fire requirements, but the principle seems more in point to permit North Viet-Nam to regard the obligation to respect the cease-fire line as suspended after the provision for terminating this temporary line in 1956 was frustrated by the refusal of South Viet-Nam to cooperate in carrying out the election. Not only was the provision for elections a major factor in inducing Ho Chi Minh to accept the temporary cease-fire, but it is expressly mentioned in the Cesse-Fire Agreement, which provides:

"Pending the general elections which will bring about the unification of Viet-Nam, the conduct of civil administration in each regrouping zone shall be in the hands of the party whose forces are to be regrouped there in virtue of the present Agreement." 31


31 See note 35 below.
This provision of the Cease-Fire Agreement could only be interpreted by reference to the conference resolutions which provided:

"The Conference recognizes that the essential purpose of the Agreement relating to Viet-Nam is to settle military questions with a view to ending hostilities and that the military demarcation line is provisional and should not in any way be interpreted as constituting a political or territorial boundary. The Conference expresses its conviction that the execution of the provisions set out in the present declaration and in the Agreement on the cessation of hostilities creates the necessary basis for the achievement in the near future of a political settlement in Viet-Nam.

The Conference declares that, so far as Viet-Nam is concerned, the settlement of political problems, effected on the basis of respect for the principles of independence, unity and territorial integrity, shall permit the Vietnamese people to enjoy the fundamental freedoms, guaranteed by democratic institutions established as a result of free general elections by secret ballot. In order to ensure that sufficient progress in the restoration of peace has been made, and that all the necessary conditions obtain for free expression of the national will, general elections shall be held in July 1956, under the supervision of an international commission composed of representatives of the member states of the International Supervisory Commission, referred to in the Agreement on the cessation of hostilities. Consultations will be held between the competent representative authorities of the two zones from 20th July, 1955, onwards."

Although the Government of the Republic of Viet-Nam (Bao Dai) was not a party to these agreements, France was, and the Diem government established in the Southern Zone as successor to France was bound by them. Its failure to carry out the provisions, which were regarded as the essence of the agreement by the "Democratic Republic of Viet-Nam" (Ho Chi Minh), would relieve the latter of the obligation to respect the cease-fire line and would entitle it to continue its interrupted effort to unify Viet-Nam by force.

The resistance to this effort by the Saigon Government, therefore, constituted "civil strife" within the domestic jurisdiction of Viet-Nam, and American intervention involving the use of armed force against the Viet-Cong in the south and the bombing of installations in the north was a violation of traditional international law forbidding intervention in the domestic jurisdiction of another state and prohibited even to the United Nations, unless the situation constituted a threat to or breach of the peace entitling it to take measures to restore international peace and security.

There is no doubt but that breach of a valid cease-fire line constitutes a violation of international law, as does violation of an international boundary. This was held in the Korean situation of 1950, as noted by the State Department's legal brief. This brief does not discuss the question of whether the cease-fire line in Viet-Nam became suspendable after frustration of the conditions which induced its acceptance by one of the parties, nor is this question discussed by the International Control Commission, which continued to examine alleged violations of

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34 Ibid., Art. 59.
the Cease-Fire Agreement up to 1965, thus suggesting that it continued to operate and to bind the parties. The Control Commission's responsibility was, however, limited to supervising the execution of the military provisions of the Geneva Agreement and did not extend to judging the effect on these provisions of non-fulfillment of the political settlement reached at Geneva. It did, however, recognize the importance of fulfillment of these provisions and the responsibility of the Geneva Powers in the matter. In its tenth report in 1960 the Commission said:

"During the period under report, there has been no progress in regard to the political settlement envisaged in the Final Declaration. The parties have not held consultations with a view to holding free nation-wide elections leading to the reunification of Vietnam and thereby facilitating early fulfillment of the tasks assigned to the Commission and the termination of its activities. The Commission is confident that this important problem is engaging the attention of the Co-Chairmen and the Geneva Powers and that they will take whatever measures they deem necessary to resolve it."

The United States legal brief dismisses the contention that the hostilities were civil strife, by characterizing any analogy to the American Civil War as:

"an entire fiction disregarding the actual situation in Viet-Nam. The Hanoi regime is anything but the legitimate government of a unified country in which the South is rebelling against lawful national authority. There are undoubtedly differences in the two cases but there are also similarities. The issue of civil strife in America in 1861 and in Viet-Nam in 1865 was whether the Declaration of Independence of the United States of July 4, 1776, and the Declaration of Independence of the Democratic Republic of Viet-Nam of September 2, 1945, closely resembling it, contemplated in each case a unified state as held by Lincoln and Ho Chi Minh, or permitted secession as held by Jefferson Davis and Diem. There is no doubt that a "unified country" did not exist in the United States during the period when the Confederate States of America occupied the South or in Viet-Nam when the Republic of Viet-Nam (Diem) occupied much of the southern half of that country. It is true the analogy is imperfect because the United States was a unified country for many years before 1861 and Viet-Nam has been in almost continuous strife with France of South Viet-Nam since its Declaration of Independence. Furthermore South Viet-Nam has received more recognition as a state than did the Confederate States. Nevertheless the position of Ho in regard to the legal unity of Viet-Nam is similar to that of Lincoln in regard to the United States, and the position of the United States in Viet-Nam is similar to that which Great Britain would have had if it had intervened in behalf of the Confederacy as it threatened to do in 1861, giving rise to diplomatic notes by Secretary of State Seward and a resolution by Congress indicating that such a move would be an unfriendly act.

Giving full consideration to the military and political provisions of the Geneva settlement, it would appear that the cease-fire had lapsed by 1958 and the situation had become one of civil strife in which outside states were forbidden by international law to intervene even on the invitation of one side.

4. Even if the cease-fire line remained legally effective, North Viet-Nam could not be accused of "aggression" against South Viet-Nam unless it had launched an unjustifiable "armed attack" upon the latter prior to the United States bomb-
ing raids across that line in February, 1965.\(^4\) The basic American argument to justify these raids was that they were acts of "collective self-defense" permitted by Article 51 of the United Nations Charter.\(^4\) The meaning of this article has been controversial.

It is true that traditional international law permitted military action in self-defense if there were an "instant and overwhelming necessity permitting no moment for deliberation," i.e., if hostile forces were about to attack. It seems clear, however, that the San Francisco Conference, by limiting self-defense to cases of "armed attack," intended to eliminate all preventive or pre-emptive action in order to maintain to the utmost the basic obligation of Members of the United Nations to "refrain in their international relations from the threat or use of force."\(^5\)

Furthermore it is clear that "armed attack" implies military action. Consequently military defensive action is not permissible under the Charter in response to economic, psychological, or other forms of subversion or intervention not involving military coercion. There can be no doubt but that bodies of armed "volunteers" crossing a frontier or cease-fire line, such as the Chinese in the Korean hostilities of 1950, or ostensibly private "military expeditions" or "armed bands" leaving one country for the purpose of attacking another, as the Cuban refugees in the Bay of Pigs affair of 1961, constitute, if of considerable magnitude, an "armed attack."\(^6\)

Finally an "armed attack" which constitutes a legitimate act of self-defense against an illegal "armed attack" cannot justify subsequent attacks by the aggressor.\(^7\)

According to the International Control Commission\(^8\) there were frequent violations of the Cease-Fire Agreement after 1957. In that and subsequent years it noted violations by the Southern Zone by permitting the establishment of United States military personnel and aircraft in its area and by entering into a de facto military alliance with SEATO and the United States.\(^9\) The United States legal memorandum sought to justify these actions by asserting that "from the very beginning, the North Vietnamese violated the 1954 Geneva accords" by leaving Communist military forces and supplies in the South and infiltrating Communist guerrillas from the North to the South.\(^10\) The Control Commission's report of June, 1955, however, indicated that both sides were satisfied with the manner in which withdrawals and transfers required by the agreement were effected.\(^11\) The United States brief asserted that 23,000 men were infiltrated from the North to the South from 1957 to 1962,\(^12\) and the Control Commission noted charges of such infiltration during this period, but not until 1962 did it assess the allegations and the evidence to support them. On that date it submitted a Special Report which called attention to the "rapid deterioration of the situation,"\(^13\) and quoted a report of its legal committee, with the Polish member dissenting:

"... In specific instances there is evidence to show that armed and unarmed personnel, arms, munitions and other supplies have been sent from the Zone in the North to the Zone in the South with the objective of supporting, organizing

\(^4\) On this assumption, these raids, if of a magnitude to constitute "armed attack" and if not justifiable as "collective self-defense" measures, would constitute aggression against North Viet-Nam, justifying that country in military action in defense. See Q. Wright, The Role of International Law in the Elimination of War 80.

\(^5\) The United States at first sought to justify these raids as "reprisals" in response to attacks on Pleiku and Tuy Hoa "ordered and directed by Hanoi" (White House Statement, Feb. 7, 1965). This was similar to the justification given for the Tonkin Bay action six months earlier, but legal examination indicated that the facts would not justify "reprisals" in either situation, and that in any case military reprisals are forbidden by the U.N. Charter. See note 58 below.

