AS:jh

cc: Files
Gauf
Scalia

APR 12 1975

out 4/12/75
@ 12:30pm
via JM. Knowles

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Use of Troops in Vietnam and Cambodia

For your information, our involvement in this matter was as follows:

We were consulted Thursday morning by Rod Hills and were asked to advise him within an hour what restrictions existed upon the President's use of troops in Vietnam and Cambodia for the purpose of evacuating American citizens, and foreigners whose lives would be endangered by reason of their close association with the United States. We understood that a decision had already been made to ask the Congress, in the President's speech, for whatever additional authority was necessary.

We advised Mr. Hills that we believed there were two possible impediments: (1) the War Powers Resolution of 1973 (copy attached), and (2) explicit limitations on expenditures in various appropriations acts (copy attached of a provision which we were advised by DOD was standard). As to the former, the language of section 2(c) would clearly prevent all of the action contemplated. However, as the language of that section indicates, it was intended only as an expression of the Congress' interpretation of the Constitution. Section 8(d)(1) makes it clear that the Resolution was not intended to effect any statutory proscription of any further constitutional powers the President might possess. We advised that in our view there was Presidential power under the Constitution to use troops for the purpose of evacuating (as opposed to enabling the continuing presence of) American citizens in foreign countries. We thought it unlikely that that constitutional power would extend to an evacuation exclusively of foreign nationals--which is not to say that no foreign nationals can be included in an American-protected evacuation.

As to the appropriations limitations, we expressed the view that use of troops merely to safeguard an evacuation would not constitute "the involvement of United States

military forces in hostilities." We indicated that there was of course room for argument over that interpretation, but that if the operation were properly limited, as was done last night in Cambodia, the action could be sustained.

The only other involvement of this office in the matter has been the attendance of my first Deputy, Leon Ulman, at a White House meeting yesterday for the principal purpose of drafting legislative proposals which would achieve what the President requested in his speech. At that time, I understand some discussion was also held concerning your immigration parole power, which Mr. Ulman conveyed to Mr. Marvin of your staff.

I will be happy to discuss this matter with you further. I will probably be in the office until mid-afternoon and at home after that. For your convenience, I attach a copy of that portion of the President's April 10 speech dealing with this subject.

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

Attachments (3)

MISUSE OF NAMES—FEDERAL AGENCIES

For Legislative History of Act, see p. 2344

PUBLIC LAW 93-147; 87 STAT. 554

[H. R. 689]

An Act to amend section 712 of title 18 of the United States Code, to prohibit persons attempting to collect their own debts from misusing names in order to convey the false impression that any agency of the Federal Government is involved in such collection.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

(a) Section 712 of title 18 of the United States Code[57] is amended to read as follows:

"§ 712. Misuse of names, words, emblems, or insignia

"Whoever, in the course of collecting or aiding in the collection of private debts or obligations, or being engaged in furnishing private police, investigation, or other private detective services, uses or employs in any communication, correspondence, notice, advertisement, or circular the words 'national', 'Federal', or 'United States', the initials 'U.S.', or any emblem, insignia, or name, for the purpose of conveying and in a manner reasonably calculated to convey the false impression that such communication is from a department, agency, bureau, or instrumentality of the United States or in any manner represents the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.".

(b) The table of sections for chapter 33 of title 18 of the United States Code is amended by striking out of the item designated

"712. Misuse of names by collecting agencies to indicate Federal agency."

and inserting in lieu thereof

"712. Misuse of names, words, emblems, or insignia.".

Approved Nov. 3, 1973.

WAR POWERS RESOLUTION

For Legislative History of Act, see p. 2346

PUBLIC LAW 93-148; 87 STAT. 555

[H. J. Res. 542]

Joint Resolution concerning the war powers of Congress and the President.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:

SHORT TITLE

Section 1. This joint resolution may be cited as the "War Powers Resolution".

57. 18 U.S.C.A. § 712.

PURPOSE AND POLICY

Sec. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

CONSULTATION

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

REPORTING

Sec. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

CONGRESSIONAL ACTION

Sec. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a decla-

ration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

Sec. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

Sec. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent

resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

Sec. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the head-

quarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

SEPARABILITY CLAUSE

Sec. 9. If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

Sec. 10. This joint resolution shall take effect on the date of its enactment.

Passed over Presidential veto Nov. 7, 1973.

