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LEGAL BASIS FOR U.S. MILITARY AID TO SOUTH VIET-NAM

The U.S. military commitment in Viet-Nam is based on a solid foundation of international law, including the following well-established points of law and fact:

- The people of South Viet-Nam have the inherent right of individual and collective self-defense against armed attack, which includes the right to seek aid from other friendly states.
- The United States has the right to participate in the collective defense of South Viet-Nam at the request of its government.
- South Viet-Nam is the victim of an armed attack instigated, directed, and sustained by North Viet-Nam in violation of international law and in violation of the Geneva accords.
- The United States is obligated, under the SEATO treaty, to respond to a Communist armed attack against South Viet-Nam.
- With Vietnamese, U.S., and other allied troops fighting in South Viet-Nam against troops infiltrated from, and supplied from, North Viet-Nam, U.S. airstrikes against military targets in North Viet-Nam are an appropriate exercise of the right of self-defense.
- Actions by the United States and South Viet-Nam are justified under the Geneva accords of 1954.
- The President of the United States has the authority to commit U.S. forces in the collective defense of South Viet-Nam.

I. The United States and South Viet-Nam are exercising the inherent right of individual and collective self-defense.

A. The United States is acting at the request of the Government of South Viet-Nam, which is the victim of an armed attack.

B. Every country has the right to take measures of self-defense against armed attack and to have the assistance of others in that defense.

C. The right of self-defense against arm attack is an inherent right and is recognized such in article 51 of the U.N. Charter wh provides that "Nothing in the present Char shall impair the inherent right of individual collective self-defense . . ."

II. South Viet-Nam is the victim of an arm attack instigated, directed, and sustained North Viet-Nam in violation of internatio law and in violation of the 1954 Geneva cords.

A. The Geneva accords of 1954 establis a demarcation line between North Viet-Nam South Viet-Nam. They provided for withdra of military forces into the respective zo north and south of this line. The accords p hibited the use of either zone for the resum tion of hostilities or to "further an aggress policy."

B. North Viet-Nam violated the acco from the outset by ordering thousands armed cadre to remain in South Viet-Nam form a clandestine political-military orga zation. The activities of this covert organiz tion were directed toward the kidnaping assassination of civilian officials.

In 1959 Hanoi decided to open a large-sc military campaign against South Viet-Na Since that decision North Viet-Nam has inf trated more than 100,000 fighting men many tons of war material into South Vi Nam. Beginning in the fall of 1964 whole un of the regular army of North Viet-Nam ha been sent across the demarcation line to large the attack on South Viet-Nam.

C. As early as June 1962 the Legal Co mittee of the International Control Commissi (ICC) determined that North Viet-Nam w carrying out "armed attacks" against So Viet-Nam in violation of the Geneva accor The Legal Committee's report made the f lowing points:

- Article 10 of the Geneva agreement cal for "the complete cessation of all hostilit in Viet-Nam."

For a more detailed treatment of this subject, see THE LEGALITY OF U.S. PARTICIPATION IN THE DEFENSE OF VIET-NAM, State Department publication 8062. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, 15¢.

•Article 19 required both sides to insure their zones "are not used for the resumption of hostilities or to further aggressive policy."

•Article 24 required each side to respect the territory of the other and "to commit no act and undertake no operation against the other Party."

•Article 27 specified that the agreement applied to all elements of the military command. This included regular, irregular, and guerrilla forces.

The report then made the following finding: "Having examined the complaints and the supporting material sent by the South Vietnamese Mission, the Committee has come to the conclusion that 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 object of supporting, organizing 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 Viet-Nam."

D. The right of individual and collective self-defense applies whether or not South Viet-Nam is regarded as an independent sovereign state. The Republic of Viet-Nam in the South has been recognized as a separate international entity by approximately 60 governments. The Geneva accords of 1954 provided for a temporary division of Viet-Nam into two zones at the 17th parallel. The action of the United Nations in the Korean conflict of 1950 clearly established the principle that there is no greater license for one zone of a temporarily divided state to attack the other zone than there is for one state to attack another state.

III. The United States is obligated by the SEATO treaty to respond to an armed attack against South Viet-Nam.

A. Article IV (1) of the Southeast Asia Collective Defense Treaty provides that "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."

B. By protocol to the treaty the parties unanimously extended the protection of the treaty to "the states of Cambodia and Laos and the free territory under the jurisdiction of the state of Viet-Nam."

