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ILLINOIS STATE UNIVERSITY

FOUNDED IN 1857  
NORMAL, ILLINOIS 61761

*War Powers Res.*

810 Hester Ave.  
Normal, Illinois 61761  
May 17, 1975

COLLEGE OF ARTS AND SCIENCES  
DEPARTMENT OF POLITICAL SCIENCE

Mr. Philip W. Buchan  
Legal Department  
The White House  
1600 Pennsylvania Ave.  
Washington, D. C.



Re: Mayaguez rescue and  
War Powers Resolution

Dear Mr. Buchen:

A colleague (Hibbert R. Roberts) and I are researching the effect of the War Powers Resolution (P.L. 93-148) for executive and legislative decision-making. An important aspect of our work focuses on the legal applicability (perhaps even the constitutionality) of some provisions of the Resolution, especially section 2(c) and section 8(d)(2).

Having read the entire congressional debate preceding adoption of the Resolution in 1973, I know that two of the legal issues are (1) whether section 2(c), by exclusion, forbids the President from rescuing U.S. citizens without prior congressional approval, and (2) whether 2(c), in conjunction with 8(d), forbids the President from taking any military action not permitted under the three circumstances outlined in 2(c) without prior congressional approval. In short, that the 60-day period in section 5(b) is not a grant of congressional authority (prior authority) because 2(c) and 8(d)(2) prevent that interpretation (the Javits position), or whether 2(c) and 8(d)(2) are essentially meaningless, given the 60-day "authority" of 5(b) (the Eagleton position).

Against this backdrop, I wonder if you would be willing to amplify remarks attributed to you, and to Mr. Hills, by the press about the legality of the Mayaguez rescue:

(1) Respecting the issue of rescuing civilians, the Washington Star, May 13, p. A-6, quotes you as saying that "in a situation such as this," neither the Cooper-Church amendment nor the War Powers Resolution prohibited military action. In context, you appeared to mean the rescue of U.S. citizens by such a "situation." Is that correct? Or did you not intend to limit your statement solely to the rescue of U.S. nationals? More explicitly, is your position that prior congressional approval (e.g., a joint resolution) is not legally required when rescuing civilians, and only in that situation, or are there other kinds of situations when prior congressional approval is not legally (or constitutionally) required?

(2) Respecting the broader issue of prior approval (not just in civilian rescues), the New York Times, May 15, p. 1, col. 7, reported that Mr. Hills, your assistant, after mentioning the President's inherent power to protect lives and property, said the Resolution does

not require prior approval of military action by Congress. Was he speaking in context only of civilian rescue, or generally? That is, was he alluding to the 60-days allowed under section 5(b) for any circumstances? Or was he, in effect, limiting his remarks to inherent constitutional power with respect to civilians only?

As we both know, no one, not even in Congress, appears to challenge the President's constitutional authority to rescue U.S. civilians (property might be another thing), the War Powers Resolution notwithstanding. If this is indeed the case, is it the Administration's position that the "authority" section 8(d)(2) mentions (but does not specify) includes authority for civilian rescue? If so, what case law might be cited to support this contention?

Is there, beyond that, an administration position on the legal constraints of the Resolution in other circumstances? For example, might the Administration come to the aid of another nation without prior congressional authority, under the provisions of section 5(b)? (While I would be deliriously happy to receive your response to this question, I certainly understand why, for political reasons, you might not want to engage in "hypothetical speculation." Still, this question gets to the heart of the Javits-Eagleton controversy, and to the real impact of the Resolution on any Administration. If you are prepared to offer a view, please do so.)

Some preliminary findings of our research (including the Mayaguez case study) will be given in November at the Southern Political Science Association convention in Nashville. Beyond that, Professor Roberts and I hope to publish a book on the War Powers Resolution. Your cooperation would be most gratefully appreciated.

Sincerely,

*Harvey Zeidenstein*

Harvey Zeidenstein  
Professor of Political Science



THE WHITE HOUSE

WASHINGTON

May 15, 1975

TO: Jack Hushen

FROM: Phil Buchen *P.W.B.*

It's O.K. to release these letters after  
you know the letters have been released  
from the Hill.





THE WHITE HOUSE

WASHINGTON

May 15, 1975

Dear Mr. President:

On 12 May 1975, I was advised that the SS Mayaguez, a merchant vessel of United States registry enroute from Hong Kong to Thailand with a U. S. citizen crew, was fired upon, stopped, boarded, and seized by Cambodian naval patrol boats of the Armed Forces of Cambodia in international waters in the vicinity of Poulo Wai Island. The seized vessel was then forced to proceed to Koh Tang Island where it was required to anchor. This hostile act was in clear violation of international law.

In view of this illegal and dangerous act, I ordered, as you have been previously advised, United States military forces to conduct the necessary reconnaissance and to be ready to respond if diplomatic efforts to secure the return of the vessel and its personnel were not successful. Two United States reconnaissance aircraft in the course of locating the Mayaguez sustained minimal damage from small firearms. Appropriate demands for the return of the Mayaguez and its crew were made, both publicly and privately, without success.