\(^6\) The International Control Commission established by the Cease-Fire Agreement was composed of representatives of Canada, Poland and India, with the latter presiding. Its reports are printed in British Command Papers, 1955 to 1965, and extensive extracts are printed in Gettleman 166 ff., and Raskin and Fall 273 ff. In some of its reports either Poland or Canada abstained.

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\(^10\) Note 41 above.

\(^11\) The United States at first sought to justify these raids as "reprisals" in response to attacks on Pleiku and Tuy Hoa "ordered and directed by Hanoi" (White House Statement, Feb. 7, 1965). This was similar to the justification given for the Tonkin Bay action six months earlier, but legal examination indicated that the facts would not justify "reprisals" in either situation, and that in any case military reprisals are forbidden by the U.N. Charter. See note 58 below.

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\(^13\) Note 5 above.


\(^7\) Gettleman 166.
and carrying out hostile activities, including armed attacks, directed against the
Armed Forces and administration of the Zone in the South. These acts are in
violation of Articles 10, 19, 24, and 27 of the Agreement on the Cessation of
Hostilities in Vietnam. . . . there is evidence to show that the PAV (People's
Army of Vietnam) has allowed the Zone in the North to be used for inciting,
encouraging, and supporting hostile activities in the Zone in the South, aimed at
the overthrow of the Administration in the South. The use of the Zone in the
North for such activities is in violation of Articles 19, 24, and 27 of the Agree­
ment on the Cessation of Hostilities in Vietnam."

In the same report the Control Commission concluded that South Viet-Nam
had violated Articles 16 and 17 of the Geneva Agreement by receiving military
aid from the United States and Article 19 by making a \textit{de facto} military alliance
with that country.\footnote{Par. 9; Gettleman 157; quoted in part in U.S. Legal Brief, p. 3.}

In a Special Report of 1965 the Control Commission noted a joint commu­
niqué of February 7, 1965, from the acting Premier of South Viet-Nam and the
United States Ambassador announcing military action against military installa­
tions in North Viet-Nam in response to aggression by North Viet-Nam forces
against Pleiku and Tuy Hoa; and also a communiqué of February 8, 1965, from
the North Vietnamese mission protesting the bombing in North Viet-Nam on
February 7 by air forces of "the United States imperialists." The Commission
commented without concurrence of the Canadian member: "These documents
point to the seriousness of the situation and indicate violations of the Geneva
Agreement."\footnote{Par. 20; Gettleman 158.}

There seems to be no evidence that organized contingents of the North Viet­
namese army crossed the cease-fire line until after the United States bombing
attacks began in February, 1965. Whether infiltrations before that date were of
sufficient magnitude to constitute "armed attacks" and whether they could be
justified as defense measures against the military activities of South Viet-Nam
and the United States in violation of the Geneva agreements is controversial.
The Department of State's legal brief of March 4, 1966, says:

"In these circumstances an 'armed attack' is not as easily fixed by date and
hour as in the case of traditional warfare. However, the infiltration of thou­
sands of armed men clearly constitutes an 'armed attack' under any reasonable
definition. There may be some question as to the exact date at which North
Viet-Nam's aggression grew into an 'armed attack,' but there can be no doubt
that it had occurred before February 1965."

The reports of the Control Commission indicating gradual increase in viola­
tions of the Geneva cease-fire by both sides after 1958 do not permit of a clear
inference on which side began "armed attacks." The problem is in any case
irrelevant if the cease-fire line had become ineffective because of the frustration
of the elections and United States intervention, as suggested above. There is no
evidence of any action by North Viet-Nam which could be regarded as an armed
attack upon the South prior to 1958, after Ho Chi Minh had engaged in four years
of fruitless effort to carry out the resolutions of the Geneva Conference. In these
circumstances Ho Chi Minh's action in support of the Viet-Cong did not con­
stitute aggression or armed attack in international relations but civil strife
within the domestic jurisdiction of Viet-Nam, similar to the action of the North
against the South in the American Civil War. Whether called "intervention,
'reprisals' or "collective defense," the United States response by bombings in
North Viet-Nam, which began in February, 1965, violated international law, the
United Nations Charter, and the Geneva Agreement, if the latter were in effect.

3. Reprisals in traditional international law were permitted only to remedy an
injury resulting from violation by another state of its obligations under interna­
tional law, after the injured state had made formal complaint and demanded
reparation, and had unsuccessfully sought to obtain a remedy by all peaceful
means available, and provided the measures of reprisal did not exceed in severity
the injury complained of." The United States "reprisals" in the Bay of Tonkin
incident of August, 1964, seem to have conformed to none of these conditions,

\footnote{Ibid. 189-190. There has been doubt whether the attack on Pleiku and Tuy Hoa actually
proceeded from North Viet-Nam. It was probably made by Viet-Cong guerrillas. See Raskin
and Fall 398.}
\footnote{U.S. Legal Brief, pp. 3-4; 60 A.J.I.L. 566 (1966).}
\footnote{The Naulila Arbitration, Portugal v. Germany, 1928, 6 Blackworth, Digest of Interna­
tional Law 164; William W. Bishop, Jr., International Law, Cases and Materials 747
(Boston: Little, Brown, 1962).}
and the same was true of the Pleiku incident of February, 1963. There were no clear proof that an injury had been received because of a violation of international law by North Viet-Nam, no formal complaint to the North Viet-Nam government, no effort to obtain a remedy by peaceful means, and the response was far in excess of any alleged injury. Furthermore, the United Nations Charter abolished the traditional right of reprisals, as declared by the Security Council in April, 1961, by requiring the Members to settle their international disputes by peaceful means and to refrain from the use or threat of force in international relations except in defense against armed attack or under authority of the United Nations.

The United States relied on the obsolete doctrine of reprisals in this case rather than on the right of self-defense against armed attack. It alleged that a United States naval destroyer had been attacked by North Vietnamese torpedo boats while patrolling beyond territorial waters on August 2 and 4, 1964, in the Bay of Tonkin. North Viet-Nam contended that the destroyers were limited in its territorial waters, which it had extended to twelve miles, and that surveillance of those waters was necessitated because of a South Vietnamese naval attack on its installations on July 31. The United States destroyers seem not to have been injured but the United States reprisals destroyed several North Vietnamese torpedo boats and the installations in five North Vietnamese ports. Congress endorsed this reprehensible "shooting from the hip" by passing a resolution almost unanimously on August 7 authorizing the President to take similar action in the future.

6. By this resolution Congress:

"Approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel armed attack against the forces of the United States and to prevent further aggression... the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom."

The President has cited this resolution as justification for his extensive escalation of the hostilities in Viet-Nam, but it has been contended by some Senators that the action taken requires a declaration of war under the Constitution, and others have asserted that in voting for it they had in mind only limited actions such as that in the Bay of Tonkin. The text, however, goes much further. The issue seems unimportant in view of the broad constitutional powers of the President to use armed force without Congressional support or declaration of war. Practice and Supreme Court decisions make it clear that the President as Commander-in-Chief and under general legislation has extensive power to use the armed forces when he deems it necessary to defend American territory or citizens or to meet treaty obligations, but not as an instrument of policy. The major limitation upon such action appears to be the Congressional power to withhold appropriations. In the Vietnamese situation Congress not only voted the funds requested by the President but authorized him to use armed force to assist SEATO states and states mentioned in the Protocol.

7. The United States has asserted that the SEATO Treaty and correspondence of President Eisenhower with Diem created a binding obligation to defend South Viet-Nam from armed attack. The correspondence does not seem to have involved a legal commitment to use armed force in defense of South Viet-Nam, but rather a United States policy of giving economic and military aid to build up a South Viet-Nam capable of resistance to subversion or aggression.

The SEATO agreement provides for consultation among the SEATO states in case one of them or an area covered by the treaty, such as South Viet-Nam, is in danger from action less than armed attack, and for collective defense in a case of armed attack. There has been no agreement among SEATO Powers to
take any form of collective action, and none of these Powers except Australia and New Zealand, which have contributed limited forces, have considered themselves under an obligation to engage in the defense of South Viet-Nam. A resolution in the SEATO meeting of June 29, 1966, endorsed the United States position but with abstention by the French representative and reservation by the Pakistan representative.

No American President seems to have recognized any legal commitment to use armed force to defend South Viet-Nam prior to 1965. The United States in signing the SEATO Treaty declared that its obligations under the treaty applied only in case of Communist aggression, and it stated at the Geneva Conference of 1954 that "it would view any renewal of aggression . . . with grave concern." It appears that American military action in Viet-Nam has been in pursuit of the policy of containing Communism rather than in fulfillment of any legal obligation and, as stated by the Control Commission, South Viet-Nam's acceptance of this action has violated the Geneva Agreement.

My study of the course of forty-five international conflicts since World War I indicated that the relative magnitude of national interests and present and future capabilities and vulnerabilities involved in the situation as perceived by the decision-makers, and their perceptions of the state of national and world opinion concerning the conflict, have had more influence than legal obligation or commitment in determining the escalation or settlement of those conflicts. The Viet-Nam conflict has been no exception. Applying the formula relating the magnitude of these factors as perceived by the parties, I concluded in the summer of 1965 that:

"Hostilities in Vietnam are likely to escalate for a time, but eventually South Vietnam and the United States will win, unless mounting national and world opinion brings about a cease-fire, or unless entry of the Soviet Union or China, or both, initiates World War III." This inclusion seems applicable a year later.

