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THE WHITE HOUSE
WASHINGTON

*file -
Mayaguez*

May 15, 1975

MEMORANDUM FOR:

MAX FRIEDERSDORF

THRU:

VERN LOEN *VL*

FROM:

CHARLES LEPPERT, JR. *CLJr*

SUBJECT:

S. S. Mayaguez Incident - Report to Congress
War Powers Resolution

The report to the Congress on the S. S. Mayaguez incident were delivered on May 15, 1975 to the following Members of the U. S. House of Representatives.

<u>Member</u>		<u>Recipient</u>	<u>Time</u>	<u>Place</u>
Speaker Albert	(VL)	left under door	2:04 a.m.	Capitol Office
" "	(CL)	Mike Reed	2:20 a.m.	Reed's home
Rep. O'Neill	(CL)	Rep. O'Neill	11:09 a.m.	Capitol office
Rep. McFall	(CL)	Rita Herald	11:12 a.m.	Capitol office
Rep. Rhodes	(CL)	Lee Prouty	11:15 a.m.	Capitol office
Rep. Michel	(CL)	Ralph Vinovich	9:58 a.m.	Office
Rep. Mahon	(DB)	Pers. secy	11:43 a.m.	Office
Rep. Price	(DB)	Pers. secy	11:40 a.m.	Office
Rep. Morgan	(CL)	Connie Yesh	10:59 a.m.	Office
Rep. Wilson(Bob)	(DB)	Pers. secy	11:42 a.m.	Office
Rep. Broomfield	(CL)	Rep. Broomfield	10:55 a.m.	Rayburn HOB
Rep. Cederberg	(DB)	Pers. secy	11:44 a.m.	Office

Friday 5/30/75

Meeting
6/3/75
9:30 a.m.

5:00 The meeting on Monroe Leigh's testimony has now
been changed to 9:30 a.m. on Tuesday 6/3 --
instead of Monday.

Others to attend:

Marsh
Monroe Leigh
Wolthius
Janka
Sam Goldberg
Russ Rourke

*Makgondler
Larry Brozouls*

THE WHITE HOUSE

WASHINGTON

May 30, 1975

MEMORANDUM FOR: JACK MARSH
FROM: RUSS ROURKE

Sam Goldberg advises me that Monroe Leigh will be testifying before Zablocki's Subcommittee on Wednesday, June 4, on the subject of the Mayaguez incident (War Powers Act, consultations, notifications, etc.).

Goldberg further advises that DOD, CIA and State have been tasked to prepare chronological statements of events in connection with the Mayaguez incident.

Prior to Wednesday's testimony, Sam believes it would be extremely helpful if he, Monroe Leigh et al could have a meeting with you, Phil Buchen and other appropriate White House types in order to coordinate Leigh's testimony.

Please advise.

✓cc: Phil Buchen

7511043

MEMORANDUM FOR LIEUTENANT GENERAL BRENT SCOWCROFT
THE WHITE HOUSE

Subject: Chronology on the Mayaguez
Incident

The offices of Senator Nelson and Congressman Zablocki have requested that the State Department provide them a chronology of the Mayaguez incident. Attached is a chronology of State Department actions. We understand that it will be used to prepare an integrated report with contributions by other agencies to furnish to the Congress.

George S. Springsteen
Executive Secretary

Attachment:

Chronology

Drafted:EA/LC:JBroh-Kahn:dtm
x23133:5/30/75

Clearances: EA - Mr. Zurhellen
L - Mr. Leigh
H - Mr. Goldberg
D - Mr. Duemling
S - Mr. Egan
P - Mr. Martinez
S/S - Mr. Ealum

CHRONOLOGYState Department Participation in the Mayaguez AffairMonday, May 12

0515 Department informed of seizure of ship.

0600- Senior officers of the Department were alerted
0800 and the matter was discussed at the Secretary's staff meeting.

1300 Following a National Security Council meeting, attended by the Deputy Secretary, the Department requested that the Chief of the People's Republic of China Liaison Office call on the Deputy Secretary.

1431 The Secretary departed for St. Louis.

1630 The PRCLO Chief refused to accept a message from the Acting Secretary to pass to the Cambodian authorities demanding the return of the Mayaguez and its crew.

1800 Senior legal officers in the Department, White House and Defense Department discussed possible need for report by President under War Powers Resolution.

2000 The Department sent a message to our Liaison Office in Peking reporting the refusal of the PRCLO to accept a message here and instructing our Liaison Office to deliver a message to the Cambodian Embassy and Chinese Ministry of Foreign Affairs. The message requested that they pass a message to the authorities in Phnom Penh demanding the return of the Mayaguez and its crew.

Tuesday, May 13

0100 The USLO in Peking reported that the messages had been delivered.

0930 During the Kennedy Subcommittee hearing on

Vietnamese refugees, when Senator Kennedy expressed the hope that appropriate committees of Congress would be informed about diplomatic efforts on the Mayaguez, a Department official responded that he was sure that this could be done.

1200 Instructions were given in the Department to prepare messages to the US Mission at the UN to instruct it to deliver letters to the UN Secretary General and Security Council. (See below under May 14 1230 and 2215.)

1300 The Department informed the Minister of the Japanese Embassy, Washington, that the US was moving one battalion of marines from Okinawa to an undisclosed destination.

Wednesday, May 14

0330 The Embassy in Tokyo requested the Department to confirm, if asked, the statement that the Japanese government planned to make that our actions connected with the Mayaguez operation did not violate understandings with the Japanese.

0715 The Liaison Office in Peking reported that the PRC had stated that it was not in a position to pass our message to the Cambodian authorities and was therefore returning it.

0845 The Embassy in Bangkok reported the text of a Thai aide memoire objecting to any US action which would involve Thailand in the Mayaguez incident.

1015 The Embassy in Bangkok reported that the Charge notified the Thai Prime Minister of the arrival of marines in Thailand. He was told that they must leave immediately.

1230 The Department telephoned the US Mission at the UN, instructing it to deliver a letter to the Secretary General requesting his assistance to obtain the release of the Mayaguez through

diplomatic channels and reserving the right of self-defense in accordance with Article 51 of the UN Charter.

1300 The Department sent a message instructing the Mission at the UN along the above lines.

1300 The letter was delivered to the Secretary General.

1400 The Mission to the UN informed the Department that the Secretary General promised to contact the Cambodian authorities.

1500- Department officials briefed members of the
1700 House International Relations Committee, Senate Foreign Relations Committee and House Armed Services Committee.

1800 Following an NSC meeting, instructions were given in the Department that, as soon as the Defense Department reported that military action had begun to obtain the release of the Mayaguez and its crew, the Department should take the following actions:

1. Send a message to all diplomatic posts to inform other governments of the US decision to take military action to secure the release of the Mayaguez and its crew;

2. Have senior officials inform key embassies in Washington of this action.

1930 After being informed by the Defense Department of the beginning of the operation, senior officials in the Department began calling key embassies.

