

forces; making the Can Lao party a public rather than a secret organization, or even disbanding it; broadening the powers of the legislature, allowing it to initiate legislation and to investigate, even through public hearings; allowing greater freedom of the press; requiring public officials to report on their finances; providing more information to the public, including "fireside chats" by the President; and various steps to promote support for the government in rural areas, including allowing villages to elect some of their own officials. To this memorandum, so heavily laden with Western values and ideas, Diem reacted coolly but politely. He said that most of the proposals matched his own, but that increased activities of the Communists made it difficult to carry them out.

Durbrow then read Diem a second memorandum recommending that, because of public criticism, he should remove Nhu and Dr. Tran Kim Tuyen, a close associate of Nhu and a key member of Nhu's intelligence system, by making both of them diplomats. Diem's reaction to this was summed up in his remark that the rumors about Nhu had been spread by the Communists.¹⁶⁸

Very little came of this effort, and a few weeks later in November 1960 a group of paratroopers attempted a "coup." Whether they were serious, or whether the object was to persuade Diem to reform his regime, is not clear. Nor is it clear to what extent the U.S. was involved. Lansdale said that Diem probably suspected Durbrow of encouraging the plotters, especially in view of the fact that Durbrow urged Diem to accede to the demands of the rebels and to avoid bloodshed.¹⁶⁹

After the attempted coup, Diem promised "sweeping reforms," which never materialized. The result of the coup, as one observer said, was to convince Diem and Nhu to intensify the "dictatorship."¹⁷⁰ Accordingly, the 18 signers of the Caravelle manifesto were arrested, and some remained in jail without trial until the end of Diem's regime in 1963. In addition, Fall said, "... coached mobs ransacked the offices of five newspapers that had shown themselves lukewarm toward the regime; the total number of people arbitrarily thrown into jails and concentration camps in connection with the paratroop mutiny is, of course, unknown. On November 13, 1960, *The New York Times*, while musing that 'much obviously now depends upon what reforms he now decides to make,' nevertheless expressed its editorial happiness 'that President Ngo Dinh Diem has survived this major test of his power.'¹⁷¹

On December 24, 1960, the month when the formation of the National Liberation Front was announced, Durbrow made another attempt to persuade Diem to take actions which the U.S. believed could help rebuild public support for the government, but this time Diem was even less forthcoming than before.¹⁷² Meanwhile, how-

¹⁶⁸*Ibid.*, pp. 1318-1324.

¹⁶⁹*Ibid.*, p. 1331. Durbrow apparently had also urged the rebels, if they gained power, to give Diem a role in the new government. See p. 1335. According to William Colby, Chief of Station for the CIA in Vietnam at the time, the CIA was in touch with Diem and Nhu as well as all of the factions involved. One of the politicians who took part in the coup sought refuge after it failed, and the CIA arranged for him to leave Vietnam in a mail sack and to resume life in Europe. See Colby's *Honorable Men*, p. 164.

¹⁷⁰Duncanson, *Government and Revolution in Vietnam*, p. 268.

¹⁷¹Fall, *The Two Viet-Nams*, p. 273.

¹⁷²See *PP*, DOD ed., book 10, pp. 1348-1351.

ever, the U.S. mission in Saigon had prepared during the second half of 1960 a comprehensive "Counter Insurgency Plan for South Vietnam," which was cabled to Washington in early January 1961, and was one of the first items of business to be taken up by the new President, Diem's old friend and supporter, John F. Kennedy, who had been elected the previous November.¹⁷³

Another Step Toward the Gulf of Tonkin Resolution

In 1957, there was another important event in the evolution of executive-congressional relations which led in 1964 to the Gulf of Tonkin Resolution. This was the passage by Congress of the second "equivalent of war" resolution, the "Middle East Resolution" (the Formosa Resolution having been the first.) As passed by Congress, the key provision of the Middle East Resolution¹⁷⁴ for present purposes was as follows (section 2):

... the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism: *Provided*, That such employment shall be consonant with the treaty obligations of the United States and with the Constitution of the United States.