Senator Morse. Our next witness will be Mr. Neal Potter, acting president of the United World Federalists.

Mr. Potter, will you come forward.

BACKGROUND OF NEAL POTTER

I want the record to show before Mr. Potter proceeds to testify that Mr. Potter is an economist, educator, and author. He has been associated with the United World Federalists since its inception in 1947 in Asheville, N.C.

In 1951-54, he was field director for the association in the Pacific Northwest; served as vice president of its Washington, D.C., chapter from 1961-62, and as a member of its national executive committee in 1960-62 and 1966-67.

An associate of Resources for the Future, Inc., Mr. Potter is involved in research in natural resources. He is coauthor of two books, "Trends in Natural Resources Commodities, 1870 to 1957," and "World Trends in Natural Resources," both published by the Johns Hopkins Press.

Mr. Potter served as assistant to Wilson M. Compton, a delegate to the United Nations General Assembly in 1949, and even mentioning his name, Mr. Potter, brings back very many fine memories. I knew Mr. Compton and am the beneficiary of his help.

Mr. Potter taught at Washington State College at Pullman, and the Carnegie Institute of Technology at Pittsburgh. He is active in civic affairs. He helped organize the Montgomery County, Md., Citizens Committee for Fair Taxation; was a charter member of the Maryland Committee for Fair Representation; served for 2 years as president of the Philippines have discussed sending a small force.

\[\text{Note 5 above.}\]

\[\text{Note 13 above.}\]

\[\text{Gettleman 175.}\]

\[\text{O. Wright, "The Escalation of International Conflicts," 9 Journal of Conflict Resolution 440 (December, 1966).}\]
of the County Citizens Planning Association, and won the Democratic nomination to the Maryland Legislature in 1966.  
(The biographic sketch of Mr. Potter follows:)

**BIOGRAPHY OF NEAL POTTER**

Neal Potter is Acting President of the United World Federalists. Economist, educator and author, he has been associated with UWF since its inception in 1947 at Asheville, North Carolina. In 1951-54 he was field director for the UWF in the Pacific Northwest; served as vice president of its Washington, D.C. Chapter from 1961-62, and as a member of its National Executive Committee in 1960-62 and 1966-67.  

An associate of resources for the Future, Inc., Mr. Potter is involved in research on natural resources. He is co-author of two books, Trends in Natural Resources Commodities, 1870-1957, and World Trends in Natural Resources, both published by the Johns Hopkins Press.  

Mr. Potter served as assistant to Wilson M. Compton, a delegate to the United Nations General Assembly in 1949. He has taught at Washington State College, Pullman, and at Carnegie Institute of Technology, Pittsburgh, Pennsylvania.  

Active in civic affairs, he helped organize the Montgomery County (Md.) Citizens Committee for Fair Taxation; was a charter member of the Maryland Committee for Fair Representation; served for two years as president of the County Citizens Planning Association; and won a Democratic nomination to the Maryland Legislature in 1966.

Senator Morse, I am sorry you have had to wait so long to testify. We look forward to your testimony.

**STATEMENT OF NEAL POTTER, ACTING PRESIDENT, UNITED WORLD FEDERALISTS**

Mr. Potter, Mr. Chairman, it has been a pleasure to be here these two hours because there has been a lot of education in it for me, as for the rest of us, I hope, in this room. We all respect Dr. Wright’s tremendous background and his opinions on these very difficult matters before us.

Let me add just one thing about the United World Federalists, to what you read, that we are a completely voluntary nonpartisan organization with nearly 100 chapters across the United States. Similar organizations do similar work in 32 other countries.

Our work is dedicated to strengthening the United Nations so it can be effective in making and protecting a just and lasting peace.

We want to say that we support both the Senate resolutions now before us, calling for new initiatives by this country to involve the United Nations in bringing an end to the conflict in Vietnam.

**INTERNATIONAL NATURE OF VIETNAM PROBLEM**

We believe that the failure to internationalize the Vietnam problem is a source of much of the difficulty which now confronts the country. Because the United States acted without United Nations decision or directive, the Vietnam war appears to many peoples of the world as an attempt by an imperialist western power to impose its will through the unilateral use of force against a small Asian nation. The whole effort to contain Communist expansion is thus confused and enormously handicapped by this position into which we have put ourselves.

Bringing the Vietnam matter to the United Nations will help to reduce this handicap. However, the Security Council or the General Assembly may ultimately decide the matter, it is likely to put American efforts to restrain international lawlessness on a higher plane.
No unauthorized party can undertake to provide order in any community without the profoundest handicaps of misunderstanding and opposition. In such a case there is no body of law and no court to determine who is an aggressor and who is the policeman, who is authorized to use force and who is not. We believe that this Nation should use military force only as conceived by the United Nations charter: that is, only when the proper United Nations body has considered and acted upon the threats to the peace or the breaches of the peace to which the United States or other concerned country has brought the U.N.'s attention. The only exception to this awaiting the U.N.'s decision should be the necessary quick response to direct attack, as in Korea; and in such a case the matter should be brought at once to the United Nations, as it was in June 1950.

We are aware that if the Vietnam matter is brought before the Security Council, a veto may prevent action. Though such a veto may handicap the United Nations in bringing peace, discussion and voting on alternative proposals by the world body will help to clarify the position of the United States, and end its present appearance of unilateral intervention.

We World Federalists are also aware that the United Nations has been handicapped in the Vietnam affair by the fact that neither North nor South Vietnam, nor mainland China is a member of the U.N. We have regretted and opposed the U.S. resistance to admission of China and her satellites to the United Nations. We would urge that these countries be invited to appear before the Security Council to take part in the discussions proposed. If they refuse, they should be invited to suggest arrangements by which their participation could be brought about, whether by the Geneva conference being resumed or otherwise.

**TERMS AND CONDITIONS OF U.S. PROPOSALS**

We believe that the terms and conditions, implicit or explicit, which the United States may put upon its proposals to the Security Council have a great deal to do with the capacity of the Council to respond. Since the United Nations is dependent on voluntary compliance—since it has no power to enforce its decisions—a threat of veto or of defiance is likely to deter the U.N. from acting at all. This barrier should be and, we believe, has been removed as far as it can be by the United States, though it might help further by exactly committing itself not to cast a veto and to abide by the proper majority votes.

If the U.N. can be brought to act on this matter, and if the Communist nations then block U.N. action, it will at least be clear who is responsible for preventing settlement. The United States should not share the blame by standing in the way of U.N. discussion and action. We support a Senate resolution for an advance U.S. pledge to carry out the decision of the Security Council.

The United States could give further support to U.N. efforts to bring peace, by making it clear that the United States will negotiate with any of the parties to the dispute, including the Vietcong, and that it will be glad to suspend bombing or any other hostilities which would not seriously jeopardize the United States-South Vietnamese military positions.
Both Senate Concurrent Resolution 44 and Senate Resolution 180 are steps in the right direction, to put the Vietnam war into the United Nations. It is clear that the interests of the United States and of the world are dependent on the participation of the United Nations in all matters relating to threats to the peace and breaches of the peace. Passage of either resolution will help to restore the United States to a position of leadership as a seeker of peace with justice, and as a supporter of lasting world peace under world law.

Senator Morse. Mr. Potter, I am very pleased to have that statement, in the record.

Senator Pell, any questions?

Senator Pell. No questions.

Senator Morse. Thank you very, very much.

Mr. Potter. Thank you, Mr. Chairman.

(The list of the delegates from Guatemala, previously referred to, follows:)

Delegation From the Congress of Guatemala
October 27, 1967

His Excellency Francisco LINARES ARANDA, Ambassador of Guatemala

Congressional Delegation

Gonzalo LOPEZ Clifuentes
Luis Jorge CAMPOLLO y Campollo
German Ovidio CASTANEDA y Casteneda
Luis Humberto CHINCHILLA Salazar
Oscar Manuel MARROQUIN Gomez
Victor Manuel MARROQUIN Gomez
Mauro Gilberto MONTERROSO
Juan Francisco QUINTANA de Leon

Senator Morse. While you were absent, Senator Pell, I had a dialog with Dr. Wright in regard to your question this morning.

Senator Pell. So I was informed, my good friend. I understand the answer was in the affirmative.

Senator Morse. He put in his legal brief that it is in the affirmative. I wanted it in the brief because I know you are as anxious as I am to get all points of view. I have made it a part of the record so that we could have it before us when we have our markup.

Senator Pell. Thank you very much.

Appearance of Ambassador Goldberg

Senator Morse. The Chair and Dr. Marcy had a telephone conversation with Ambassador Goldberg yesterday afternoon, and the Ambassador repeated his desire at the first opportunity to appear before the committee to make a statement and answer our questions. He cannot make a commitment as to how early next week that will be because they are in the midst of a Security Council discussion in respect to the Middle East problem. But Ambassador Goldberg told us that he would keep in touch and advise us when he would be able to come down.

The Chair rules the committee will stand in recess, subject to the call of the Chair for further public hearings.

(Whereupon, at 4 p.m., the committee recessed, subject to the call of the Chair.)
SUBMISSION OF THE VIETNAM CONFLICT TO THE UNITED NATIONS

THURSDAY, NOVEMBER 2, 1967

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

The committee met, pursuant to notice, at 10:05 a.m., in room 4221, New Senate Office Building, Senator J. W. Fulbright (chairman) presiding.

