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THE PRESIDENT HAS SEEN . . .
THE WHITE HOUSE
WASHINGTON

June 21, 1976

MEMORANDUM FOR THE PRESIDENT

FROM:

EDWARD SCHMULTS 

SUBJECT:

Informing the Congress on the Lebanon Evacuation

The question presented in this memorandum is whether or not you should inform the Congress on the Lebanon evacuation. Under Section 4 of the War Powers Resolution, in the absence of a declaration of war, the President is required to submit a report to the Speaker of the House and the President Pro Tempore of the Senate within 48 hours after the 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".

Under the circumstances of the Lebanon evacuation where (a) only an unarmed LCU landing craft^{1/} was used within the three-mile territorial waters of Lebanon, and (b) imminent involvement in hostilities was not

^{1/} The Naval personnel operating the craft were also not armed. The mother ship, an LPD, remained more than three miles offshore and thus no United States forces equipped for combat were introduced into Lebanon's "territory, airspace or waters." The State Department advises that Lebanon has never asserted a claim to territorial waters greater than three miles.

clearly indicated by the circumstances,^{2/} it is my opinion that the President is not required to report to the Congress under Section 4 of the War Powers Resolution. The Attorney General and the Legal Adviser of the State Department concur in this opinion.

Although contacts were made with various members of Congress Saturday evening to inform them about the evacuation, it is also clear that the President had no duty to consult with the Congress within the meaning of Section 3 of the War Powers Resolution. The consultation requirement arises only "before introducing the United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." As indicated above, there was no threat of imminent involvement in hostilities in the Lebanon evacuation.

While a report is not legally required, the question arises as to whether or not it may be desirable to send a letter to the Congress to provide information on the evacuation and to lessen any criticism that you may have failed to comply with the War Powers Resolution. The arguments for and against a report would seem to be as follows:

PRO: -- A report would be consistent with your desire to keep Congress appropriately informed on matters involving foreign affairs. It would complete the process begun by the telephone calls to the Congressional Leadership Saturday night.

-- A report would serve to dampen any criticism that you may have failed to comply with the War Powers Resolution. A specific statement in the report that the War Powers Resolution is not applicable would serve to minimize or eliminate the precedential importance of the report.

CON: -- A report may serve to undermine our position that the War Powers Resolution is not applicable.

-- A specific statement in the report that the War Powers Resolution does not apply may only provoke controversy.

^{2/} There was no evidence that hostilities would occur in the vicinity of the evacuation site which was controlled by the PLO. Moreover, all governments with forces in Lebanon did not oppose the evacuation.

DECISION:

Prepare a report to the Congress.

Do not prepare a report to the Congress.
Recommended by the State Department and
Scowcroft.

Other.

Outbox received in the mail --- did not go in
thru us --- OBE - no decision made