

INFORMATION

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Pres file

Wednesday, November 29, 1967 -- 4:45 pm

Mr. President:

You asked for an authoritative interpretation of our responsibilities under the SEATO Treaty. In the marked passages of the attached two papers the following question is dealt with: whether the defense obligations set forth in Article IV, paragraph 1, of the Treaty are individual as well as collective. As the covering note indicates: "For more than five years, the United States has made plain that it considers each party to the Treaty to have such an individual obligation under the Treaty provision."

W. W. Rostow

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DEPARTMENT OF STATE

Washington, D.C. 20520

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November 24, 1967

MEMORANDUM FOR MR. WALT W. ROSTOW
THE WHITE HOUSE

Subject: Applicability of the SEATO Treaty
to Viet Nam

In accordance with Secretary Rusk's request, I am enclosing with this note copies of two papers that discuss the applicability of the SEATO Treaty to Viet Nam. Each of these takes up the question whether the defensive obligations set forth in Article IV, paragraph 1 of the Treaty are individual as well as collective. For more than five years, the United States has made plain that it considers each party to the Treaty to have such an individual obligation under the Treaty provision. I have marked the portions of the attached papers that are directed to this point.

LCM

Leonard C. Meeker
The Legal Adviser

Enclosures:

1. Department of State memorandum of March 4, 1966 entitled "The Legality of US Participation in the Defense of Viet Nam."
2. Background Paper for SEATO Council Meeting in April 1967.

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G. International Law Does Not Require a Declaration of War as a Condition Precedent To Taking Measures of Self-Defense Against Armed Attack

The existence or absence of a formal declaration of war is not a factor in determining whether an international use of force is lawful as a matter of international law. The United Nations Charter's restrictions focus on the manner and purpose of its use and not on any formalities of announcement.

It should also be noted that a formal declaration of war would not place any obligations on either side in the conflict by which that side would not be bound in any event. The rules of international law concerning the conduct of hostilities in an international armed conflict apply regardless of any declaration of war.

H. Summary

The analysis set forth above shows that South Viet-Nam has the right in present circumstances to defend itself against armed attack from the North and to organize a collective self-defense with the participation of others. In response to requests from South Viet-Nam, the United States has been participating in that defense, both through military action within South Viet-Nam and actions taken directly against the aggressor in North Viet-Nam. This participation by the United States is in conformity with international law and is consistent with our obligations under the Charter of the United Nations.

II. THE UNITED STATES HAS UNDERTAKEN COMMITMENTS TO ASSIST SOUTH VIET-NAM IN DEFENDING ITSELF AGAINST COMMUNIST AGGRESSION FROM THE NORTH

The United States has made commitments and given assurances, in various forms and

¹² For a statement made by President Eisenhower on June 21, 1954, see *ibid.*, Aug. 2, 1954, p. 163.

¹³ For text, see *ibid.*, p. 162.

¹⁴ For text, see *ibid.*, Sept. 20, 1954, p. 393.

at different times, to assist in the defense of South Viet-Nam.

A. The United States Gave Undertakings at the End of the Geneva Conference in 1954

At the time of the signing of the Geneva accords in 1954, President Eisenhower warned "that any renewal of Communist aggression would be viewed by us as a matter of grave concern," at the same time giving assurance that the United States would "not use force to disturb the settlement."¹² And the formal declaration made by the United States Government at the conclusion of the Geneva conference stated that the United States "would view any renewal of the aggression in violation of the aforesaid agreements with grave concern and as seriously threatening international peace and security."¹³

B. The United States Undertook an International Obligation To Defend South Viet-Nam in the SEATO Treaty

Later in 1954 the United States negotiated with a number of other countries and signed the Southeast Asia Collective Defense Treaty.¹⁴ The treaty contains in the first paragraph of article IV the following provision:

Each Party recognizes that aggression by means of armed attack in the treaty area against any of the Parties or against any State or territory which the Parties by unanimous agreement may hereafter designate, would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes. Measures taken under this paragraph shall be immediately reported to the Security Council of the United Nations.

Annexed to the treaty was a protocol stating that:

The Parties to the Southeast Asia Collective Defense Treaty unanimously designate for the purposes of Article IV of the Treaty the States of Cambodia and Laos and the free territory under the jurisdiction of the State of Vietnam.

Thus, the obligations of article IV, paragraph 1, dealing with the eventuality of

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armed attack, have from the outset covered the territory of South Viet-Nam. The facts as to the North Vietnamese armed attack against the South have been summarized earlier, in the discussion of the right of self-defense under international law and the Charter of the United Nations. The term "armed attack" has the same meaning in the SEATO treaty as in the United Nations Charter.