Present: Senators Fulbright, Sparkman, Mansfield, Morse, Gore, Lausche, Symington, Pell, McCarthy, and Aiken.

The CHAIRMAN. The committee will come to order.

We meet this morning to continue a series of hearings on the role that the United Nations should play in settlement of the Vietnam conflict. The committee is considering two resolutions covering the question of submitting the Vietnam war to the United Nations Security Council. Both Senate Concurrent Resolution 44, introduced by the distinguished Senator from Oregon, Senator Morse, and Senate Resolution 180, introduced by the senior Senator from Montana, Mr. Mansfield, with 57 cosponsors, are being considered by the committee.

We are very happy indeed this morning to welcome the Representative of the United States to the United Nations, Ambassador Arthur Goldberg. Mr. Ambassador, will you proceed?

STATEMENT OF HON. ARTHUR J. GOLDBERG, U.S. REPRESENTATIVE TO THE UNITED NATIONS, ACCOMPANIED BY JOSEPH J. SISCO, ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL ORGANIZATION AFFAIRS

Ambassador Goldberg. Thank you very much, Mr. Chairman and members of this committee. I should like to say I am accompanied here today by Mr. Joseph Sisco, the able and dedicated Assistant Secretary of State for International Organization Affairs.

Mr. Chairman and gentlemen, I appreciate very much your invitation to appear before this committee and to give testimony in public session on the important subject of the responsibility of the United Nations in the search for peace in Vietnam. This is the gravamen of Senate Concurrent Resolution 44 introduced by Senator Morse, and of Senate Resolution 180 introduced by Senator Mansfield and many other Senators.

I should like also, Mr. Chairman, to express my appreciation to the committee which had scheduled me to appear last week to defer my appearance which was impossible at that time because of a meeting
of the Security Council and other consultations on the Middle Eastern crisis at the U.N. I should like also to thank Dr. Marcy who was so kind as to arrange for this day which was more convenient.

At the very outset let me say that I agree completely with the concept of the responsibility of the United Nations which underlies both resolutions.

In preparing my testimony I have taken note of Senator Morse's comment in the hearings before this committee on October 26, referring to Senator Mansfield's resolution and I quote Senator Morse, who said in part: "I think it probably would be the most appropriate type of resolution to send to the President, for, after all, this ought to be a teamwork play."

I need scarcely add at this time that the Senator made it very clear this was without prejudice to his own views in the matter.

It is my considered view as the U.S. Representative to the United Nations that the adoption of Senator Mansfield's resolution at this time will support the efforts I have been making at the United Nations at the direction of the President to enlist the Security Council in the search for peace in Vietnam.

U.N. RESPONSIBILITY UNDER THE CHARTER

Any analysis of the problem of U.N. involvement in Vietnam must start with the United Nations charter. Under the charter, the United Nations and its members have a specific obligation to cooperate in the maintenance of international peace and security. This obligation is clearly set forth in the provisions of the charter, including specifically the following:

Article 1, paragraph 1, which states the first purpose of the United Nations as:

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

Article 2, paragraph 3, which includes among the principles binding upon all members the following:

All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered.

Article 24, paragraph 1:

In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Article 25:

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

And to these provisions should be added all of chapters VI and VII of the charter which confer broad powers on the Security Council for the maintenance of international peace and security.

Moreover, it is obvious that these powers and obligations of the United Nations apply to the situation in Southeast Asia in general and Vietnam in particular.
In saying this I am mindful of the argument that is sometimes made, both in and out of the United Nations, that several of the principal parties—the Democratic Republic of Vietnam, the Republic of Vietnam, and the People's Republic of China—are not in the United Nations and that it is, therefore, not a suitable place to deal with the Vietnam question. The premise is, of course, a fact, but the conclusion is incorrect. The charter explicitly provides for the responsibility and participation of nonmembers; for example:

Article 2, paragraph 6, provides—

The Organization shall ensure that states which are not Members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

And article 32 provides in part, and I again quote, that—

Any state which is not a member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute.

It is clear, therefore, Mr. Chairman, that the United Nations has a duty to act for peace in Vietnam, and that the involvement of nonmembers is no obstacle to such action. The question therefore arises: Why has such action not taken place?

I believe it would be useful to the committee if I review briefly the record of our endeavors in the Security Council to obtain such action.

CAMBODIA COMPLAINT IN 1964

I begin with the Cambodia complaint in 1964, although I might have begun with the complaint of Thailand which preceded this, where Thailand in 1954 brought one aspect of its security in Southeast Asia to the Security Council. In this case, the Security Council was frustrated from acting in that situation by a Soviet veto.

But more relevant and more immediately involved is the Cambodia complaint of 1964.

In May 1964 Cambodia brought to the Security Council a complaint over incidents on its border with South Vietnam. After extended debate the Council decided by a vote of nine in favor (Bolivia, Brazil, China, France, Ivory Coast, Morocco, Norway, United Kingdom, United States), none against, and two abstentions (Czechoslovakia and the U.S.S.R.) to send three of its members as a mission to the scene of the trouble. As the tally shows, the Soviet Union abstained on this step. Its representative contended that the existing machinery set up under the Geneva agreements was sufficient and a Security Council mission was therefore, and I quote him, “not justified.”

Nevertheless, the mission was sent. Its recommendations included sending a group of United Nations observers to Cambodia. Both the United States and the South Vietnamese Governments supported this proposal. But at that point the Cambodian Government termed the proposal “unacceptable to Cambodia” and asked that its complaint “should be placed on file.” The matter was thereupon dropped at the request of Cambodia, the original complainant.
I now turn to the next chapter, the Tonkin Gulf incident.

In August 1964, the United States took the initiative in requesting a Security Council meeting to consider the Tonkin Gulf incident. The Soviet Union proposed that North Vietnam be invited to take part in the discussion. The United States made no objection to such an invitation but further proposed that South Vietnam also be invited. The President of the Council thereupon consulted with the members and reported to the Council that his consultations had resulted in agreement among the members on the participation of both North and South Vietnam in the proceedings. He made clear that under this agreement the North and South Vietnamese Governments would both be welcome to give information to the Council either by taking part in the discussions or in such form as they might prefer. It should be added that the question of participation by Peking was not raised at that time.

In response to this invitation, the Foreign Minister of South Vietnam replied to the Council in a long letter on August 15, giving his Government’s side of the dispute and placing the South Vietnamese permanent observer to the United Nations at the Council’s disposal, and if I recall that letter correctly it also indicated that the South Vietnamese Government was prepared to send a delegation to participate in the discussion.

The response from Hanoi was a flat rejection of the competence of the United Nations to deal with the matter at all. I would like to quote from the North Vietnamese telegram to the President of the Security Council, dated August 19, 1964:

The consideration of the problem of the acts of war by the U.S. Government against the Democratic Republic of Vietnam and of the problem of the United States war of aggression in South Vietnam lies within the competence of the 1954 Geneva Conference on Indo-China, and not of the Security Council;

Should the Council take an illegal decision on the basis of the U.S. "complaint", the Government of the Democratic Republic of Vietnam would regretfully find itself obliged to consider that decision null and void.

In view of this attitude of Hanoi, the members of the Council determined that it would be useless to proceed further.

I now turn to the efforts in summer 1965. On June 25, 1965, President Johnson invited members of the United Nations, and I quote him "to use all their influence individually and collectively to bring to the table those who seem determined to make war."

On my appointment as U.S. Representative in July 1965, at the direction of the President, I made the Vietnam question my very first order of business. On July 30 I sent a letter to the President of the Security Council, summarizing previous U.S. efforts to open a path to peace in Vietnam and expressing our willingness, and I quote from that letter—

to collaborate unconditionally with members of the Security Council in the search for an acceptable formula to restore peace and security to that area of the world.

And I added in conclusion:

It is the hope of my Government that the members of the Security Council will somehow find the means to respond effectively to the challenge raised by the present state of affairs in Southeast Asia.
Mr. Chairman, I then initiated an intensive personal canvass of members of the Security Council, with a view to gaining their support for a move by the Council on Vietnam. This canvass disclosed a broad consensus among the members, regardless of their views on the substance of the Vietnam issue, that any effort to have the matter considered in the Council at that time would be unproductive.

EFFORTS IN CONNECTION WITH THE 1965-66 BOMBING PAUSE

In December 1965, as the committee will recall, the United States suspended the bombing of North Vietnam, and accompanied this step with an intensive diplomatic effort for peace in Vietnam. The bombing pause lasted 37 days, during which, at the direction of the President, I went to Europe to consult with the heads of government of several countries and His Holiness the Pope and various other emissaries were sent to other capitals.

Upon my return in January 1966, while the pause was still in effect and again expressing the view that the Security Council ought to aid in the search for peace in Vietnam, I also again consulted privately with members of the Security Council to determine whether action by the Council would, in their view, be appropriate and helpful in the cause of peace. This was early in January while the bombing pause was in effect.

My canvass disclosed a general view of the members of the Council that a meeting of the Council at that point would jeopardize diplomatic efforts which were then underway.