In accordance with my desire that the Congress be informed on this matter and taking note of Section 4(a)(1) of the War Powers Resolution, I wish to report to you that at about 6:20 A.M., 13 May, pursuant to my instructions to prevent the movement of the Mayaguez into a mainland port, U. S. aircraft fired warning shots across the bow of the ship and gave visual signals to small craft approaching the ship. Subsequently, in order to stabilize the situation and in an attempt to preclude removal of the American crew of the Mayaguez to the mainland, where their rescue would be more difficult, I directed the United States Armed Forces to isolate the island and interdict any movement between the ship or the island and the mainland, and to prevent movement of the ship itself, while still taking all possible care to prevent loss of life or injury to the U. S. captives. During the evening of 13 May, a Cambodian patrol boat attempting to leave the



island disregarded aircraft warnings and was sunk. Thereafter, two other Cambodian patrol craft were destroyed and four others were damaged and immobilized. One boat, suspected of having some U. S. captives aboard, succeeded in reaching Kompong Som after efforts to turn it around without injury to the passengers failed.

Our continued objective in this operation was the rescue of the captured American crew along with the retaking of the ship Mayaguez. For that purpose, I ordered late this afternoon an assault by United States Marines on the island of Koh Tang to search out and rescue such Americans as might still be held there, and I ordered retaking of the Mayaguez by other marines boarding from the destroyer escort HOLT. In addition to continued fighter and gunship coverage of the Koh Tang area, these marine activities were supported by tactical aircraft from the CORAL SEA, striking the military airfield at Ream and other military targets in the area of Kompong Som in order to prevent reinforcement or support from the mainland of the Cambodian forces detaining the American vessel and crew.

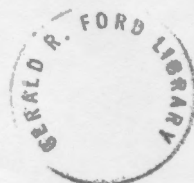
At approximately 9:00 P.M. EDT on 14 May, the Mayaguez was retaken by United States forces. At approximately 11:30 P.M., the entire crew of the Mayaguez was taken aboard the WILSON. U. S. forces have begun the process of disengagement and withdrawal.

This operation was ordered and conducted pursuant to the President's constitutional Executive power and his authority as Commander-in-Chief of the United States Armed Forces.

Sincerely,



The Honorable James O. Eastland  
President Pro Tempore of the Senate  
United States Senate  
Washington, D. C. 20510



### Question

Some members of Congress have raised the issue that you may have notified but did not "consult" Congress before attacks started to prevent movement of Cambodian boats between the MAYAGUEZ and Koh Tang Island or between the island and the Cambodian mainland. Others have raised the issue that you did not "consult" with the Congress before you had already decided to seize the ship and the island forcefully and to protect the operation by air attacks on military targets. What are your comments on these issues?

### Answer

From the very beginning of this operation, as our diplomatic and military actions developed, I kept the leaders of the Congress fully informed. On the decision made under a critical time deadline to use force in order to recover the vessel and the crew, I discussed the contemplated actions fully with the leaders of the Congress and of the appropriate committees as soon as possible.

As a former Congressman, I fully believe that it is important for the Congress and Executive to act together on major issues. That is the philosophy that I have followed since the beginning of my administration, and that I shall continue to follow. Neither one of us can assume the responsibilities of the other, nor should we try, but it is important that we should work together and understand each other's views.



Question

In military actions to seize the captured MAYAGUEZ and rescue its crew, did you comply fully with U.S. law?

Answer

I did. Neither the Cooper-Church Amendment in 1971 (which prohibited use of U.S. ground combat troops in Cambodia) nor the prohibitions in later appropriations acts against U.S. combat activities anywhere in Indochina limited my Constitutional authority under the circumstances in this case to protect American lives and vessels from illegal attack and seizure. The War Powers Resolution does not in any way restrict the introduction of U.S. armed forces into hostilities but merely calls for prior consultation with the Congress if possible and subsequent reporting of the fact. These procedural requirements were met.





THE WHITE HOUSE  
WASHINGTON

*Mayaguez  
war powers*

July 18, 1975

Dear Dr. Zeidenstein:

Your letter has been received concerning the study you and Mr. Roberts are conducting regarding the war powers resolution as it related to the rescue operations for the Mayaguez crew and vessel. However, I do not believe it is appropriate for me to comment on the legal issues you raise because they involve matters of advice given by this office to the President.

I do appreciate your interest in the legal problems posed by the war powers resolution, and I would welcome a copy of your published findings.

Sincerely,

*Philip W. Buchen*

Philip W. Buchen  
Counsel to the President

Dr. Harvey Zeidenstein  
Professor of Political Science  
College of Arts and Sciences  
Illinois State University  
Normal, Illinois 61761

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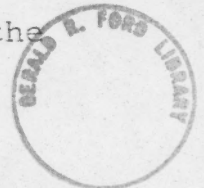
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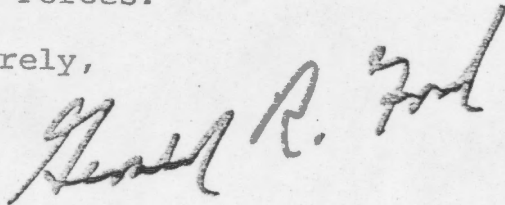
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The Honorable  
The Speaker  
United States House of Representatives  
Washington, D. C. 20515