Article IV, paragraph 1, places an obligation on each party to the SEATO treaty to "act to meet the common danger in accordance with its constitutional processes" in the event of an armed attack. The treaty does not require a collective determination that an armed attack has occurred in order that the obligation of article IV, paragraph 1, become operative. Nor does the provision require collective decision on actions to be taken to meet the common danger. As Secretary Dulles pointed out when transmitting the treaty to the President, the commitment in article IV, paragraph 1, "leaves to the judgment of each country the type of action to be taken in the event an armed attack occurs."¹⁵

The treaty was intended to deter armed aggression in Southeast Asia. To that end it created not only a multilateral alliance but also a series of bilateral relationships. The obligations are placed squarely on "each Party" in the event of armed attack in the treaty area—not upon "the Parties," a wording that might have implied a necessity for collective decision. The treaty was intended to give the assurance of United States assistance to any party or protocol state that might suffer a Communist armed attack, regardless of the views or actions of other parties. The fact that the obligations are individual, and may even to some extent differ among the parties to the treaty, is demonstrated by the United States understanding, expressed at the time of signature, that its obligations under article IV, paragraph 1, apply only in the event of Commu-

nist aggression, whereas the other parties to the treaty were unwilling so to limit their obligations to each other.

Thus, the United States has a commitment under article IV, paragraph 1, in the event of armed attack, independent of the decision or action of other treaty parties. A joint statement issued by Secretary Rusk and Foreign Minister Thanat Khoman of Thailand on March 6, 1962,¹⁶ reflected this understanding:

The Secretary of State assured the Foreign Minister that in the event of such aggression, the United States intends to give full effect to its obligations under the Treaty to act to meet the common danger in accordance with its constitutional processes. The Secretary of State reaffirmed that this obligation of the United States does not depend upon the prior agreement of all other parties to the Treaty, since this Treaty obligation is individual as well as collective.

Most of the SEATO countries have stated that they agreed with this interpretation. None has registered objection to it.

When the Senate Committee on Foreign Relations reported on the Southeast Asia Collective Defense Treaty, it noted that the treaty area was further defined so that the "Free Territory of Vietnam" was an area "which, if attacked, would fall under the protection of the instrument." In its conclusion the committee stated:

The committee is not impervious to the risks which this treaty entails. It fully appreciates that acceptance of these additional obligations commits the United States to a course of action over a vast expanse of the Pacific. Yet these risks are consistent with our own highest interests.

The Senate gave its advice and consent to the treaty by a vote of 82 to 1.

C. The United States Has Given Additional Assurances to the Government of South Viet-Nam

The United States has also given a series of additional assurances to the Government of South Viet-Nam. As early as October 1954 President Eisenhower undertook to provide direct assistance to help make South Viet-

¹⁵ For text, see *ibid.*, Nov. 29, 1954, p. 820.

¹⁶ For text, see *ibid.*, Mar. 26, 1962, p. 498.

April 15, 1967

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SEATO COUNCIL MEETING
Washington, April 18-20, 1967

Background Paper

SEATO Relationship to U.S. Actions in Viet Nam

United States Position

United States actions in assisting South Viet Nam to defend itself against armed attack from the North are in fulfillment of an obligation we undertook in 1955 in the Southeast Asia Collective Defense Treaty. Article IV, paragraph 1 of the Treaty provides:

"Each Party recognizes that aggression by means of armed attack in the treaty area against any of the Parties or against any State or territory which the Parties by unanimous agreement may hereafter designate, would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes. Measures taken under this paragraph shall be immediately reported to the Security Council of the United Nations."

From the outset South Viet Nam was included within the treaty area by virtue of a protocol to the Treaty. Therefore, the Southeast Asia Collective Defense Treaty has provided a substantiating basis for United States support of South Viet Nam. Since North Viet Nam's aggression reached the level of "armed attack", however, our support of South Viet Nam is properly considered as fulfilling our obligation under Article IV, paragraph 1. 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 obligations of the parties under the Treaty are individual, as well as collective.~~ Article IV, paragraph 1 places an obligation on each party to the SEATO Treaty to "act to meet the common danger in accordance with its constitutional processes" in the event of an armed attack. The Treaty does not require a collective determination that an armed attack has occurred in order that the obligations of Article IV, paragraph 1

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Most of the SEATO countries have stated that they agreed with this interpretation. None has registered objection to it.

Other SEATO Members

Thailand, Australia and New Zealand have all subscribed publicly to a position virtually identical with that of the United States as described above. The Philippines has linked its provision of a military construction unit to assist South Viet-Nam with its SEATO Treaty obligations. The United Kingdom, France and Pakistan would not agree that the Treaty obligates them to assist South Viet-Nam in its present defense against the North, despite the fact that the Communique of the 1966 SEATO Council Meeting specifically characterized North Viet-Nam's aggression against the South as a "continuing armed attack."

SEATO

SEATO as an organization is not closely related to United States actions in Viet-Nam. There has been no request for assistance from South Viet-Nam to SEATO as an entity and no collective action by SEATO. The attitudes of the United Kingdom, France and Pakistan would make SEATO collective action difficult, if not impossible, to obtain. The closest relation of the organization to U.S. actions is the support given by the annual Council meetings, particularly the presence of the observer from South Viet-Nam and the generally helpful references in the Communique.

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