2000 The US Mission at the UN reported the Secretary General's written reply to the letter from the US Mission. Earlier, at 1900, the Secretary General's spokesman at the UN told the press that he was making all possible efforts to achieve a solution to the problem by peaceful means. For this purpose, he had communicated

with the US and Cambodian governments, offered them his good offices, and appealed to them to refrain from further acts of force to facilitate a peaceful settlement.

- 2004 The Department was notified of a Phnom Penh broadcast announcing the decision to release the Mayaguez and senior officials were immediately informed.
- 2215 The Department instructed the US Mission to deliver a message to the President of the UN Security Council on US actions to secure the release of the Mayaguez and its crew under Article 51 of the UN Charter.
- 2250 The Liaison Office in Peking reported that the message to the Cambodian embassy had been returned.
- 2330 The US Mission to the UN reported that the Security Council had authorized distribution of the letter from the US Mission.

Thursday, May 15

- 0030 The Department instructed all posts to inform host governments of the circumstances surrounding the President's decisions with regard to the seizure of the Mayaguez.
- 0300 A message was sent to our Embassy in Bangkok informing it that we were using Thai bases for the Mayaguez operation and instructing the Embassy to tell the Thai that we would remove the marines from Thailand when the operation was completed.

THE WHITE HOUSE
WASHINGTON

*file -
Mayaguez*

May 15, 1975

MEMORANDUM FOR:

MAX FRIEDERSDORF

THRU:

VERN LOEN *VL*

FROM:

CHARLES LEPPERT, JR. *CLJr*

SUBJECT:


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War Powers Resolution

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Rep. Morgan	(CL)	Connie Yesh	10:59 a. m.	Office
Rep. Wilson(Bob)	(DB)	Pers. secy	11:42 a. m.	Office
Rep. Broomfield	(CL)	Rep. Broomfield	10:55 a. m.	Rayburn HOB
Rep. Cederberg	(DB)	Pers. secy	11:44 a. m.	Office

NATIONAL SECURITY COUNCIL

May 20, 1975

MEMO FOR: PHIL BUCHEN
FROM: LES JANKA 
SUBJECT: Executive Agreements

Attached is a draft transcript of my notes of the meeting on Executive Agreements last Friday.



MEMORANDUM

NATIONAL SECURITY COUNCIL

May 17, 1975

MEMORANDUM FOR THE RECORD

PARTICIPANTS:

President Ford
Senator Sparkman
Senator Case
Congressman Broomfield
Congressman Zablocki
Jack Marsh
Max Friedersdorf
General Scowcroft
Phil Buchen (only attended last part of meeting)

DATE AND TIME: Friday, May 16, 1975
2:15 p.m. - 2:50 p.m.

PLACE: The Cabinet Room
The White House

SUBJECT: Executive Agreements

Senator Sparkman: Mr. President, we passed two bills for you today -- both the authorization and the appropriation for refugee assistance.

The President: That is great. Now you've got the Turkish aid bill coming up on Monday. Does it look good?

Senator Sparkman: I really don't know. Mike Mansfield is working hard on it. With only 23 doubtful votes, we should be able to pass it easily.

The President: I called you down here today because I know both Committees are concerned about legislation which would require the President submit executive agreements to the Congress for its approval. I know both Bentsen and Glenn have introduced bills and, Clem, you and Doc have one as well.



Senator Case: Abourezk's Subcommittee on the Separation of Powers has been holding hearings this week on the Senate bills. I have not submitted a bill of my own yet, but I expect the matter will also come up in the Foreign Relations Committee. I am thinking of submitting a bill that would require the Foreign Relations Committee to pass a resolution in 10 days for any executive agreement submitted to it that would determine any particular agreement is so important that it must be brought to the full Congress for approval; the Committee would have to act within 10 days to pass such a resolution. The Congress could then act within 30 days, 60 days, or some appropriate time.

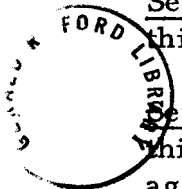
Representative Zablocki: Our bill is essentially the same in that it provides that in an emergency the Committee must act within 10 days. Our bill also deals only with agreements that involve national commitments.

Senator Case: I have not seen your House bill.

The President: I just wanted you all to know, at this early stage, that I hope we can move very slowly on this type of legislation until we can see how some of the things now in existence are working under this Administration. I can tell you that there is a strong feeling in both the State Department and Justice that this kind of legislation is not necessary. State Department feels that the Case Act has worked out very well. I wanted to say to you today, very informally, that I think we should work closely together on the details of this legislation. If there appears to be such a strong feeling in the Congress that we have to pass some kind of bill, I think we have to work very carefully on this. I believe, in fact, that we have worked cooperatively so far, and I want to avoid a confrontation, if possible. If, however, this is a broad extension of Congressional powers, I hope we can slow down the progress on the bill until our technical people can work with you on it. Henry Kissinger is not here because he is meeting with the Shah. The Shah is a very impressive man and I've enjoyed meeting with him. [to Sparkman] John, do you have any comments?

Senator Sparkman: I'm impressed with your statement, and I definitely think that we can cooperate in this matter and avoid any confrontation.

Senator Case: We couldn't have a more reasonable Chief Executive. I think we can work out a process whereby Congress can decide if an agreement is important enough to require Congressional approval, but we will still have to address the problem that there is nothing we can do if a President will not send an executive agreement to us. The thing that got me going again was the incident of the Nixon-Thieu letters, which weren't sent to us. I was also concerned about the economic



agreements signed at the Nixon Summit with the Soviets. We eventually got these, but not for over a year. The State Department is very reluctant to move in this area.

The President: Have you felt that we have not been helpful on this?

Senator Case: Not you, Mr. President.

Senator Sparkman: Cliff, is it your proposal that the President would notify us of an agreement, sending it up normally, and then the Committee will decide if it needs approval?

Senator Case: Yes, if the full Senate concurred with the resolution the Committee reported.' [to the President] As you know you are already sending up all agreements so this is not a change. I am building on the current legislation.

The President: [to Zablocki] Clem, what do you think?

Representative Zablocki: Mr. President, you asked us to go slowly. We do not mean to rush anything through. Chairman Morgan, I know will want to hold full committee hearings on these bills and to work closely with the Department of State. We would also be willing to arrange it so the President could state any classification he saw necessary and we could deal with the agreement accordingly. Mr. President, I want to make very clear that we are getting executive branch cooperation, we are receiving the executive agreements as we foresaw in the 1972 legislation. Our concern is that there are some executive agreements that are as important as a treaty. If such executive agreements are made, the Legislative Branch could not meet its obligations under the Constitution. We also have to address the problem of individual agencies making agreements with agencies of other governments, such as state banks and so forth.

Senator Sparkman: The Spanish bases issue was one we remember well. We thought that agreement should have been a treaty. I remember telling Secretary Rogers and Alex Johnson at the time that when the time came to renew these agreements it should be done in the form of a treaty. I recalled that Bill Rogers objected very strongly to this. We were also concerned over the agreements on the Azores, Bahrain, and Diego Garcia. I do believe that if the respective committees were notified of an executive agreement, we could decide whether we thought it needed confirmation or not.