These diplomatic efforts, as we all know very regrettably failed late in January, and the bombing of North Vietnam was resumed. On January 31, I requested a meeting of the Security Council on Vietnam. The Council convened the next day February 1. We laid before it a United States draft resolution, the text of which is as follows:

The Security Council, deeply concerned at the continuation of hostilities in Vietnam, mindful of its responsibilities for the maintenance of international peace and security, noting that the provisions of the Geneva Accords of 1954 and 1962 have not been implemented, desirous of contributing to a peaceful and honorable settlement of the conflict in Vietnam, recognizing the right of all peoples, including those in Vietnam, to self-determination,

1. Calls for immediate discussions without preconditions at (blank) on (date) among the appropriate interested governments to arrange a conference looking toward the application of the Geneva Accords of 1954 and 1962 and the establishment of a durable peace in Southeast Asia;

2. Recommends that the first order of business of such a conference be arrangements for a cessation of hostilities under effective supervision;

3. Offers to assist in achieving the purposes of this resolution by all appropriate means, including the provision of arbitrators or mediators;

4. Calls on all concerned to cooperate fully in the implementation of this resolution;

5. Requests the Secretary General to assist as appropriate in the implementation of this resolution.

The Security Council discussed the matter for two days, on February 1 and 2, 1966. The position of the Soviet Union with respect to United Nations competence to deal with the Vietnam conflict was stated by its Representative, Ambassador Fedorenko, my colleague in the UN, during the debate in these words:

The Soviet delegation deems it essential to state that it objects to the convening of the Security Council for the discussion of the question of Vietnam and
declares itself to be against the inclusion of the present item in the agenda of the Security Council.

And at a later point in the debate Ambassador Fedorenko went on to say, and again I quote:

I should like to quote a message stating the position of the National Liberation Front of South Vietnam. This organization today published a statement in reply to the decision of the United States of America to bring the problem of Vietnam to the Security Council. In that statement it is pointed out that the Security Council has no right to take any decisions on questions involving South Vietnam and that all resolutions of the Security Council on the question of Vietnam will be null and void as far as the National Liberation Front is concerned.

It is also pertinent, Mr. Chairman, to note the observations of the Representative of France, then Ambassador Seydoux, on this question, and I single these quotations out, Mr. Chairman, because they are from the permanent members of the Council and carry important implications:

My government does not believe that the United Nations constitutes the proper framework for achieving a peaceful solution of the Vietnam conflict. A debate before the Security Council might run the risk of resulting ultimately—as has happened in the past—only in a vain confrontation and in demonstrations of purely formal character.

**VERBATIM RECORDS OF COUNCIL MEETINGS**

I should like with your permission, Mr. Chairman, to submit to the committee the verbatim records of the three Council meetings which took place on those dates so that the views of all of the members can be before the committee.

The Chairman. They will be included in the record. (The material referred to is on file with the committee.)

**INSRIPTION DEBATE TO PLACE MATTER ON COUNCIL AGENDA**

Ambassador Goldberg. As the committee knows from its very close attention to this problem which it has always manifested, the inscription of an item on the agenda of the Security Council is, under the Council's rules, a procedural question, and when we use the word "inscription" in the U.N., it means the adoption of the agenda placing the matter before the Council for substantive discussion.

Since inscription is procedural it is therefore not subject to the veto under article 27 of the charter, but can be accomplished by any nine affirmative votes. On the afternoon of February 2, we proceeded to a vote. The result was: For inscription, nine: Argentina, China, Japan, Jordan, New Zealand, Netherlands, United Kingdom, United States, Uruguay. Opposed, in other words, voting no, Bulgaria, Soviet Union. Abstentions, four: France, Mali, Nigeria, Uganda. While there is a difference between noes and abstentions, the net effect of a combination of no and abstention votes if seven in number would be to defeat inscription.

Let me point out that a number of the favorable votes on inscription—

The Chairman. That isn't quite right: not nine in number of abstentions and noes; It would take nine affirmative votes.

Ambassador Goldberg. Yes, it takes nine affirmative votes so if you could not get the nine because of abstentions and noes then it could not be inscribed. I was merely trying to say that for all practical
purposes an abstention is the same as a no and the no is the same as an abstention on procedural matters. On a substantive matter a no vote by the Soviet Union would be a veto and that would end the matter as far as the Council’s decision is concerned.

Let me point out that a number of the favorable votes on inscription were cast on the understanding that the Council would not proceed forthwith to consider the matter substantively, but that instead informal consultations would be held as to the future course of action. Only on this basis was it possible to obtain the necessary nine votes for inscription.

Accordingly, immediately after the vote the President of the Council who was then, my colleague, Ambassador Matsui of Japan, adjourned the Council with the consent of the members so that the agreed-upon consultations could be held, and very intensive consultations were then held by Ambassador Matsui very skillfully over the three weeks that followed. He summed up the results of these consultations in a letter to the members of the Council dated February 26. He reported that he had found differences of view among the members, principally on, and I quote him, “the wisdom of the Council considering the problem of Vietnam at this particular juncture.” He added that these differences had “given rise to a general feeling that it would be inopportune for the Council to hold further debate at this time.”

AMBASSADOR MATSUI’S LETTER

Ambassador Matsui’s entire letter is pertinent to the committee’s inquiry, and with your permission, Mr. Chairman, I should like to submit it for the record.

The CHAIRMAN. Without objection, it will be included.

(The letter referred to follows:)

LETTER DATED 26 FEBRUARY 1966 FROM THE PRESIDENT OF THE SECURITY COUNCIL TO THE SECRETARY-GENERAL

I have the honour to transmit herewith the text of a letter dated 26 February 1966, addressed by me to the members of the Security Council. I should be grateful if Your Excellency would kindly have this letter reproduced as a document of the Security Council.

Please accept, etc.

(Signed) AKIRA MATSUI, President of the Security Council.

As you know, at the 1273rd meeting of the Security Council on 2 February 1966, following the adoption of the agenda for that meeting, namely, the letter dated 31 January 1966, addressed to the President of the Security Council by the Permanent Representative of the United States of America (S/7105), I suggested that informal and private consultations be held in order to decide on the most effective and appropriate way of continuing our debate in the future, and that, to this end, the meeting be adjourned until an exact date and time could be arranged for the next meeting.

That suggestion was approved without objection and it was so decided by the Council.

Pursuant to that decision, I felt obliged, as President of the Council for the month of February, to make myself available in arranging the informal and private consultations envisaged by the Council in its decision. I have endeavoured to carry out this task with members of the Council both individually and collectively. I have also conferred with the Secretary-General, who has expressed to me his own views of the situation.

It is clear to me that members of the Council have every right to be informed of the results of these consultations. I feel, indeed, that it is my duty, as President of the Council, so to inform members.
A useful exchange of views has taken place; on the other hand, some serious differences of views remain unresolved.

The principal difference among members on the procedural question at issue relates to the wisdom of the Council considering the problem of Viet-Nam at this particular juncture. Although it was felt by a number of members that the Council might find some way to contribute towards a solution of the Viet-Nam problem, others took the position that consideration of the problem in the forum of the Council would not be useful under present circumstances; some members, adhering to positions they had expressed when adoption of the provisional agenda was discussed on 1 and 2 February, did not choose to participate in consultations.

These differences of views have made it impossible for me to report, at this stage, agreement on a precise course of action the Council might follow. They have also given rise to a general feeling that it would be inopportune for the Council to hold further debate at this time and, rather than a formal meeting of the Council, a report by me in the present form has appeared to be the most appropriate step that could be taken. I have decided, therefore, to take this step under the present extraordinary circumstances.

It would not be appropriate for me to refer, in a formal and public document such as this, to the views that individual members expressed in the course of informal and private consultations. Nevertheless, throughout the Council's proceedings of 1 and 2 February and the consultations stemming therefrom, I believe I could detect a certain degree of common feeling among many members of the Council which might be summarized as follows:

1. There is general grave concern and growing anxiety over the continuation of hostilities in Viet-Nam and a strong desire for the early cessation of hostilities and a peaceful solution of the Viet-Nam problem;

2. There appears also to be a feeling that the termination of the conflict in Viet-Nam should be sought through negotiations in an appropriate forum in order to work out the implementation of the Geneva Accords.

It is my understanding that the Council, having decided on 2 February to place on its agenda the item contained in the letter dated 31 January by the Permanent Representative of the United States of America (S/7105), remains seized of the Viet-Nam problem.

May I conclude by expressing my personal hope that efforts will be continued, within and outside of the United Nations, by whatever means may be deemed appropriate, to find an early, peaceful solution of the Viet-Nam question.

I am requesting the Secretary-General to reproduce this letter as an official document of the Council.

I avail myself, etc.

(Signed) AKIRA MATSUI,
President of the Security Council.

ATTITUDE OF COUNCIL MEMBERS TOWARD DEBATE

Ambassador Goldberg. It is important to note also, Mr. Chairman and gentlemen, that the Soviet Union and Bulgaria refused throughout to even join in the consultations which Ambassador Matsui held among the Council members. The Soviet representative, Ambassador Fedorenko, sent a letter to the President of the Council stating his “strong objections” to the procedure followed by Ambassador Matsui, and charging him with “steps that go beyond the limit of his confidence and violate the Security Council's rules of procedure and established practice.” A similar letter was also sent by the Bulgarian representative. I need scarcely add, Mr. Chairman, that in our view and I think in the view of many members of the Council Ambassador Matsui acted quite properly in doing what he did and quite within his authority as President of the Council in reporting to the members of the Council the results of his consultations.