The resolution also authorized expanded military and economic assistance programs in the Middle East for the purpose of deterring possible moves by the Russians into the "power vacuum" created by the aftermath of the British-French invasion of Egypt a few months earlier.

It will be noted that unlike the Formosa Resolution, which "authorized" such contingent military action by the President (as both of the 1954 draft resolutions on Indochina had also provided), the Middle East Resolution stated that if the President decides that it is necessary, the U.S. "is prepared" to use its armed forces, provided that this is "consonant with" the Constitution. This language was substituted by the Foreign Relations Committee for the language proposed to Congress by the administration and approved by the House by which Congress once again would have "authorized" Presidential action. It was an important change, and one with consequences for all subsequent resolutions of this type (including the Gulf of Tonkin Resolution), none of which "authorized" Presidential action.

On January 1, 1957, Eisenhower and Dulles met for 4 hours with congressional leaders, including committee leaders, to apprise them of the situation in the Middle East and the proposed resolution. In response to a question, Eisenhower said that "in modern war there

¹⁷³On March 24, 1960, the Chief of Staff of the U.S. Army had recommended urgent measures to improve Vietnamese counterinsurgency capability. The JCS agreed, and so advised CINCPAC, which then did a study on the subject that the JCS approved in June 1960 and sent to the Secretary of Defense. State agreed, and on October 20, 1960, Durbrow was directed to develop the plan. *Ibid.*, book 2, IV, A. 5., p. 83. For further details, see Spector, *Advice and Support*, pp. 361-364, 371-372.

¹⁷⁴Public Law 85-7.

might not be time for orderly procedures; it was necessary to make our interest clear in advance."¹⁷⁵

The next day, Secretary Dulles met in executive session with the Foreign Relations Committee at 6:15 p.m. to explain the situation, and to ask for the committee's reactions to the administration's draft of a joint resolution authorizing the President to act.¹⁷⁶

Several members of the committee who were present at the hearing, notably Humphrey and Mansfield, were dubious about the language then in the bill which would "authorize" the President to use the armed forces. Mansfield said that the President had the constitutional right to use the armed forces "if the security of this country is endangered at any time." Humphrey asked Dulles whether or not the President could use the armed forces to defend vital U.S. interests. Dulles replied that Eisenhower took the position that this should be approved by Congress, to which Humphrey retorted, "Yet he is asking us for a predated declaration of war." Dulles had to agree (though he did not like the term), but he argued that in the case of the Formosa Resolution the effect had been "the greatest insurance for peace that we could have devised for that area," and that the Middle East Resolution was also a "program for peace."

On Saturday, January 5, the President presented his proposed plan, which became known as the "Eisenhower Doctrine," to a joint session of Congress.¹⁷⁷ Among other things, Eisenhower said that if he had to take military action under the resolution, ". . . I would, of course, maintain hour-by-hour contact with the Congress if it were in session. And if the Congress were not in session, and if the situation had grave implications, I would, of course, at once call the Congress into special session."

The House Foreign Affairs Committee held long public and executive hearings on the proposal, during which considerable opposition was expressed to the advance authorization of the use of force. Support for the administration was also strong, however, and in the end the committee passed the resolution 24-2 (one voted present) with only two amendments of interest to the present discussion. One of these required semiannual reports to Congress (the administration's draft had provided for annual reports), and the other provided for repeal of the resolution by concurrent resolution, which could not be vetoed. (By contrast, the Formosa Resolution would end when the President so determined.) Both of these were accepted by the Senate and became law.

In its report¹⁷⁸ the Foreign Affairs Committee said that the language of the resolution did not "detract from or enlarge" the power of the President as Commander in Chief, nor "delegate or diminish" the power of Congress to declare war.

The Middle East Resolution was approved by the House on January 30, 1957, by a vote of 355-61, with about an equal number of Democrats and Republicans in opposition.

¹⁷⁵Dwight D. Eisenhower, *Waging Peace*, 1956-1961 (Garden City, N.Y.: Doubleday, 1965), p. 179.