Senator Case: Of course, we recognize the problem is what happens in the interim between the signing of the agreement and the Congressional decision to approve it or not.

The President: Yes, clearly this procedure would leave many agreements in limbo.

Senator Case: However, once foreign countries realize there is a co-operative effort that involves both the Executive and the Legislative Branches, they can adjust to this and work with us just as smoothly as they do now.

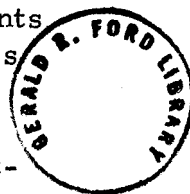
The President: [to Broomfield] Bill, what do you have to say?

Congressman Broomfield: Mr. President, I think this discussion was very helpful. I didn't sign the original (Morgan-Zablocki) bill because of the objections we have just heard. I definitely think we should slow down our consideration of this legislation.

Senator Case: The difficulty is how to draw up language that is not too restrictive but still has some meaning in it. I think, from his description, Clem's bill is very good. He is a genius at drafting.

The President: During the last 48 hours we have had an experience that prompted me to want to talk to you about this to slow down the pace of the legislation. My people in State and Justice believe that this legislation is unconstitutional and that the 60-day delay would prevent us from acting decisively. These are the questions I'm getting. Therefore, I thought that if we could have this exchange at a preliminary stage, we could avoid any possible confrontation. If Congress decides to move ahead we would want an opportunity to work together so that we don't have both sides frozen in. We have had enough of that kind of confrontation with the Congress so I hope we can avoid it over this issue.

Senator Case: There is a shady area here we will have to address. Do you remember Senator Symington's hearings on the Thai contingency agreements? We, the United States, didn't see them as commitments to go to war, but to the Thais it seemed to imply they could see it as involving an automatic U.S. response commitment. These kind of things really need careful scrutiny. I think some of our diplomatic people want to encourage foreign countries to believe that a commitment indeed exists. For example, I am sure that President Thieu was convinced that he had a firm deal.



The President: I think he did believe that under the circumstances although I'm sure he recognized when Congress acted to prohibit any U.S. military action.

General Scowcroft: The converse of Senator Case's remarks could mean that the President might lose his position where he speaks for the United States, where other countries see him as the voice of the U.S. We cannot have a situation where other countries perceive the U.S. as divided and not able to speak with one voice in foreign policy.

Senator Sparkman: Brent, this President is not that kind of guy. Other Presidents do speak with that kind of authority and this is precisely the danger we want to avoid.

Jack Marsh: Let me give you my perspective of how these things tend to work in the Executive Branch, especially on how we act to keep Congress informed. I was in the Congress and now I've had an opportunity to see things on the Executive Branch side. We have to begin to look very carefully at the question of to what extent the Legislative Branch is encroaching on Executive action, on the responsibility the Executive Branch has under constitutional authority to conduct foreign policy. We made a determined effort to comply with the War Powers Act during the Vietnam and Cambodian events, including the seizure of this ship. We did have problems on who we should consult with. The language of the War Powers Act is vague on who should be consulted. It simply says, "the Congress". We had a long debate here and we are not yet certain what Congress expects as compliance with these provisions.

I also want to point out that in a time of crisis, these legislative requirements do act as a kind of deterrent on executive action and I think we need guidelines to clear up these procedures. We did decide on our own that we would inform 22 people, the leadership of each House and the Chairmen and the ranking members of the Judicial Committees. I recall that at one point during the Vietnam evacuation we had members of Congress all over the globe to notify. It was a rather difficult task.

I am concerned that when we start to get criticism or complaints whether we complied with the law, it tends to inhibit executive action to the extent that Congress knows that a statute exists that limits executive authority and, therefore, tries to assert its prerogative in the foreign policy area. As you move into consultations during a crisis planning period, Congress also wants to move in on the planning process and this starts to inhibit Executive Branch processes. I can see a situation arising whereby the War Powers Act consultations can lead to an assertion of a Congressional role in executive areas of action. We must distinguish more clearly between what the law requires and when the President just brings Congress in to inform them of what he has full discretion to do.



In a crisis the Executive Branch has to operate under great time constraints and many problems of coordination. We have to coordinate extensively with other agencies on their activities to be able to do an accurate and adequate job of consultations. It is quite a battle for us to get the necessary information to do a good job in keeping you informed. As you consider the current legislation, you will want to consider this burden on us and what it does to our ability to act in a time of crisis.

The President: In our meeting here Wednesday evening, the Speaker mentioned the discussion in the House on Wednesday, which included many demands for greater consultation. One member of the Congress, who I will not name, indicated that he needed to be informed and consulted, but if I were to do this, one additional person always becomes four, in that I would then have to inform his counterpart in the other party and his two counterparts in the Senate. This is a burden that can go just so far. We have tried to be reasonable. I know some members don't think that we have done enough. It is a mechanical and practical problem but an important one.

Senator Case: I haven't heard any such complaints, Mr. President.

Congressman Zablocki: It certainly wasn't me complaining, but I was put in a bind because, of course, the press felt that I was surely one member who would be consulted. Mr. President, I want you to know how hard we worked on Section 3 of the War Powers Act. We purposely didn't spell out the consultation process because we thought that the President needed the flexibility to respond according to the situation. I, for one, would be satisfied if the President reached only one member of the House if that is all he had time to do during a time of crisis.

The President: That is a very interesting comment, Clem. We have interpreted that section as we thought best.

Senator Sparkman: You mentioned your identifying 22 people to be consulted, but I can tell you that on the Senate side, we are perfectly satisfied if only the two leaders are notified and, if possible, also Cliff and I, to whom the Committee has delegated such responsibility.

You used the phrase confrontation, Mr. President. I've told people that I know of no confrontation with the Executive on this issue.

[Terry O'Donnell brings in a message for Senator Sparkman.]

Mike Mansfield wants us back up in the Senate for a roll call vote.

Senator Case: Mr. President, we are most grateful to have the chance to talk to you today on this matter.

Senator Sparkman: I am quite confident we can work this out together.

THE WHITE HOUSE

WASHINGTON

May 26, 1975

Active Agreement

MEMORANDUM FOR: General Scowcroft

FROM:

Phil Buchen

P.W.B.

Attached is a second letter from Senator Abourezk to the President regarding the Nixon/Thieu correspondence. I am sending a copy also to Monroe Leigh because of his involvement before the Abourezk Subcommittee.

Attachment

cc: Monroe Leigh

JAMES O. EASTLAND, MISS., CHAIRMAN
JOHN L. MCCLELLAN, ARK.
PHILIP A. HART, MICH.
EDWARD M. KENNEDY, MASS.
MICH. GAYN, IND.
QUENTIN N. BURDICK, N. DAK.
ROBERT C. BYRD, W. VA.
JOHN V. TUNNEY, CALIF.
JAMES ABGURECK, S. DAK.
ROMAN L. HRUSKA, NEBR.
HIRAM L. FONG, HAWAII
HUGH SCOTT, PA.
STROM THURMOND, S.C.
CHARLES McC. MATHIAS, JR., MD.
WILLIAM L. SCOTT, VA.