My own canvass taken independently of that of Ambassador Matsui confirmed his assessment that the members of the Council were generally unwilling to proceed with a substantive discussion despite the strong and express preference of the United States that we get on
with the debate. I should also like to add we did have somewhat of a substantive debate as happens in the U.N. in the process of inscribing an item. I made a statement of a substantive character in support of inscription because I could hardly avoid it, and other members spoke to the substance in dealing with the inscription matter as is apparent from the record you have kindly allowed me to file with the committee.

Indeed my canvass showed that this unwillingness to get on with the debate was found even among those members who had voted affirmatively on inscription in the hope that such a vote might sway the negative attitude of the Soviet Union and France in particular.

U.S. CANVASS ON COUNCIL MOOD TO RENEW VIETNAM CONSIDERATION

Since that time, a year and a half ago—it seems to me a very long time, Mr. Chairman, in light of our work at the U.N.—my associates and I at the U.S. mission have periodically reviewed the possibility of renewed consideration of Vietnam by the Security Council. We made a particular point of this during the Tet bombing pause at the beginning of 1967. This also happened to be the time when several of the nonpermanent seats on the Council changed hands, and we engaged in detailed consultations with the members just coming on the Council as well as with those remaining on the Council. But the results of this canvass were no more encouraging than those that had preceded it.

Then, as recently as September of this year, scarcely two months ago, and largely at the initiative of Senator Mansfield and Senator Morse who indicated, as they have previously, strong interest in this matter, at the request of the President I once again conducted an intensive canvass of the members of the Security Council. In these informal consultations in order to attempt to meet the point of view of those who in 1966 had argued that inscription was not desirable because of the competence of the Geneva machinery, we discussed the possibility of Council action, either on the resolution we had offered in January 1966 or on a new formulation. Now the new formulation was designed to take into more specific account the views of those who had argued that the Geneva Conference was the proper forum, not the U.N., and this new draft was as follows:

The Security Council,
Having considered the problem of Vietnam,
Deeply concerned at the situation in Vietnam and the threat it poses to international peace and security,
Believing in the principle of the inviolability of, and respect for, the sovereignty and territorial integrity of states,

Convinced that a solution to this problem is to be found through political and not military means, and that a peaceful solution should be found through negotiations,
Considering, that the Geneva Agreements of 1954 and 1962 constitute a workable basis for peace in Southeast Asia.
1. Reaffirms, on the basis of the Geneva Agreements, the following principles:
   (a) That there should be a complete cease-fire and disengagement by all armed personnel throughout North and South Vietnam at an agreed upon date.
   (b) That there should be no military forces or bases maintained or supported in North and South Vietnam other than those under the control of the respective governments, and all other troops and armed personnel should be withdrawn or demobilized, and all other military bases abolished as quickly as possible and in accordance with an agreed time schedule, during which introductions of additional armed personnel should be prohibited.
(c) That the international frontiers of the states bordering on North and South Vietnam and the demilitarized zone between North and South Vietnam should be fully respected.

(d) That the question of reunification of Vietnam should be settled peacefully by the Vietnamese people in both North and South Vietnam, without any foreign interference.

(e) That there should be international supervision of the foregoing through such machinery as may be agreed upon.

2. Calls for the convening of an international conference for the purpose of establishing a permanent peace in Southeast Asia based upon the principles of the Geneva Agreements.

I regret to report that this recent canvass, once again shows a general unwillingness for the Security Council either to resume its consideration of the agenda item and draft resolution which we proposed in early 1966, or to consider this new draft, or to take any other action on the matter.

COMMENTS OF HANOI, PEKING, AND NLF ON U.N. INVOLVEMENT

It is relevant at this point, Mr. Chairman, and distinguished members of the committee, at this point to note the attitudes of Hanoi and Peking, as well as the National Liberation Front, toward United Nations involvement in the search for peace in Vietnam. All of these have made known their views on the subject many times. I shall cite only a few representative examples, although I have a more comprehensive summary which, with your permission, I shall file with the committee.

The CHAIRMAN. Without objection.

Ambassador GOLDBERG. In late January 1966, the North Vietnamese Foreign Minister declared:


In June 1966, the North Vietnamese Foreign Ministry said:

The United Nations has absolutely no competence in the Vietnam problem. The fact that the Saigon puppet administration, at U.S. bidding, proposed that the United Nations send its observers to supervise the election farce in South Vietnam is completely illegal and runs counter to the 1954 Geneva agreements on Vietnam and international law.

Then in September 1966, the Premier of North Vietnam, Pham Van Dong, said in a speech:

On the occasion of the current session of the United Nations General Assembly, they are trying again to use the United Nations as an instrument for their aggressive policy in Vietnam. But the United Nations has absolutely no right whatsoever to intervene in the Vietnam issue.

And recently, when I was conducting soundings in late August and early September of this year among members of the Security Council, and this fact became known, through statements made by other people, other than ourselves where we consulted very broadly as we had been, Hanoi's major daily, Nhan Dan, which reflects the official view, said:

The United States ruling circles are actively trying to get the United Nations to interfere in the Vietnam problem on the occasion of the forthcoming 22d Session of the United Nations General Assembly. United States delegate to the
United Nations Arthur Goldberg has met a number of representatives of various countries.

The Vietnamese people have many times clearly stated that the United Nations has no right whatsoever to interfere in Vietnam. The Vietnam question can only be settled on the basis of the four-point stand of the DRV Government and the five-point stand of the NLF.

The position of the National Liberation Front has been identical with that of Hanoi, as illustrated by the following statement by the central committee of the front on February 2, 1966:

The NLF is determined to expose before the public the United States imperialists' perfidious plot to hide behind the United Nations flag to accelerate the aggressive war in South Vietnam and the war of destruction against North Vietnam. The NLF solemnly declares: The United Nations has no right to make decisions concerning the affairs of the South Vietnamese people.

A similar attitude has been expressed by the Peking government, as can be seen in the following examples.

In April 1965, the People's Daily in Peking ran an editorial which stated:

The Vietnam question has nothing to do with the United Nations. The 1954 Geneva agreements were reached outside the United Nations and the latter has no right whatsoever to interfere in the affairs of Vietnam and Indochina. It is the duty of the countries participating in the Geneva conference to safeguard the Geneva agreements and no meddling by the United Nations is called for, nor will it be tolerated. This is the case today as it was in the past, and so will it remain in the future.

Then, on August 7, 1965—just as I was holding my first consultations with members of the Security Council—the People's Daily said in an editorial:

It is clear to everyone that the United Nations has no right whatever to meddle in the Vietnam question, nor can it solve the issue. The Vietnam question has nothing to do with the United Nations.

We have many other statements from Peking to the same effect, including some of quite recent date, which are included in the document which you have kindly given me permission to file.

(The summary referred to follows:)

SUMMARY OF COMMENTS OF HANOI, PEKING, AND NLF ON U.N. INVOLVEMENT IN SEARCH FOR PEACE IN VIETNAM

LIBERATION FRONT STATEMENTS ON THE VIETNAM QUESTION IN THE UNITED NATIONS


The Liberation Front attached the US in a commentary entitled “What is the purpose of US in making approaches to bring Vietnamese problems before United Nations.” The Front charged that, since Johnson's other attempts to “sell the false goods of peace negotiations” have failed, he has now sought to bring the Vietnam problem before the United Nations. The Liberation Radio also alleged that “Johnson intends to use the UN intervention in Vietnam as a means for the US imperialists to withdraw from the present impasse,” and that Johnson hopes through “the UN organization, which is controlled by the United States, he will obtain a resolution condemning the Vietnamese people and legalizing the participation of a number of new countries in the dirty war.” Finally, the Front claimed that its statement of 22 March 1965 provided “rational and reasonable basis” for settlement, and “apart from that, the South Vietnamese people will not recognize any decision of any organization which wants to solve problems in another way.”
October 4, 1965.—Hanoi VNA International Service in English 0553 GMT 4 October 1965.

In a commentary broadcast over Hanoi radio, the Liberation Press Agency stated that "the United Nations has no competence to discuss the Vietnam question, and that "by dealing with the Vietnam issue, the United Nations is helping the US imperialist abolish the 1954 Geneva agreements on Vietnam." The commentary accused the US of looking for means to "legalize their violation of the 1954 Geneva agreements on Vietnam" by use of the "UN banner to cover up their brazen acts of war and aggression in Vietnam in an attempt to urge the Vietnamese people to let the American troops continue occupying their country."


In an official statement, the Central Committee of the Liberation Front stated on 2 February that "the United Nations has no right to make decisions concerning the affairs of the South Vietnamese people." The Front asserted further that it "will regard all decisions of the UN Security Council as worthless and as violations of the principles relating to the independence, sovereignty, unification, and territorial integrity of Vietnam as guaranteed by the 1954 Geneva Accords."