SEC. 806. Notwithstanding any other provision of law, upon enactment of this Act, no funds heretofore or hereafter appropriated may be obligated or expended to finance the involvement of United States military forces in hostilities in or over or from off the shores of North Vietnam, South Vietnam, Laos, or Cambodia, unless specifically authorized hereafter by the Congress.

SEC. 807. (a) The first section of the Act entitled "An Act to authorize the making, amendment, and modification of contracts to facilitate the national defense", approved August 28, 1958 (72 Stat. 972; 50 U.S.C. 1431),[15] is amended by adding at the end thereof the following: "The authority conferred by this section may not be utilized to obligate the United States in any amount in excess of $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such obligation. For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period."

(b)(1) The second sentence of section 302 of the Defense Production Act of 1950 (50 App.U.S.C. 2092)[16] is amended by inserting "(1)" immediately after "except that" and by striking out the period at the end of such section and inserting in lieu thereof a comma and the following: "and (2) no such loan may be made in an amount in excess of $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed loan and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such loan."

(2) Section 302 of such Act is further amended by adding at the end thereof a new sentence as follows: "For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period."

(c) Section 2307 of title 10, United States Code,[17] is amended by adding at the end thereof a new subsection as follows:

"(d) Payments under subsection (a) in the case of any contract, other than partial, progress, or other payments specifically provided for in such contract at the time such contract was initially entered into, may not exceed $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period."

(d)(1) Section 18(a) of the Military Selective Service Act (50 U.S.C.App. 468) is amended by inserting before the period at the end of the first sentence a comma and the following: "except that no order which requires payments thereunder in excess of $25,000,000 shall be placed with any person, unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed order and 60 days of continuous session of Congress have expired following the date

15. 50 U.S.C.A. § 1431.
16. 50 App.U.S.C.A. § 2092.
17. 10 U.S.C.A. § 2307(d).
18. 50 U.S.C.A. § 468.

floods of refugees, and that led to
mic. The results are painfully obvious
id profoundly moving.
In my first public comment on this
gic development, I called for a new
nse of national unity and purpose. I
id I would not engage in recrimina-
ns or attempts to assess the blame.
eiterate that tonight.
In the same spirit, I welcomed the
tement of the distinguished majority
the United States Senate earlier this
ek, and I quote: "It's time for the
ngress and the President to work to-
ther in the area of foreign as well as
mestic policy."
So let's start afresh.
am here to work with the Congress.
the conduct of foreign affairs, Presi-
tial initiative and ability to act
ftly in emergencies are essential to
national interest.
With respect to North Vietnam, I
upon Hanoi—and ask the Congress
join with me in this call—to cease
tary operations immediately and to
or the terms of the Paris agreement.
United States is urgently request-
the signatories of the Paris con-
nce to meet their obligations to use
r influence to halt the fighting and
nforce the 1973 accords. Diplomatic
s to this effect have been sent to
members of the Paris conference,
uding the Soviet Union and the
ple's Republic of China.
ne situation in South Vietnam and
bodia has reached a critical phase
iring immediate and positive deci-
s by this Government.

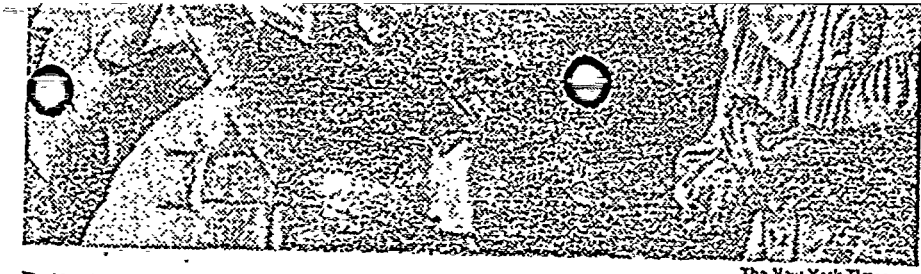
The Options Are Few

ne options before us are few, and
time is very short.
n the one hand, the United States
l do nothing more; let the Govern-
t of South Vietnam save itself and
t is left of its territory if it can;
those South Vietnamese civilians
have worked with us for a decade
nore, save their lives and their
lies if they can; in short shut our
and wash our hands of the whole
r—if we can.
on the other hand, I could ask
ress for authority to enforce the
accords with our troops and our
s and our aircraft and our artillery,
o carry the war to the enemy.
ere are two narrower options:
st, stick with my January request
the Congress appropriate $300,000,
for military assistance for South
am and seek additional funds for
mic and humanitarian purposes.
increase my requests for both em-
cy military and humanitarian as-
ce to levels which by best esti-
s might enable the South Vietnam-
stem the onrushing aggression, to
ze the military situation, permit
liance of a negotiated political set-
nt between the North and South
amese, and, if the very worst were
ppen, at least allow the orderly
ation of Americans and endan-
South Vietnamese to places of

me now state my considerations
onclusions:

Advice From Weyand Cited

ave received a full report from



The New York Times

Betty Ford and two of her children, Susan and John, applauding as President Ford arrived to speak before a joint session of Congress last night.

Fundamental decency requires that we do everything in our power to ease the misery and the pain of the monumental human crisis which has befallen the people of Vietnam. Millions have fled in the face of the Communist onslaught and are now homeless and are now destitute. I hereby pledge in the name of the American people that the manitarian effort to help care for and United States will make a maximum hufeed these hopeless victims.

Clarifications Are Urged

And now I ask the Congress to clarify immediately its restrictions on the use of U.S. military forces in Southeast Asia for the limited purposes of protecting American lives by insuring their evacuation, if this should be necessary. And I also ask prompt revision of the law to cover those Vietnamese to whom we have a very special obligation and whose lives may be endangered, should the worst come to pass.

I hope that this authority will never have to be used, but if it's needed there will be no time for Congressional debate.

Because of the gravity of the situation, I ask the Congress to complete action on all these measures not later than April 19.

In Cambodia the situation is tragic. The United States and the Cambodian Government have each made major efforts—over a long period and through many channels—to end that conflict. But because of their military successes, steady external support, and their awareness of American legal restrictions, the Communist side has shown no interest in negotiation, compromise, or a political solution.

And yet, for the past three months the beleaguered people of Phnom Penh have fought on, hoping against hope that the United States would not desert them, but instead provide the arms and ammunition they so badly need.

I have received a moving letter from the new Acting President of Cambodia, Saukham Khoy. And let me quote it for you.

"Dear Mr. President," he wrote. "As the American Congress reconvenes to reconsider your urgent request for supplemental assistance for the Khmer Republic, I appeal to you to convey to the American legislators our plea not to deny these vital resources to us, if a nonmilitary solution is to emerge from this tragic five-year-old conflict.

"To find a peaceful end to the conflict we need time. I do not know how much time, but well all fully realize that the agony of the Khmer people cannot and must not go on much longer.

And we will uphold our country's principles.

The American people know that our strength, our authority and our leadership have helped prevent a third world war for more than a generation. We will not shrink from this duty in the decades ahead.

And let me now review with you the basic elements of our foreign policy, speaking candidly about our strengths and some of our difficulties.

We must first of all face the fact that what has happened in Indochina has disquieted many of our friends, especially in Asia. We must deal with this situation promptly and firmly. To this end, I have already scheduled meetings with the leaders of Australia, New Zealand, Singapore and Indonesia, and I expect to meet with the leaders of other Asian countries as well.

A key country in this respect is Japan. The warm welcome I received in Japan last November vividly symbolized for both our peoples the friendship and the solidarity of this extraordinary partnership. I look forward, as I'm sure all of you do, with every special pleasure to welcoming the Emperor when he visits the United States later this year.

We consider our security treaty with Japan the corner stone of stability in the vast reaches of Asia and the Pacific. Our relations are crucial to our mutual well-being. Together we are working energetically on the international multilateral agenda—in trade, energy and food. We will continue the process of strengthening our friendship, mutual security and prosperity.

Also, of course, of fundamental importance is our mutual security relationship with the Republic of Korea, which I reaffirmed on my recent visit. Our relations with Europe have never been stronger. There are no peoples with whom America's destiny has been more closely linked. There are no peoples whose friendship and cooperation are more needed for the future. For none of the members of the Atlantic Community can be secure, none can prosper, none can advance unless we all do so together. More than ever, these times demand our close collaboration in order:

¶To maintain the secure anchor of our common security in this time of international riptides.

¶To work together on the promising negotiations with our potential adversaries.

To pool our energies on the great new economic challenge that face us.

New Problems and Decisions

In addition to this traditional agenda,

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The momentum
has been achieve
months must and
The active role
to a major effort f
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proceed. We have
to reconvene the
We are prepared
other forums. The
move ahead on wh
most promising