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, D.C. 20510

PETER M. STOCKETT
CHIEF COUNSEL AND STAFF DIRECTOR

May 22, 1975

The Honorable Gerald R. Ford
The White House
Washington, D.C.

Dear Mr. President:

On May 2, I requested that you and the State Department furnish to the Separation of Powers Subcommittee of the Senate Committee on the Judiciary, copies of the letters of November 14, 1972, and January 5, 17, and 20, 1973, sent by President Richard M. Nixon to President Nguyen Van Thieu, in which President Nixon makes commitments regarding American assistance to South Vietnam in the post-settlement period; copies of the letters of November 11 and December 20, 1972, from President Thieu to President Nixon regarding American assistance to South Vietnam in the post-settlement period; and copies of any other material or information related to this correspondence and its substance. On May 12, Robert J. McCloskey, Assistant Secretary for Congressional Relations for the State Department, replied that my request to State had been forwarded to the White House.

In my letter to you, I asked that you respond by May 7 so that we might make use of this correspondence in our hearings on executive agreements which were held on May 13, 14, and 15. Mr. William T. Kendall responded on May 3 by acknowledging receipt of my letter and by promising to call my letter to your early attention. During two subsequent telephone conversations, Mr. Kendall assured my staff that a response would be forthcoming prior to the hearings. Regrettably, that did not happen and follow-up phone calls to Mr. Kendall's office have not been returned.

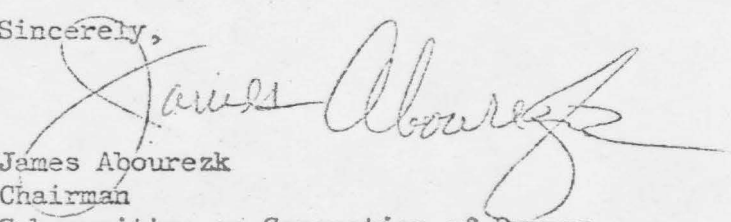
While we have completed the bulk of these hearings, they will resume in mid-June with the testimony of Monroe Leigh, Legal Adviser for the Department of State.



Page Two
May 22, 1975

It is imperative that we have copies of the Nixon-Thieu correspondence for our use when these hearings resume, for completion of the hearing record, and for our further study of the whole problem of executive agreements, particularly legislative solutions therefor. In view of the inordinate time which has elapsed without a reply, I respectfully request that you respond by June 5.

Sincerely,


James Abourezk
Chairman
Subcommittee on Separation of Powers



THE WHITE HOUSE

WASHINGTON

May 27, 1975

MEMO FOR: Phil Buchen ✓
Rod Hills
Ken Lazarus
Barry Roth

FROM: Dudley Chapman *DC*

SUBJECT: Legislative Encroachments

For your information.



and the cost will be far less than tax expenditures for people at the upper end of the income scale. In this time of economic and housing crisis, you can do no less.

POWER OF CONGRESS TO CONTROL AGENCIES IN THE EXECUTIVE BRANCH

(Mr. DEL CLAWSON asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. DEL CLAWSON. Mr. Speaker, the constitutional separation of powers is explicit. We will all agree that Congress is empowered to write the laws of the land. And yet, I believe all of us in this body have taken note of increasing instances of blurring the clear definition of these powers by actions of agencies in the executive branch. Only a few "horror stories" are required to persuade us that eternal vigilance is the price we must pay if we are not to relinquish the law-writing function to a swarm of eager bureaucrats. Under the guise of "implementation" they can wreak changes, build empires, soar to heights of imaginative mismanagement of the public weal undreamed of in the halls of Congress when the original legislation was written and enacted.

With increasing frequency we resort to legislation saying in effect "whoa" to prevent specific regulations from going into effect. The directives are promulgated as a result of legislation approved in the Congress with no intent to authorize what emerges in the way of burdensome Federal redtape, disruption of the lives of individual citizens, and entire communities or costly wasteful regulation by the executive branch.

We are putting out bureaucratic brush fires when what we need is an efficient fire prevention system. I am introducing today a bill which is intended to provide such a system. The bill will establish a method whereby the Congress may prevent the adoption by the executive branch of rules and regulations which are contrary to law or inconsistent with congressional intent or which go beyond the mandate of the legislation which they are designed to implement. For the information of my colleagues the full text follows:

A bill to establish a method whereby the Congress may prevent the adoption by the executive branch of rules or regulations which are contrary to law or inconsistent with congressional intent or which go beyond the mandate of the legislation which they are designed to implement

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) whenever any officer or agency in the executive branch of the Federal Government (including any independent establishment of the United States) proposes to prescribe or place in effect any rule or regulation to be used in the administration or implementation of any law of the United States or any program established by or under such a law, or proposes to make or place in effect any change in such a rule or regulation, such officer or agency shall submit the proposed rule, regulation, or change to each House of Congress together with a report containing a full explanation thereof.

(b) Except as provided in section 2, any proposed rule, regulation, or change described in subsection (a) shall become effective 60 legislative days after the date of its submission to the Congress as provided in such subsection, or at such later time as may be provided in the rule, regulation, or change itself or in the report submitted therewith.

Sec. 2. (a) No proposed rule, regulation, or change described in the first section of this Act shall be placed in effect if, within the 60-day period described in subsection (b) of such section, either House of Congress adopts a resolution in substance disapproving such rule, regulation, or change because it contains provisions which are contrary to law or inconsistent with the intent of the Congress, or because it goes beyond the mandate of the legislation which it is designed to implement or in the administration of which it is designed to be used.

(b) Nothing in this Act shall prevent the Congress, at any time during the 60-day period described in subsection (b) of the first section of this Act, from adopting a concurrent resolution specifically approving the rule, regulation, or change involved; and upon the adoption of any such concurrent resolution the rule, regulation, or change may become immediately effective.

(c) The referral, reporting, and consideration under this section of any resolution with respect to a proposed rule, regulation, or change in either House of Congress shall be governed by the Rules of that House which are applicable to other resolutions in similar circumstances.

(d) As used in this Act, the term "legislative days" does not include any calendar day on which both Houses of Congress are not in session.

Sec. 3. This Act shall apply with respect to all proposed rules, regulations, and changes therein which (but for the provisions of this Act) would take effect on or after the first day of the first month which begins after the date of the enactment of this Act.

A TRIBUTE TO DR. CARL C. BRUMBACK, PUBLIC HEALTH DIRECTOR OF PALM BEACH COUNTY, FLA.

Mr. ROGERS asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. ROGERS. Mr. Speaker, Thursday, July 3, 1975, Dr. Carl L. Brumback will be honored with a testimonial dinner by the community he has so faithfully served as the public health director of Palm Beach County for the past 25 years.

Mr. Speaker, it is not unusual for a Member of Congress to give just due and recognition to a distinguished constituent, but I believe that Dr. Carl Brumback, who is affectionately known as the "Dean of Public Health," should be given special honors.