Acting Chief of the Front delegation in China Nguyen Minh Phuong spoke at a reception in Peking marking the sixth anniversary of the Front. Phuong stated that "the people of South Vietnam will never allow US imperialism to utilize the United Nations to interfere with the South Vietnam question."

September 12, 1967.—Moscow in English to North America 2200 GMT 12 September 1967.

In a Moscow press conference, the front representative to the USSR Dang Quang Minh replied to a question by pointing out that the United Nations has no right to tackle the Vietnam problem.

Chinese Communist Statements Denying Right of UN to Take Up Vietnam Issue

The United Nations is a tool used by the United States to carry out its policies of aggression and war. It has nothing to do with Vietnam. Nor has it any right to intervene in the affairs of the Vietnamese people. The United States will never succeed in its attempt to make use of the United Nations to intervene in Vietnam.—NCNA broadcast, September 3, 1965.

At the present the Johnson administration is plotting to interfere in the internal affairs of the Vietnamese people through the United Nations, though the Vietnamese question has nothing whatsoever to do with the United Nations which has absolutely no right to intervene.—NCNA broadcast, September 23, 1965.

The Lyndon Johnson administration, having resumed the bombing of DRV territory, tried to pursue its war blackmail through the U.N. Security Council, which has no authority to meddle with the Vietnam question, and to gloss over its escalation of the war of aggression against Vietnam.—NCNA broadcast, February 1, 1966.

It is universal knowledge that the United Nations has nothing to do with the Vietnam question and has no right whatever to interfere in it. Whoever proposes, and by whatever manner he may propose, to discuss the Vietnam question in the United Nations is illegal and will be opposed and condemned by the Vietnamese people.—People's Daily editorial entitled, "The United Nations Has No Right to Poke Its Nose into the Vietnam Question," September 24, 1966.

The United Nations is a tool in the hands of the U.S. imperialism, and U Thant is a faithful flunkey of the U.S. imperialists. The several plans so far put forward by U Thant for the alleged purpose of solving the Vietnam question were all in the service of U.S. imperialism. The Vietnam question must be resolved by the Vietnamese people themselves. The United Nations has no right whatsoever to meddle with it, nor should U Thant be permitted to intervene.—People's Daily Commentator Article, March 31, 1967.

The people of the world know full well that the Vietnam question has nothing to do with the United Nations. Vietnam's affairs must be settled by the Vietnamese people themselves and they permit no interference from any outsider. The United Nations has absolutely no right whatsoever to interfere in the question.

The Vietnamese people have always resolutely opposed U.N. intervention in the Vietnam question.

At this crucial period in the Vietnam war against U.S. aggression and for national salvation, anybody who participates in U.N. maneuvers to interfere in
Vietnam is aiding and abetting U.S. aggression in Vietnam and betraying the Vietnamese people. This is utterly impermissible.—People’s Daily editorial, September 27, 1967.

NORTH VIETNAMESE STATEMENTS DENYING UN COMPETENCE ON VIETNAM

The US authorities * * * have requested help from the UN membership at large in getting peace talks started. This is a maneuver to use the UN to impose on the Vietnamese people negotiations under US terms. The DRV Government has on repeated occasions declared that internationally speaking the consideration of the US Government’s war acts against the DRV and the US war of aggression in SVN falls within the competence of the participants in the 1954 Geneva conference on Indochina, and not of the UN. Any UN resolution in furtherance of the above US scheme will be null and void and will completely discredit the UN.”—FBIS Daily Report of September 23, 1965 Hanoi VNA in English of September 23, 1965.

The DRV Government has on many occasions declared that on the international field it is within the competence of the participating countries of the 1954 Geneva conference on Indochina, but not of the UN, to consider the acts of war of the US Government against the DRV and the US aggressive war in South Vietnam. * * * Any resolution of the UN on the above questions are completely illegal and null and void, and only impair still further the US prestige.”—FBIS Daily Report of September 24, 1965 Hanoi VNA in English of September 23, 1965, quoting DRV Foreign Ministry Memorandum of September 23, 1965.

The UN has no right to discuss the Vietnam problem * * * any UN resolution on the Vietnam problem will be completely illegal and null and void. By so doing, the UN itself will trample upon its charter and bring discredit to itself. If it has real power, the UN should compel the US—one of its members—to stop its aggressive war in Vietnam.”—FBIS Daily Report of September 27, 1965 Hanoi VNA in English of September 24, 1965, quoting Nhan Dan editorial of September 24, 1965.

The spokesman of the DRV Foreign Ministry today issued a statement protesting the US renewed attempt to raise the Vietnam question before the UN Security Council * * * The government of the DRV reaffirms once again that on the international plane, the consideration of the US war acts in Vietnam falls within the competence of the 1954 Geneva conference on Indochina and not of the UN Security Council. Any resolution by the UN Security Council intervening in the Vietnam question will be null and void.”—FBIS 102 of February 1, 1966 Hanoi VNA in English February 1, 1966.

The Government of the DRV has many times declared that the UN absolutely has no right to interfere in the Vietnam problem. All the decisions, resolutions, or other acts of the UN in any form concerning the Vietnam problem, are null and void.”—FBIS 16 of October 8, 1966 Hanoi VNA in English October 8, 1966 on “US schemes”.

The Brown (British Foreign Minister) program advocates an international supervision and control of the implementation of the preceding (four) points. This runs completely counter to the Geneva Agreements on Vietnam. To include many countries of the international supervision and control commission in Vietnam and to set up an internal police force in Cyprus are a maneuver of the British Government to make the UN interfere in the Vietnam problem. What right has the UN in Vietnam?”—FBIS 44 of October 8, 1966 Hanoi VNA in English October 8, 1966.

To call on both sides to cease fire and hold unconditional negotiations while the US is committing aggression against Vietnam and taking serious steps in its military escalation in both zones of Vietnam is to make no distinction between the aggressor and the victim of aggression, to depart from reality, and to demand that the Vietnamese people accept the conditions of the aggressors.

By the way, it is necessary to underline once again the views of the Government of the DRV, which has pointed out that the Vietnam problem has no concern with the United Nations and the United Nations has absolutely no right to interfere in any way in the Vietnam question.”—FBIS Daily Report (Asia and Pacific) of March 28, 1967 DRV Foreign Ministry Comment on U Thant’s statement quoted in UN Bulletin 24 Hanoi VNA in English of March 27, 1967.

“By getting (sic) the UN to interfere in Vietnam is a shopworn plot of the US imperialists in their aggression against Vietnam. The US has long been schem-
ing to get its henchmen seated in the UN over the past years, and it has many times attempted through the UN to legalize its war of aggression against Vietnam... The Vietnamese people have many times clearly stated the the UN has no right whatsoever to interfere in Vietnam."—FBIS Daily Report (Asia and Pacific) of September 11, 1967 Hanoi VNA in English of September 10, 1966 quoting a Nhan Dan commentary of September 10, 1967.

EFFORTS ON BEHALF OF THE ADMINISTRATION

Now, Mr. Chairman, this is the record of my efforts on behalf of the Administration and the President to enlist the United Nations and specifically the Security Council in the search for peace in Vietnam.

I must confess that the failure of these efforts has been my keenest disappointment and my greatest frustration during my service for our Government at the United Nations. I frankly had hoped for a much more constructive and positive role of the United Nations when I took on this assignment for our country. But, Mr. Chairman, in spite of these rebuffs, I do not intend, as long as I occupy my present post, to diminish my efforts in this cause.

I repeat my conviction that Senator Mansfield's resolution, if it is adopted by the Senate, as I hope and trust it will be, will support the efforts I am making at the United Nations at the President's direction. The resolution, as I understand it, is intended to express the sense of the Senate and appropriately leaves the timing and circumstances of action in the Security Council for Presidential determination.

For my part, I promise this committee and the American people, in keeping with the spirit of the resolutions that you are considering, to persevere with all the resources at my command to the end that the Security Council may carry out its clear responsibilities under the charter with respect to Vietnam. I shall do so in the conviction that if there is any contribution that diplomacy—in or out of the United Nations—can make to hasten the end of this conflict, none of us can in good conscience spare any effort or any labor to make that contribution—no matter how frustrating past efforts may have been, or how many new beginnings may be required. The admirable courage and perseverance of our men on the battlefield must be fully matched by our perseverance in seeking, through diplomacy, to find the common ground on which a fair and honorable political settlement can be built.

I thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Ambassador.

I think that is an extraordinarily clear and very fine statement, and I think it does great credit to your representation of this country in the United Nations.

There are a few questions I want to go into quickly, much quicker than I would like, in order that other members may have an opportunity to put questions.

INTENTION TO RECONVENE GENEVA CONFERENCE

May I ask regarding the current proposal that you have or expect to submit, which—

Calls for the convening of an international conference for the purpose of establishing a permanent peace in Southeast Asia based upon the principles of the Geneva Agreements.
Is it proper to interpret that as meaning the same as the reconvening of the Geneva conference under the cochairmanship of the United Kingdom and the U.S.S.R., with the same membership participating?

Ambassador Goldberg. Yes, Mr. Chairman.

It is intended to reaffirm our willingness to have that done. It is also intended to add a little more flexibility because there have been some indications from the other side that perhaps some other conference might be desirable. But we would be entirely willing, and we would be interpreting this clause to mean that the Geneva conference, with the same membership should be reconvened.