C. The obligation of each party under article IV (1) is individual as well as collective. "Each Party" recognizes that aggression by armed attack would endanger "its own peace and safety" and agrees that it will act to meet the common danger.

IV. U.S. airstrikes against North Viet-Nam are an appropriate exercise of the right of self-defense.

A. U.S. airstrikes are aimed at carefully selected military targets—not at civilian population centers. Every effort is made to keep civilian casualties at a minimum.

B. Airstrikes against lines of communication and other military targets in North Viet-Nam are necessary to impede the infiltration of men and supplies into South Viet-Nam and do not represent a disproportionate response to the force being used against South Viet-Nam by North Viet-Nam.

C. There is no rule of international law that permits an aggressor to strike at a neighbor with immunity from retaliation against its own territory.

V. Actions by the United States and South Viet-Nam are justified under the Geneva accords of 1954.

A. Description of the accords. The Geneva accords of 1954 established the date and hour for a cease-fire in Viet-Nam, drew a "provisional military demarcation line" with a demilitarized zone on both sides, and required an exchange of prisoners and the phased regroupment of Viet Minh forces from the South to the North and of French Union forces from the North to the South. The introduction into Viet-Nam of troop reinforcements and new military equipment (except for replacement and repair) was prohibited. The armed forces of each party were required to respect the demilitarized zone and the territory of the other zone. The adherence of either zone to any military alliance, and the use of either zone for the resumption of hostilities or to "further an aggressive policy," were prohibited. The International Control Commission was established, composed of India, Canada, and Poland, with India as chairman. The task of the Commission was to supervise the proper execution of the provisions of the cease-fire agreement. The people of Viet-Nam were to enjoy "the fundamental freedoms, guaranteed by democratic institutions established as a result of free general elections by secret ballot." In this climate, general elections for reunification were to be held in July 1956 under the supervision of the ICC.

B. North Viet-Nam violated the accords from the beginning. From the very beginning, the North Vietnamese violated the 1954 Geneva accords. Communist military forces and supplies were left in the South in violation of the accords. Other Communist guerrillas were moved north for further training and then were infiltrated into the South in violation of the accords. North Viet-Nam greatly enlarged its armed forces with Chinese Communist help while South Viet-Nam reduced its own.

C. The introduction of U.S. military personnel and equipment was justified since the accords prohibited the reinforcement of foreign

military forces in Viet-Nam and the introduction of new military equipment, but they allowed replacement of existing military personnel and equipment. Prior to late 1961 South Viet-Nam had received considerable military equipment and supplies from the United States (an estimated $200 million in material had been withdrawn by the French), and the United States had established a gradually enlarged Military Assistance Advisory Group (MAAG) of fewer than 900 men, to replace the French training and advisory personnel. These actions were reported to the ICC and were permissible under the agreements.

As the Communist aggression intensified between 1959 and 1961, with increased infiltration and a marked stepping-up of Communist terrorism in the South, the United States found it necessary in late 1961 to increase substantially the numbers of our military personnel and the amounts and types of equipment introduced by this country into South Viet-Nam. These increases were justified by the principle of international law that a material breach of 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.

In accordance with this principle, 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.

D. South Viet-Nam was justified in refusing to implement the election provisions of the Geneva accords.

The 1954 Geneva accords contemplated the reunification of the country by general elections in July 1956, which were intended to obtain the "free expression of the national will."

Throughout the 1954 Geneva conference the United States adhered to its well-established position, expressed by Under Secretary of State Walter Bedell Smith as follows:

"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 insure that they are conducted fairly."

Throughout the conference both the United States and the State of Viet-Nam (South) rejected the effort to bind the people of South Viet-Nam to any election which would not permit that "free expression of the national will."

E. South Viet-Nam did not agree to the election provision of the accords because it failed to provide for supervision by the United Nations, but South Viet-Nam did not reject the concept of free elections. President Diem refused to participate in elections in 1956 because the conditions of repression prevailing in North Viet-Nam at that time made free elections impossible.

F. The Viet Minh was a popular moveme during the war with France, but after th cease-fire there was considerable resistanc to the Communist program in North Viet-Nar Nine hundred thousand refugees fled to Sou Viet-Nam, and all opposition that remaine was harshly repressed. General Giap, curren ly Minister of Defense of North Viet-Nam, addressing the Tenth Congress of the Nor Vietnamese Communist Party in October 19 publicly acknowledged that executions, terro and torture had become commonplace.