Dr. Brumback was born in Denver, Colo. He attended public schools in Kansas. He earned his AB and his MD degrees at the University of Kansas and his MPH degree at the University of Michigan.

He served his country in the Army Medical Corps during World War II, as chief of medicine in Kassel, Germany. He retired from the U.S. Army Reserve as colonel.

His public health career started in 1947 as health officer in Laclede County, Mo. He then became Director of Public Health for the Atomic Energy Commis-

sion, Oak Ridge, Tenn. Since 1950 and until now he has been the public health director for Palm Beach County.

He took over the department when it consisted of only a few employees and minimum equipment and built it to an institution of more than 300 employees in 15 health clinics and community centers.

Despite his busy schedule he was awarded a diploma by the American Board of Preventive Medicine. He is a fellow of the American Public Health Association, the American College of Preventive Medicine, and the Royal Society of Health. He is a member of Alpha Chi Sigma, Phi Sigma, Nu Sigma Nu, Delta Omega, the American School Health Association, the Pan American Medical Association, and the Florida Society for Preventive Medicine.

Many deserved honors have come his way. He holds the Meritorious Service Award, 1968, of the Florida Public Health Association, the Certificate of Recognition from Alpha Kappa, and is an honorary member of the Florida Nurses Association.

His comprehensive knowledge of public health has brought him teaching appointments as adjunct professor of biological sciences at the Florida Atlantic University, as clinical associate professor at the University of Florida, and as field training preceptor at the University of North Carolina.

Among his numerous publications and papers were Community Responsibility for Promotion of Positive Health among the Aging, the Development of Community Health Centers, the Agricultural Migrant, Hepatitis Epidemic in the Young Drug-Oriented Society, and many more.

In his 25 years of public health service, Dr. Brumback has already amassed a lifetime's work of honors and accomplishments. His advice and counsel is sought by the county, the State, and the Federal Government. He has the respect and admiration of his colleagues and the community. But more than his accomplishments, his unflagging zeal and his sincere endeavor to help the poor and deprived make him a great human being.

In his years of service to Palm Beach County he was offered higher posts and greater financial rewards, but he always felt it his duty to pursue his conviction that public health and the delivery of qualified health services was his mission.

Mr. Speaker, I would like to express the hope that Dr. Brumback will continue for many years in the service he so outstandingly represented in Palm Beach County and in the State of Florida. Our Nation can be proud to honor and pay tribute to one of its finest citizens.

TWO NEW WILDERNESS AREAS NEEDED

(Mr. TALCOTT asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. TALCOTT. Mr. Speaker, I have today introduced two pieces of environmental legislation which are of vital importance to the area I represent, and

SECRET SENSITIVE

DECLASSIFIED

E.O. 12958, Sec. 3.4 (1)

White House Guide Lines, Feb. 21, 1983

By KR

DATE: 5/11/88

(opened 2/14/84 by JS)

TALKING POINTS FOR CONGRESSIONAL NOTIFICATION

I am calling to inform you on a classified basis, of certain developments with regard to the seizure of an American merchant vessel by Cambodian naval vessels off the coast of Cambodia yesterday. The United States has demanded the immediate release of the ship and its crew. There has been no Cambodian response to this demand.

As a precautionary measure, the President has ordered the U. S. military forces to take certain actions:

-- to prevent the American seamen from being transferred from the vessel or the nearby island to the Cambodian mainland, placing their lives in jeopardy and restricting our ability to rescue them.

-- to prevent reinforcement from the Mainland of the Cambodian forces detaining the American vessel and crew.

With these objectives in mind, the President has directed that U. S. aircraft should attempt to stop the movement of Cambodian boats between the ship or the island and the Cambodian mainland, and to prevent movement of the ship itself. Our military commanders have been directed to use the minimum force required to achieve these objectives.

FYI - You may draw on, but not go beyond, the attached fact sheet in answering questions on this subject.

Status of the U. S. Merchant Ship Seized by Cambodians

The S. S. Mayaguez, seized by Cambodian Communist forces, May 12, is now about 20 miles outside the port of Kompong Som, just north of Koh Tang Island. The ship is dead in the water, and there is reason to believe that most or all of its crew has been transferred to the island. The ship is being kept under surveillance by U. S. reconnaissance aircraft.

As a precautionary measure, several U. S. Navy combat vessels have been ordered to proceed to the general area of Koh Tang Island.

The U. S. has requested that Phnom Penh authorities have the ship released immediately. We have, so far, received no reply.

An NSC meeting was convened this morning.

DECLASSIFIED

E.O. 12958, Sec. 3.4 (b)

White House Guide Lines, Feb. 24, 1983

SECRET SENSITIVE

By KR

NARS, Date

5/11/88 (opened 2/14/84 by 75)

TALKING POINTS FOR CONGRESSIONAL NOTIFICATION

I am calling to inform you on a classified basis, of certain developments with regard to the seizure of an American merchant vessel by Cambodian naval vessels off the coast of Cambodia yesterday. The United States has demanded the immediate release of the ship and its crew. There has been no Cambodian response to this demand.

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The U. S. has requested that Phnom Penh authorities have the ship released immediately. We have, so far, received no reply.

An NSC meeting was convened this morning.

Nsc
Pres exchange of ltr
to Barry
6/2

May 30, 1975

Dear Mrs. Absaug:

This will acknowledge receipt and thank you for your recent letter to the President concerning the reported exchange of letters between former President Nixon and British and French leaders about the supersonic transport.

Please be assured that your letter was passed along to the President and the appropriate members of the staff.

With kind regards,

Sincerely,

Vernon C. Loen
Deputy Assistant
to the President

The Honorable Bella S. Absaug
House of Representatives
Washington, D. C. 20515



bcc: w/incoming to Philip Buchen for DIRECT REPLY - please provide this office with copy.
bcc: w/incoming to General Scowcroft - FYI
bcc: w/incoming to John Marsh - FYI

VCL:EF:VO:vo

24
BELLA S. ABZUG
20TH DISTRICT, NEW YORK

COMMITTEES:
GOVERNMENT OPERATIONS
PUBLIC WORKS

Request copy of letter

Congress of the United States
House of Representatives
Washington, D.C. 20515

May 15, 1975

5-22
WASHINGTON OFFICE:
1506 LONGWORTH OFFICE BUILDING
WASHINGTON, D.C. 20515

DISTRICT OFFICES:
252-7TH AVENUE
NEW YORK, N.Y. 10001
725 WEST 181ST STREET
NEW YORK, N.Y. 10033
720 COLUMBUS AVENUE
NEW YORK, N.Y. 10025

MP

The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D. C.

Dear Mr. President:

As a member of the House Public Works and Transportation Subcommittee, and a Representative from New York City, I have a vital interest in the decision regarding the introduction of the supersonic transport into regular service. I am opposed to permitting these aircraft into regular service, and hope that the decision by the FAA is based upon unbiased considerations.