¹⁷⁶*SFRC Hrs. Ser.*, Vol. XI, pp. 1 ff.

¹⁷⁷*Public Papers of the Presidents*, Dwight D. Eisenhower, 1957, p. 15.

¹⁷⁸H. Rept. 85-2, p. 7.

At this point, the Foreign Relations and Armed Services Committees met jointly to consider the resolution. Fulbright argued that Congress did not have adequate information on which to base its judgment, and moved to request documentation on U.S. Middle East policy since 1946. On the understanding that this would not impede passage of the resolution, this motion carried unanimously.¹⁷⁹

Following several days of public and executive hearings, the joint committee began marking up the bill on February 12, 1957. The previous day, Fulbright had made his own position clear in a very strong speech in the Senate, a speech that provides an interesting contrast to the position he took on the Gulf of Tonkin Resolution in 1964. Congress was being asked, he said, "for an unprecedented delegation of authority to make wars and to spend money without restriction . . . shall we strike down the Senate's rights and duties in the conduct of foreign affairs, as defined by 168 years of constitutional practice? . . . shall we say yes to a radical proposal whose adoption would mean that we are abandoning our constitutional system of checks and balances; that from now on, naked Executive power will rule the highest and most fateful interests of the Nation?"

The proposed resolution, he said, ". . . asks for a blank grant of power over our funds and Armed Forces, to be used in a blank way, for a blank length of time, under blank conditions, with respect to blank nations, in a blank area . . . in filling in the blanks, the President need not consult, much less be accountable to any other constitutional organ of government.

"The whole manner of presentation of this resolution—leaks to the press, speeches to specially summoned Saturday joint session, and dramatic secret meetings of the Committee on Foreign Relations after dark one evening before the Congress was even organized, in an atmosphere of suspense and urgency—does not constitute consultation in any true sense. All of this was designed to manage the Congress, to coerce it into signing this blank check."

Fulbright concluded by saying, "I do not believe that even for a short time the Congress should abdicate its constitutional powers. History will demonstrate that the periods of greatest danger to the rights of the people, in a democracy, are those periods when adulation for a popular idol diverts their attention momentarily from the implications of their actions."¹⁸⁰

As the joint committee began its markup of the resolution, Fulbright argued that because it had the force of law, a joint resolution would delegate congressional power to the President, and, by relieving him of the need to come back to Congress, would be an improper delegation of such power. He said he believed that in an "emergency" the President had the right and the duty to act, if need be, without Congress' approval, but not otherwise. Accordingly, he proposed that the form of the resolution be changed to a

¹⁷⁹*SFRC Hrs. Ser.*, vol. IX, p. 130. Two months later the information began arriving at the committee, but there was such a massive amount of material, and the task of evaluating it was so enormous, that within a couple of months the committee decided not to pursue the matter further, and the material was returned to the State Department.

¹⁸⁰*CR*, vol. 103, pp. 1855-1857.

Senate or a concurrent resolution, neither of which would have the effect of law. His motion was defeated, 9-17.¹⁸¹

As he had done in the past, and would do again in the future, Russell supported the President, even though he privately deplored, in the closed room in which the joint committee was meeting, the way in which the resolution was being handled. "In my opinion," he told the other members of the committee, "the Congress of the United States is being treated as a group of children, and very small children, and children with a very low IQ at that, in the manner that this resolution has been presented to us." He agreed with Fulbright that there was no emergency, but he added that Congress had a responsibility to support the President, and for this reason he had voted against Fulbright's motion.¹⁸²

Senator Stennis moved to amend the resolution to provide for Congress to "approve" rather than to "authorize" military action by the President. In something of a reversal of his previous position, he argued that passage by Congress of resolutions authorizing the President to use the armed forces, which he said the President already had the constitutional right to do, constituted a retrenching of the President's constitutional powers. "We are going to change the whole order of things," he said, "and there will come a time in international affairs when a strong President will have a forward sound policy that might not be momentarily backed by a majority of the Congress, and under these precedents he would be left at their mercy."