A nationwide election in these circumstanc would have been meaningless. Few people the North would have dared to vote against t Communist regime. With a substantial majo ity of the Vietnamese people living north the 17th parallel, such an election would ha meant turning the country over to the Commu nists without regard to the will of the peopl

G. The election issue can furnish no just fication for North Viet-Nam's armed aggre sion against South Viet-Nam. International la requires that political disputes be settled peaceful means. Recourse to armed force prohibited. This doctrine is of great impo tance in the temporarily divided states, be Germany, Korea, or Viet-Nam, where pea depends upon respect for established demarc tion lines. The action of the United Nations in t Korean conflict of 1950 clearly establish the principle that there is no greater licen for one zone of a temporarily divided state attack the other zone than there is for o state to attack another state. South Viet-Na has the same right that South Korea had to d fend itself and to organize collective defen against an armed attack from the North. resolution of the Security Council dated Ju 25, 1950, noted "with grave concern the arm attack upon the Republic of Korea by forc from North Korea" and determined "that th action constitutes a breach of the peace.

VI. The President has full authority to comm U.S. forces in the collective defense of Sou Viet-Nam.

The United States is acting in Viet-Na with the full authority of the executive and t legislative branches of the Government.

A. The President's power under article of the U.S. Constitution extends to the actio currently undertaken in Viet-Nam. Under t Constitution, the President is Commander Chief of the Army and Navy. He holds t prime responsibility for the conduct of U. foreign relations. These duties carry ve broad powers, including the power to depl American forces abroad and commit them military operations when the President deen such action necessary to maintain the securi and defense of the United States.

Since the Constitution was adopted the have been at least 125 instances in which t President has ordered the Armed Forces take action or maintain positions abroad witho

obtaining prior congressional authorization. For example, President Truman ordered 250,000 troops to Korea during the Korean war and President Eisenhower dispatched 14,000 troops to Lebanon in 1958.

The Constitution leaves it to the President to determine whether the circumstances of a particular armed attack are urgent and the potential consequences so threatening to the security of the United States that he should act without formally consulting the Congress.

B. The Southeast Asia Collective Defense Treaty authorizes the President's actions. Under article VI of the U.S. Constitution, "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land." Article IV, paragraph 1, of the SEATO treaty establishes as a matter of law that a Communist armed attack against South Viet-Nam endangers the peace and safety of the United States. In this event the United States undertakes to "act to meet the common danger in accordance with its constitutional processes."

C. The Joint Resolution of Congress of August 10, 1964, authorizes U.S. participation in the collective defense of South Viet-Nam.

Congress has acted in unmistakable fashion to approve and authorize U.S. actions in Viet-Nam. Following the North Vietnamese attacks in the Gulf of Tonkin against United States destroyers, Congress adopted, by a Senate vote of 88-2 and a House vote of 416-0, a joint resolution containing a series of important declarations and provisions of law.

Section 1 resolved that "the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression."

Section 2 provides that the United States is prepared 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 identification of South Viet-Nam through the reference to "protocol state" in this section is unmistakable, and the grant of authority "as the President determines" is unequivocal.

The following illuminating exchange occurred during the hearings:

"Mr. Cooper. [John Sherman Cooper] .... Does the Senator consider that in enacting this resolution we are satisfying that requirement of article IV of the Southeast Asia Collective Defense Treaty? In other words, are we now giving the President advance authority to take whatever action he may deem necessary respecting South Vietnam and its defense, or with respect to the defense of any other country included in the treaty?

"Mr. Fulbright. [J. William Fulbright] I think that is correct.

"Mr. Cooper. Then looking ahead, if the President decided that it was necessary to use such force as could lead into war, we will give that authority by this resolution?

"Mr. Fulbright. That is the way I would interpret it. If a situation later developed in which we thought the approval should be withdrawn it could be withdrawn by concurrent resolution."

The August 1964 joint resolution continues in force today. Section 2 of the resolution provides that it shall expire "when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress."

D. No declaration of war by the Congress is required to authorize U.S. participation in the collective defense of South Viet-Nam.

Over a very long period in our history, practice and precedent have confirmed the constitutional authority to engage U.S. forces in hostilities without a declaration of war. This history extends from the undeclared war with France in 1798 and the war against the Barbary pirates at the end of the 18th century to the Korean war of 1950-53.

In the case of Viet-Nam the Congress has supported the determination of the President by the Senate's approval of the SEATO treaty, the adoption of the joint resolution of August 10, 1964, and the enactment of the necessary authorizations and appropriations.

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