It is my understanding, however, that on January 19, 1973, former President Nixon wrote to the British and French Prime Ministers indicating that he would do all he could to insure that the Anglo-French Concorde supersonic transport be treated "equitably in the United States." I am concerned that the Administration has therefore already made its decision on the SST, and that the results of the formal proceedings and tests which have been undertaken as part of the decision-making process will not be the determining factor in deciding the issue.

I therefore request that your office make available to me a copy of this letter. I also wish to know whether the position stated in the letter regarding the treatment of the Concorde continues to be that of the Administration.

Sincerely,

Bella S. Abzug

BELLA S. ABZUG
Member of Congress

BSA:csc



THE WHITE HOUSE

WASHINGTON

June 2, 1975

MEMORANDUM FOR: JACK MARSH

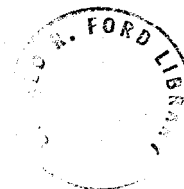
FROM:

PHIL BUCHEN

P.W.B.

This is in response to your memorandum of May 26 attaching a letter to you from Paul Findley and your reply. Attached is a copy of the response I approved for Monroe Leigh to send in reply to a letter from Paul Findley similar to the one he sent you.

Do you want me to write a further letter to Paul Findley?





DEPARTMENT OF STATE
THE LEGAL ADVISER
WASHINGTON

Honorable Paul Findley
House of Representatives
Washington, D.C. 20515

Dear Mr. Findley:

Thank you for your letter of May 15 recommending that the United States offer to join Cambodia in submitting to the International Court of Justice the legal issues involved in the seizure of the Mayaguez.

Your suggestion is a thoughtful one, which has substantial attractions, as the text of your statement to the House of Representatives shows. However, we are, on balance, disinclined to invite Cambodia to join in placing the Mayaguez issues before the Court for two reasons.

First, we believe that we have vindicated U.S. rights under international law by the action taken; with the release of the ship and crew, there is no continuing dispute which, from our viewpoint, the Court could usefully resolve. It should be noted in this regard that, to our knowledge, Cambodia has advanced no legal claims against the United States in respect of the Mayaguez incident.

Second, in view of the profoundly negative attitude of Communist States to the Court, we see little possibility that Cambodia would agree to submit the case to the Court. This attitude of Communist States is so well known that, if we made the offer, informed observers might tend to dismiss it as one we made confident that it would not be accepted. We are reinforced in this view by the fact that Cambodia has so far manifested no disposition to engage even in diplomatic communication, still less international adjudication.

Sincerely yours,

Monroe Leigh



THE WHITE HOUSE

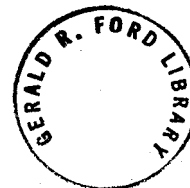
WASHINGTON

May 26, 1975

MEMORANDUM TO: PHIL BUCHEN

FROM: JACK MARSH

Phil, I would be interested in your reaction to the attached.
Thank you.



May 26, 1975

Dear Paul:

I have your letter of May 15 and the attached copy of your press release relative to your recommendation that the "United States submit to the World Court the legal issues in the Cambodian seizure of the American merchant ship".

In response to your letter, I have forwarded copies of your position statement to Presidential Counsellor Philip W. Buchen, the National Security Council and the Department of State.

Thank you for taking the time to advise me of your proposal on this matter.

With warmest personal regards, I remain,

Sincerely,

John O. Marsh, Jr.
Counsellor to the President

Honorable Paul Findley
House of Representatives
Washington, D. C.
JOM:RAR:cb



TRANSMITTED BY:
(Date & Time Stamp)

RECEIVED BY:
(Date & Time Stamp)

DEPARTMENT OF STATE
Operations Center

LDX MESSAGE RECEIPT

S/S #

'75 JUN 4 PM 1:17

Bow

DEPT OF STATE

JUN 4 PM 12 38

LDX MESSAGE NO. 1129, CLASSIFICATION _____, NO. PAGES 8

DESCRIPTION OF MSG. Statement of Monroe Leigh

FROM: Monroe Leigh, L, 29598, 6425
Officer Office Symbol Extension Room Number

LDX TO: DELIVER TO: EXTENSION: ROOM NUMBER:

White House, Philip Buchen, 456-2632, 2nd Floor, W. Wing

Exec. Office Bldg., Les Janka, 395-3116, 376A

FOR: CLEARANCE ☐ INFORMATION ☒ PER REQUEST ☐ COMMENT ☐

REMARKS: _____

VALIDATED FOR TRANSMISSION BY: *st*
Executive Secretariat Officer



STATEMENT OF MONROE LEIGH
LEGAL ADVISER OF THE DEPARTMENT OF STATE
TO THE SUBCOMMITTEE ON INTERNATIONAL SECURITY
AND SCIENTIFIC AFFAIRS
HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

Wednesday, June 4, 1975, 2:00 P.M.

Mr. Chairman, Members of the Committee:

I again express my appreciation for the opportunity to appear before this Subcommittee on the subject of war powers. I understand that the focus of today's hearing will be on steps taken by the Executive Branch to comply with the "consultation" provisions set forth in Section 3 of the War Powers Resolution (P.L. 93-148).

Before turning to the subject of consultation, I wish to make a brief reference to the report concerning the Mayaguez affair which the President sent to the Speaker of the House and to the President Pro Tempore of the Senate early in the morning of May 15, 1975. The preparation of this report, and of the three preceding reports, in accordance with the War Powers Resolution, are



in my view indicative of the good faith effort on the part of the Administration to comply with the reporting requirements set forth in the War Powers Resolution.

I might add that it has frequently been difficult to comply with the procedural provisions in Section 4(a) of the Resolution. For example, Section 4(a) requires the President to submit a written report containing certain specified information within a 48-hour period to the Speaker of the House and to the President Pro Tempore of the Senate. To comply with the 48-hour requirement in the last report which concerned the Mayaguez affair, the President had to be awakened at 2 o'clock in the morning in order to read and sign his report so that it could be delivered to the Speaker and the President Pro Tempore of the Senate. These deliveries were made to the offices of the Speaker and President Pro Tem at approximately 2:30 AM on May 15 about four hours before the expiration of the 48-hour period.



Returning to the question of consultation, I think that three points are of significance in connection with the Mayaguez affair: (1) the Congressional leadership was informed of the principal military operations prior to the actual commencement of those operations; (2) the Congressional leadership did have an opportunity to express its views concerning the impending military operations; and (3) all views which were expressed by the Congressional leadership either in the Cabinet Room meeting on May 14 or in the two earlier telephone contacts with the White House staff on May 13 and 14 were communicated directly to the President.

With respect to the particulars of the Executive Branch's efforts to adhere to the consultation provisions in Section 3 of the War Powers Resolution, perhaps I should begin by noting that although the Mayaguez incident was a rapidly unfolding emergency situation, four separate sets of communications took place



between the Executive Branch and the Congressional leadership. The first of these were carried out by White House staff officers at the direction of the President on the evening of May 13th between 5:50 PM and 7:20 PM. One contact, however, was not made until 8:20 PM and another not until 11:00 PM. Ten members from the House side and 11 Senators were contacted regarding the military measures directed by the President to be subsequently taken to prevent the Mayaguez and its crew from being transferred to the Cambodian mainland, and to prevent any reinforcement from the mainland of Cambodian forces detaining the Mayaguez vessel and crew. The individual views expressed by each of the members were communicated to the President. Among the members contacted on the House side were the Speaker, the Majority and Minority leaders, and the chairman and ranking Minority member of the House Committee on International Relations.