Humphrey agreed with Stennis: "... I feel the President does have the power under the Constitution to protect the vital interests of the United States, and those vital interests may be a long way away. . . ."

Morse strongly disagreed. The President was proposing a "dangerous power," he said. "... certainly he has no power so broad as is proposed here—that is, that under the Constitution a President of the United States can start sending American boys around the world to die to protect the territorial integrity of some power just because he thinks that if that state ceases to exist as a nation, it might eventually injure the security of the United States."

Senator Harry Byrd also disagreed strongly with Stennis. He asked Stennis whether his position was that the President could start a war, and then Congress could declare war. "That is about the practical side of it," Stennis replied. "I think in the modern times that we are living in, we cannot afford to limit it too much . . . world conditions being what they are, . . . the United States has just got to get out further and further forward and frontward in world policy. . . ."

Senator Ervin said that Stennis' proposal said "in effect that the President of the United States has a right to engage in offensive warfare without authorization from Congress," which he said he rejected. He took the position that the President's power, when not acting by authority of Congress, was "defensive," and that "Congress alone had the power to authorize 'offensive warfare.'"

¹⁸¹*SFRC Hrs. Ser.*, vol. XI, P. 242. All of the nine yeas were Democrats, but Democrats Stennis, Kennedy, Russell and Green voted nay.

¹⁸²*Ibid.*, pp. 246 ff.

Stennis' motion was defeated 11-17, with most Democrats voting for the change (all 11 ayes were Democrats, but Fulbright, Byrd, Morse and Ervin voted nay).¹⁸³

An interesting and important proposal by Morse that presaged the War Powers Resolution was defeated by about the same vote, 12-16, split about the same way. (All 12 were Democrats, but Green, Russell, Stennis and Symington voted nay.) This would have put Congress in the position of being able to approve or disapprove Presidential action at the time the President decided to use the armed forces, rather than in advance. The key provision was as follows:

Prior to the employment of armed forces the President shall give notice to Congress. If, in the judgment of the President, an emergency arises in which such notice to Congress is not possible, he shall upon the employment of armed forces forthwith inform Congress and submit his action for its approval or disapproval.

Morse argued that this course of action would protect congressional constitutional prerogatives and prevent a situation in which, after giving the President advance authority or approval, Congress would be faced with having the President say, "You cannot go back on it. 'You gave me the authority.'"

Morse said, "If a President in the exercise of the so-called emergency powers believes that the lives and the property and vital interests of the United States are so at stake in an emergency situation that troops have got to be sent in immediately to protect our interests, there goes along with that the responsibility of the President to submit his action to the checking power of the Congress, and the Congress has the residual power to repeal or reject the action of the President and order the troops home."

Fulbright and Ervin agreed with Morse's reasoning. Fulbright referred to "what Jefferson called acquittance from the Congress," that is, that when the President acts beyond his constitutional powers, Congress can "acquit" him or not after the fact, thus approving or disapproving what he has done. This, said Ervin, "brings it right square under the old fundamental legal principle . . . [that] subsequent ratification is equivalent to a prior authorization."¹⁸⁴

Following the defeat of the Stennis and Morse amendments, the joint committee approved an amendment offered by Mansfield (as a part of a longer amendment which was defeated, but this section was then reoffered by Humphrey) to strike the word "authorize," and in its place to substitute the language of the final act stating, "if the President determines the necessity thereof, the United States is prepared to use armed forces. . . ." This language, Mansfield said, would avoid both the advance delegation of congressional power and "another precedent like Formosa, which ultimately may hamstring the power of the President to command the Armed Forces on his own in an emergency. . . ." Senator Kennedy asked whether the proposed language would mean that "we are granting the President the right to use the Armed Forces without coming

¹⁸³For discussion and action on the Stennis amendment see *ibid.*, pp. 302-359.