The Chairman. On several occasions, the other side, the North Vietnamese and, I think, as one of your citations of the Chinese said, that that is the competent forum in which this matter should be settled; is that not correct?

Ambassador Goldberg. There have been some recent statements particularly from China further qualifying their former position, and our formulation was intended to be more encompassing so as not to exclude any type of international conference, but we believe the most appropriate would be the reconvening of the Geneva Conference as you have said.

The Chairman. And from time to time, the Soviet Union has also stated that the conference was a proper forum; is that not correct?

Ambassador Goldberg. That is correct, but the Soviet Union has not responded to our repeated invitation to them to join with the British in reconvening the conference.

The Chairman. I realize that.

Reconvening of Geneva Conference

Let me say, I certainly am sympathetic with your view that Hanoi has been very unresponsive to these offers and it is quite beyond my comprehension as to why. I don't understand their reluctance or their refusal to do it except possibly they may interpret this move to mean the United Nations is going itself to undertake to deal with the substantive question. Now, this may be a point, I am not clear, I don't know, of course, whether or not that is their reason, but if that should be so that they interpreted this as a move on our part to use the U.N. to solve the problem then they, not being a member have some reason for it. Even so, I would not agree with their position at all. I think that it would be perfectly proper if they would agree to come and submit the matter to the United Nations.

But in any case, seeking to find some basis upon which we might get a reconvening of the Geneva conference, it has seemed to me that this point is very important. I confess that if this is the purpose, to reconvene the Geneva conference, I cannot possibly understand the attitude of the French Government or of the Soviet Government in refusing to take the position in the Security Council that this would be a proper mode of procedure because you do not deal with it substantively.

I think some of the statements of the Soviets and of the French that I have seen and some which you cite seem to indicate that they believe, too, that we are attempting to use the Security Council itself to deal with the substantive question; is that correct?
Ambassador Goldberg. I shared your apprehensions about this, Mr. Chairman, and in the inscription debate in 1966 after listening to the comments made by the Soviet Union and by France and having read some of these editorials which appeared at the time, I specifically addressed myself to that problem in the same light as you have just done, trying to make clear that while we believe, and had to believe under the charter, that the Security Council had competence, nevertheless, in light of what they are saying about it, it was not our proposal that the U.N. itself settle the matter, but rather, we were trying to get the great influence and prestige of the Security Council behind the reconvening of the Geneva conference, and I think the statement you made today is a helpful statement. I endorse it completely, and I also am puzzled why, in light of their contention on the basis that the Geneva conference is the forum, why they can possibly object to a Security Council resolution which supports the reconvening of the forum which it is asserted by them is the appropriate forum.

The Chairman. That is right. This really raises a question of their good faith, in my mind. If they really are interested in being of assistance in stopping this serious conflict, I am at a loss to understand why they would refuse to reconvene the conference if the members of the Security Council so recommend. That would particularly apply to France and the Soviet Union who have both on numerous occasions stated publicly that this was the way to proceed.

ATTITUDE OF NONPERMANENT MEMBERS OF COUNCIL

Now, I am not aware of the previous statements of some of the nonpermanent members of the Security Council. You don't have time, of course, to outline them, but in your consultations, I can't understand why they would not, at least nine of them, agree to this. Do you think they understand this point?

Ambassador Goldberg. I think they must understand it, Mr. Chairman, and gentlemen. I have before me the statement I made, which is in your record, after the debate that we had in February of 1966, and I said this—I should like to read, if I may, just a paragraph or two.

Now I shall turn to some of the questions raised by members in the course of our discussion. I should like to deal with what was first pointed out by my friend, our former President, the Representative of France, whose wisdom I have learned to appreciate very much and whose friendship I deeply value. The question he raised is an important one and has been raised by others, the representative of Mali, the representative of Uganda, and it has been adverted to by the representative of Bulgaria and I think was mentioned also by our esteemed colleague, Mr. Fedorenko of the Soviet Union. Their point is this: It has been pointed out by them that the Geneva conference at which all parties to the conflict are represented, has been the international body which has in the past dealt with the problems of Vietnam, and it has been claimed that it still remains the appropriate body to do so. The United States has no quarrel with this contention. We have repeatedly stated that we would welcome the reconvening of the Geneva conference for this purpose. It has been correctly pointed out that the purpose of our draft resolution is to assist in what thus far it has not been possible to realize, the reconvening of the Geneva Conference. That has not been possible to realize not because of any opposition on the part of the United States. Quite the contrary. Under these circumstances, therefore, the choice before the members of the Security Council is not whether to deal with this problem in the Council or to deal with it in Geneva, but whether to deal with it at all. The door to Geneva is at least for the time being closed and the question we have to decide is a plain
SUBMIT VIETNAM CONFLICT TO UNITED NATIONS

and simple one: Do we wish also to close the door to the United Nations? What will the people of the world say if we do?

The Chairman. You have made that very clear this morning, much clearer than it has ever been made before, although I think your speech in August went very far in this direction. I must say I thought it was an excellent speech and I am at a loss to understand why so many members of the Assembly have recently made speeches critical of our country, and of the bombing in view of your speech. I can't believe they understand what we really mean. So I am particularly pleased that you support this resolution of Senator Mansfield. I predict that if this is properly handled, and I have every confidence it will be by you, that this will make a great impression upon a number of those people who have been critical. I don't see how they could object to this procedure.

Senator Sparkman?

Senator Sparkman. Mr. Chairman, let me say that I certainly endorse everything the Chairman has said. I have been very much impressed with your statement, Ambassador Goldberg. It seems to me that you have gone into the matter most carefully and pointedly, and I don't see much left to question you about.

I am puzzled as is the Chairman, about the attitude of many of these countries, as to why they could not accept what seems to be the clear responsibility of the Security Council under the charter of the United Nations to take some kind of action. It seems to me that you have probed in just about every direction that you can to find some action that they could agree to take.

AGREEMENT ON RECONVENING GENEVA CONFERENCE

Does the Geneva Conference have the power to reconvene itself?

Ambassador Goldberg. Under the rules of the conference, the two cochairmen, the Soviet Union and Great Britain, may reconvene the conference.

Senator Sparkman. But it cannot be reconvened unless both chairmen agree to it?

Ambassador Goldberg. That is correct.

Senator Sparkman. And so far the chairmen have not agreed to do so?

Ambassador Goldberg. The British have repeatedly indicated their willingness to do so by public statements and by private letters to the other cochairman as recently as in the Assembly of the United Nations last month.

Senator Sparkman. Does the Soviet representative give reasons for his unwillingness to reconvene the conference?

Ambassador Goldberg. Basically, if I were to interpret his reasons, his reasons are that Hanoi does not want the conference reconvened. He always says that the Soviet Union does not want to, but he always reads the statements made either by Hanoi or the NLF, and my interpretation is that that is the basis for the decision taken by the Soviet Union. That is my interpretation, Mr. Chairman. He also asserts that they are unwilling, but that is my interpretation.

Senator Sparkman. How many countries constitute the Geneva Conference?
Ambassador Goldberg. The Geneva Conference, there are quite a number.

The Chairman. Are you talking about the 1954 one or the 1962 one? There are nine in the first; 14 in the second.

Ambassador Goldberg. There are a larger number.

Senator Sparkman. Fourteen in the one that prevails at the present time. I believe you have put to them that we would be willing to proceed under either the 1954 or the 1962 arrangement; is that right?

Ambassador Goldberg. That is correct. Although we do feel that if a conference were to be held it would be highly desirable to deal with both issues because it would be necessary to deal with peace in that part of the world, and would be highly desirable to deal with the problems in Laos, Cambodia, because they are related problems, as well as Vietnam.

Senator Sparkman. But the membership is powerless to act in the absence of the agreement of the two chairmen.

Ambassador Goldberg. That is correct, Senator Sparkman.

Senator Sparkman. Mr. Ambassador, I want to commend you for what I consider the excellent job that you have been doing for us in the United Nations and for your presentation here today.

Ambassador Goldberg. Thank you.

Senator Sparkman. That is all, Mr. Chairman.

MEMBERSHIP OF GENEVA CONFERENCES

The Chairman. For the record, Mr. Ambassador, unless it is already in would you insert the membership of both Geneva conferences and also the present membership of the Security Council?

Ambassador Goldberg. Yes; I shall be very glad to do so.

(The material referred to follows:)

MEMBERSHIP OF GENEVA CONFERENCES

1954

I. Participants

Cambodia
China (Communist)
France
Laos
United Kingdom
United States
U.S.S.R.
Vietnam, State of (South)
Vietnam, Democratic Republic of (North)

1962

Burma
Cambodia
Canada
China (Communist)
France
India
Laos

1 Popularly known as Viet Minh.

2 During the conference, there were three Laotian representatives invited to sit at the table with equal status: one representing the neutral faction, one representing the leftist faction, and one representing the rightist faction.

The U.S.S.R. looked upon the neutral faction as representing the Royal Lao Government; the United States looked upon the rightist faction as representing the Royal Lao Government. The conference adjourned for several months to permit the three factions to untangle their conflicting claims. They finally reached an agreement (in June of 1962) to establish a government of national union, and it was this government which accepted the agreements reached at the conference.