At approximately 8:30 PM that same evening, U.S. aircraft sank a Cambodian vessel seeking to approach the Mayaguez. This was the first fire from U.S. forces that was directed at Cambodian ships and forces during the entire affair.

The second set of communications took place on the following morning, May 14, 1975, between 11:15 AM and Noon. At that time 11 members of the House and 11 Senators were contacted and informed that 3 Cambodian patrol craft had been sunk; and that 4 others had been immobilized in an effort to prevent removal of the Mayaguez crew to the mainland. They were also informed at that time (1) that one Cambodian vessel had succeeded in reaching the mainland "possibly with some U.S. captives abroad"; and (2) that the first U.S. Navy vessel, the destroyer escort, Holt, had arrived in the area.

The House members and Senators contacted included all of those that had been contacted on



the previous evening. Once again, each of the individual views of the House members and Senators was communicated to the President.

The third and fourth sets of communications involved State Department briefings and the President's White House meeting with the Congressional leadership, respectively. On May 14, between 3:00 PM and 5:00 PM, Department officials briefed members of the House International Relations Committee, the Senate Foreign Relations Committee, and the House Armed Services Committee concerning the status of the Mayaguez operation. The fourth communication occurred when the President met with the Congressional leadership in the Cabinet Room at the White House at approximately 6:30 PM on that same day. At that meeting the President personally briefed the leadership on the specific orders given by him for the recapture of the ship and the crew. There was an active exchange of views concerning the operations that had already taken place and



the operations that were to take place later on the evening of May 14.

It is my view that these communications -- which involve information from the President to the Congressional leadership and views expressed by the Congressional leadership being communicated to the President -- were consistent with the provisions of Section 3 of the War Powers Resolution. The President is called upon to consult "in every possible instance." I realize that some have argued that the President could have done more to secure the views of Congress prior to ordering the final military action to recapture the Mayaguez and its crew. But one must consider the other things that the Chief Executive had to do to discharge his obligations under the Constitution. The period of decision extended at most from 7:30 AM Monday, May 12 (4 hours after the seizure) to 7:30 PM Wednesday, May 14, a period of about 60 hours. During this period the President set in motion the various diplomatic and military actions which resulted in the eventual release of the vessel and crew. He supervised the mobilization of the naval and air strength



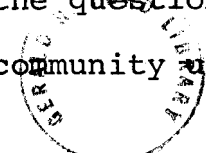
which were brought to bear on the situation; he initiated the diplomatic efforts to reach the Cambodian government and to seek the assistance of the United Nations. He made the critical decisions authorizing the military to take hostile actions to prevent the ship and crew from being taken to the mainland. These were his inescapable constitutional responsibilities as commander-in-chief. Despite these continuous demands on his time, he saw to it that four sets of consultations were carried out -- one of which he personally carried out with the leadership. Even in the light of hindsight, I believe that this was a remarkable effort by the President to cooperate with the Congress during a time of emergency decision making.



[July 1975?]

Intelligence Agreements and Case Act -
Options for Senate Hearings

1. Prior to the July 15 hearing, attempt to get an understanding from Senators Case and Sparkman that the Case Act was not intended to apply to intelligence agreements.
Pro - this would provide the best possible response to any questions on this subject from Senator Abourezk, and would of course be completely satisfactory from the standpoint of the intelligence community. The legal argument of non-applicability would be solid.
Con - It is quite unlikely that Case and Sparkman would agree to such an understanding. Even should they concur, Congress might well disagree, and decide to legislate differently.
2. State that Leigh and Rovine are only now beginning to become familiar with intelligence agreements, that without some further examination it is difficult to characterize them generally, and that questions of possible Case Act coverage remain to be decided upon. Add that the Department has only rarely treated agency level agreements as international agreements within the meaning of the Case Act.
Pro - parries the question of past practice and future intent, and delays a final decision until some of the CIA furor has died down. Keeps all options open.
Con - delay invites move by Congress to participate in the final decision, or to legislate on the question adversely. Will make intelligence community uneasy.



Delay may be effective only for a month or two, at which time we will be asked again for our views.

3. Argue that under the National Security Act, the Director of Central Intelligence is responsible for protecting his sources and methods, and that under his separate statutory mandate, Congressional review has been carried out through other committees. Historically, the Congressional review channels for intelligence operations, including agreements, have been quite apart from the Senate and House Foreign Relations Committees.

Pro - avoids the politically difficult executive privilege argument, while providing a decent, if not totally persuasive approach to the question of Case Act coverage.

Con - permits an easy response that the two approaches are not in conflict, but at worse lead to some duplication. Also there are other areas of double Congressional review, including defense agreements and atomic energy agreements.

4. If absolutely necessary, argue that even if the Case Act should be determined to apply, an issue of executive privilege may arise. Make clear that the reason for the invocation of the doctrine would be the fact of such agreements and the parties concerned, rather than the substance of the agreements.



Pro - avoid disputes on coverage of Case Act; good chance of having this upheld by the courts in event of perceived conflict with Case Act; (see U.S. v. Nixon, 418 U.S. 683, at 706, in which the Supreme Court appeared to accept within the doctrine "a claim of need to protect military, diplomatic, or sensitive national security secrets...."); in any event, it is only way out in case of Freedom of Information Act request.

Con - may be somewhat difficult to invoke the doctrine in context of international agreements; difficult politically; and might lead to adverse legislation.

(N.B. The issue of executive privilege was raised at the 1971 hearings on the Case Act. Jack Stevenson and Senators Case and Sparkman had a discussion on the matter, and Professor Bickel of Yale also raised the issue - see attached pages. If you wish, I will have a memorandum prepared on this topic.)

5. Refer the questioner to the intelligence agencies, none of which have ever transmitted intelligence agreements to the Department of State Legal Adviser.

Pro - removes pressure from Department of State.

Con - ultimately futile as will probably lead to adverse legislation; appears to be putting blame on intelligence agencies or the President and will



harden Congressional views. Also, any legal view received from the agencies will not be authoritative on Case Act questions.

6. Argue that the Case Act does not apply to intelligence agreements and none need be transmitted to the Congress.

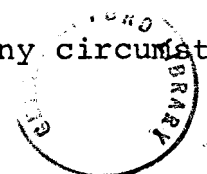
Pro - at least initially satisfy the intelligence community and avoid possible disastrous consequences for intelligence gathering.

Con - the legal argument is weak (based on notion of agency level agreements not being true international agreements) and politically impossible. Strong risk of adverse Congressional reaction, including specific legislative requirement that agency level agreements, including intelligence agreements, be transmitted.

7. Argue that the Case Act does apply and some intelligence agreements must be transmitted, but only with adequate security procedures agreed upon by the intelligence community and the foreign countries concerned.