¹⁸⁴For discussion and action on Morse's amendment see *ibid.*, pp. 329-353.

again to Congress," and Mansfield replied, "we are not granting him the right. We are in effect reasserting or reaffirming his right. . . ." Faced with the need to act on the resolution, the opposition acquiesced, and the amendment was passed 15-13 on a straight party-line vote, the Democrats in favor and the Republicans against. (The administration was opposed to Mansfield's amendment because it did not specifically provide for congressional authorization or approval of action by the President, thus weakening the force of the resolution.)¹⁸⁵

The Middle East Resolution was then approved by the joint committee 20-8, with Russell, Fulbright, Byrd, Mansfield, Morse, Long, and Ervin voting in the negative. (Russell objected to the economic and military assistance provisions of the resolution.)¹⁸⁶ In its report, the joint committee said the language approved in lieu of "authorizing," ". . . has the virtue of remaining silent" on constitutional questions, but that the joint committee, while "sharply divided" on the constitutional issue, "strongly supports the policy announced by the President of using armed force, if necessary, to help nations in the Middle East resist overt Communist aggression."¹⁸⁷

The action of the committee in removing from the resolution the provision for congressional authorization of Presidential use of the armed forces, while it may have had the "virtue of remaining silent" on the constitutional question, was, by the same token, a very important precedent for avoiding such authorization in the future. This, in turn, resulted in language in the Gulf of Tonkin Resolution, as was noted earlier, that affirmed the President's right to use the armed forces without requiring specific approval or authorization by Congress, in advance or at the time, which had serious legal and constitutional consequences when Congress decided to repeal the Gulf of Tonkin Resolution in 1970. Not having specifically authorized the President to act, its repeal of the resolution was, perforce, symbolic.

After action by the joint committee, the Senate then passed the Middle East Resolution without further changes, rejecting (28-64) Morse's motion to add the language he had proposed in committee. All but two of those who supported the amendment were Democrats. Russell voted for the amendment, but Mansfield and Humphrey, as well as Kennedy, Johnson of Texas, and such other antiwar stalwarts of the 1960s as Frank Church (D/Idaho), Joseph S. Clark (D/Pa.), Gore and Cooper, voted against it. Fulbright was absent.¹⁸⁸ On final passage, the vote on the Middle East Resolution was 73-19. (Fulbright was absent.) Again, all but two of those opposed to its passage were Democrats, but only three of these, Estes Kefauver (D/Tenn.), Morse, and Joseph C. O'Mahoney (D/Wyo.) were in the liberal wing of the party.¹⁸⁹

The Senate's action in dropping the authorization provision from the resolution, and in rejecting Morse's proposal, may have contrib-

¹⁸⁵For discussion and action on the Mansfield amendment see *ibid.*, pp. 363-404

¹⁸⁶*Ibid.*, p. 408.

¹⁸⁷S. Rept. 85-70, p. 9.

¹⁸⁸CR, vol. 103, p. 3121

¹⁸⁹*Ibid.*, p. 3129. In this brief review it has not been possible to give credit to O'Mahoney's impressive constitutional arguments before the joint committee and in Senate debate.

uted to the unilateral action of President Eisenhower a year later (1958) in sending almost 15,000 U.S. troops to Lebanon to support the government in power against a threatened coup by pan-Arabists, and, in Eisenhower's words, "to stop the trend toward chaos."¹⁹⁰ At a White House meeting with leaders of Congress, there was considerable skepticism, especially from the Democrats, about the operation. Speaker Sam Rayburn was concerned about getting involved in a civil war. Fulbright disputed the alleged threat of the Communists. According to Eisenhower, however, "authority for such an operation lay so clearly within the responsibility of the Executive that no direct objection was voiced."¹⁹¹ Consistent with this interpretation, he did not base his action on, nor suggest that it had any relationship to, the 1957 Middle East Resolution.

Within a short time, the crisis in Lebanon eased, U.S. interests and regional stability were preserved, and a good case could again be made that Congress' passage of a supporting resolution had been instrumental in helping the President to achieve those results. Ahead, however, as the decade and the Eisenhower administration came to an end, lay the increasing involvement of the United States in the Vietnam war, and the decision by the President, following Congress' passage of another such resolution, to send U.S. forces to help fight that war.

¹⁹⁰Eisenhower, *Waging Peace*, p. 270.

¹⁹¹*Ibid.*, p. 272. See, however, Morse's objections, *CR*, vol. 104, pp. 19563 ff.

NOTES ON SOURCES AND STYLE

Sources

This study is based largely on primary unpublished and published materials and oral histories conducted by CRS. All pertinent memoirs and relevant secondary materials were also consulted, and are cited in the footnotes where appropriate.

Congressional materials which were used include the *Congressional Record* and all published committee hearings and reports during 1945-61 which relate in any significant way to the Vietnam (Indochina) war. Among these are the Senate Foreign Relations Committee's historical series containing the previously unpublished transcripts of executive sessions of the committee through 1960, as well as those of the House Foreign Affairs Committee (through 1956) which have been published in its historical series.

The transcripts of executive sessions of the Senate Armed Services Committee during 1945-61 remain at the committee, unpublished and closed. Some subject and legislative files from the committee have been transferred to the National Archives, and many of these are open. Those that are not open can be used only with permission of the committee.

All transcripts and papers of the House Foreign Affairs and Armed Services Committees which have been transferred to the National Archives—and some have been—are governed by the House rule preventing access to all House records for 50 years except with permission of the committee through the Clerk of the House.

Open and unpublished records of the Senate Foreign Relations Committee for the 1945-61 period were reviewed at the National Archives, and are cited where appropriate. Some pertinent files containing classified materials remain restricted.

Unpublished materials from the Executive which were consulted for this part of the study consisted primarily of the archives at the Dwight D. Eisenhower Library, as well as the John Foster Dulles papers at Princeton University. Although many of the pertinent papers at the Eisenhower Library have been opened, most of the NSC papers at the library, including those of the Planning Board and the Operations Coordinating Board, are still closed pending NSC approval of declassification.

All relevant published materials from the Executive were also utilized, including the State Department's *Foreign Relations of the United States* series (*FRUS*), and the several publications of the historical office of each of the military services, especially the first

volume in the United States Army in Vietnam series. (The *FRUS* series on Indochina has now been published through 1954, except for Volume XII for 1952-54 dealing with East Asia and the Pacific.)

The three editions of the *Pentagon Papers* were used extensively, primarily the edition referred to as the Gravel Edition, *The Pentagon Papers: The Defense Department History of United States Decision-making on Vietnam* [The Senator Gravel Edition]. 4 vols. (Boston: Beacon Press, 1971), and the photo offset DOD edition, published in a limited number of copies by the House Committee on Armed Services from the text provided by the Department of Defense: United States Department of Defense, *United States in Vietnam Relations, 1945-1967* ["The Pentagon Papers"]. 12 vols. (Washington: U.S. Government Printing Office, 1971). To facilitate access, the Gravel edition is cited except where it does not contain material in the DOD edition.

Valuable secondary materials for Part I of this study, in addition to the various writings by or about U.S. officials, include the works of Joseph Buttinger, Bernard Fall, Ellen Hammer, Robert Scigliano, and Robert Shaplen, cited in the footnotes.

Stanley Karnow's, *Vietnam: A History* (New York: Viking Press, 1983), George C. Herring's brief study, *American's Longest War* (New York: Wiley, 1979), and the series of volumes, *The Vietnam Experience*, being published by the Boston Publishing Company, are the only available general surveys of the entire 30 years of the war.

In addition, a study covering the entire period, entitled, *The Strategic Lessons Learned in Vietnam*, was prepared in 1979-80 by the BDM Corporation for the Strategic Studies Institute of the U.S. Army War College. It was declassified in 1981, but has not been published. Copies are available in typescript from the Defense Technical Information Center, Cameron Station, Alexandria, Virginia as well as from the National Technical Information Service, Springfield, Virginia.

Style

Full name identification of persons referred to in this study, as well as their role or political party, is given at the place where the person is first mentioned, which can be found in the index.

For Vietnamese names, in which the last name is first, the use of first names (Ngo Dinh Diem becomes Diem rather than Ngo) follows the general practice in U.S. Government documents and in published materials, based on Vietnamese custom.

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