Pro - the legal argument is sound; Congress will of course be satisfied, even with the need for widespread agreement on security procedures. Assuming such widespread agreement, there should be little in the way of adverse consequences.

Con - the intelligence community will not likely accept the legal argument or transmission under any circumstances;



and such widespread agreement is impossible to achieve. In any event, even one objecting foreign state will be a target for criticism, thus endangering our intelligence agreements with that country.

L/T:AWRovine:rfp

6-25-75





DEPARTMENT OF STATE

Washington, D.C. 20520

LIMITED OFFICIAL USE

MEMORANDUM

August 6, 1975

TO: NSC - General Scowcroft
Major McFarlane
Mr. Janka
EA - Mr. Habib
S - Mr. Bremer

FROM: L - Monroe Leigh *M.L.*

SUBJECT: Treatment of Nixon-Thieu Letters

As each of you knows, the Congress has shown strong interest in securing copies of the so-called Nixon-Thieu correspondence containing alleged "commitments" to the Government of South Vietnam. Initially the congressional criticism focussed on the fact that this correspondence was being kept secret from Congress. The later criticism, however, has focussed on the contention that since this correspondence embodied "commitments," it should have been supplied to Congress under the provisions of the Case Act, which requires that "international agreements other than treaties" be reported either to the Congress or, in the case of classified international agreements, to the Senate Foreign Relations Committee and the House International Relations Committee.

As you know, Secretary Kissinger, testifying before the Senate Foreign Relations Committee shortly after unauthorized disclosure of two of the Nixon letters in the New York Times, took the position that these letters were not international agreements but statements of personal intention on the part of President Nixon. Somewhat later, on May 13 when I testified before the Abourezk Subcommittee of Senate Judiciary, I was questioned about the Nixon-Thieu

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-2-

correspondence and took the same position. At about the same time, Professor Louis Henkin of Columbia University Law School, testifying before the Abourezk Subcommittee, characterized the two letters which had been released as statements of political intention rather than international agreements. Neither my answer nor Henkin's has satisfied Senator Abourezk and his colleagues, and there have been numerous senatorial letters requesting copies of the correspondence or demanding that they be submitted to Congress under the Case Act.

As Phil Buchen has pointed out, the CSCE agreement which the President signed in Helsinki on July 31 is an example, and a highly publicized one, of an international accord which does not have binding legal effect and which consists entirely of declarations of political intents. In fact, the final act at Helsinki includes a provision, which in effect states that the Helsinki Accords are not eligible for registration as an international agreement under Article 102 of the United Nations Charter.

The point is that it is not unusual in international intercourse for nations to adopt statements of political intention which do not rise to the level of international agreements.

It may be useful, therefore, in responding to future demands for the Nixon-Thieu correspondence not only to state that they constitute no more than statements of political intention, but also to point out that the Helsinki Accords resulting from the CSCE belong to the same category of diplomatic instrument.

cc: White House - Mr. Buchen ←



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DEPARTMENT OF STATE
THE LEGAL ADVISER
WASHINGTON

August 15, 1975

MEMORANDUM FOR MR. BUCHEN
THE WHITE HOUSE

FROM: Monroe Leigh *ML*

I enclose for your information a Xerox copy of the preliminary transcript of my testimony before Senator Abourezk on July 25.

The references to the Nixon-Thieu letters appear on the following pages: 431, 432, 433, 437, 438, 440, 441.

The references to the intelligence cooperation arrangements appear on the following pages: 431, 432, 435, 436, 445, 452, 453.

Needless to say, I will be happy to discuss this with you at your convenience.

I am sending copies of the transcript to John Warner at CIA and to John Brock at DIA, calling attention to the passages relating to intelligence cooperation arrangements.

Enclosure:

As stated.



Vol. 4

The United States Senate

Report of Proceedings

Hearing held before

Subcommittee on Separation of Powers

of the

Committee on the Judiciary

S. 632 and S. 1251

EXECUTIVE AGREEMENTS

Friday, July 25, 1975

Washington, D. C.

Duplication or copying of this transcript by photographic, electrostatic or other facsimile means is NOT AUTHORIZED. Copies available, when authorized by Committee, only through Official Reporters.

WARD & PAUL

410 FIRST STREET, S. E.
WASHINGTON, D. C. 20003

(202) 544-6000



C O N T E N T SSTATEMENT OF:PAGE

Mr. Monroe Leigh, Legal Adviser for Treaty Affairs,
United States Department of State

accompanied by:

Mr. Arthur W. Rovine, Assistant Legal Adviser for
Treaty Affairs, Department of State

416

- - -



1 S. 632 and S. 1251

2 Executive Agreements

3 - - -

4 Friday, July 25, 1975

5 - - -

6 United States Senate,

7 Subcommittee on Separation of Powers,

8 of the Committee on the Judiciary,

9 Washington, D. C.

10 The Subcommittee met, pursuant to notice, at 10:15 o'clock
11 a.m., in Room 2228, Dirksen Senate Office Building, the
12 Honorable James Abourezk (Chairman of the Subcommittee)
13 presiding.

14 Present: Senator Abourezk (presiding).

15 Also present: Irene Margolis, Staff Director; Carl
16 Tobias, Counsel.

17 - - -

18 Senator Abourezk. The Subcommittee hearings will come
19 to order.

20 Today, the Subcommittee on the Separation of Powers
21 resumes its hearings on the use of executive agreements by the
22 President to conclude international agreements. Mr. Monroe
23 Leigh, the Adviser for the State Department, will testify here
24 this morning.

25 I want to thank you, Mr. Leigh, for returning to the




1 Subcommittee so that we could explore some of the areas we
2 could not address for various reasons when you testified during
3 May.

4 If I might, I would like to briefly summarize my
5 understanding of your previous testimony. I take it that your
6 major objection to the Glenn and Bentsen bills is a
7 constitutional one. First, that Congress cannot legislate to
8 limit a sole presidential constitutional power; and secondly,
9 you object to the use of a concurrent resolution to veto an
10 agreement.

11 With regard to the practical problems that you raise, you
12 cited the bill's applicability in time of war, and the
13 uncertainty created by the 60-day time period and the fact that
14 Congress already has a sufficient negative reaction through the
15 appropriations process.

16 You recommended that instead of attempting such a broad
17 approach to the problem that particular substantive areas of
18 agreements should be addressed in separate legislation. You
19 also suggested greater executive-legislative cooperation
20 through expanded 175 procedures whereby the Assistant
21 Secretary of State would provide relevant committees regular
22 and detailed briefings on developments in their areas of
23 responsibility.

24 And finally you concluded that any change in the
25 allocation of power by statute would be unconstitutional, and a



constitutional amendment would be required.

Is that a fair statement, summary of your previous statement?

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STATEMENT OF MONROE LEIGH, LEGAL ADVISER FOR
TREATY AFFAIRS, UNITED STATES DEPARTMENT OF STATE
ACCOMPANIED BY: ARTHUR W. ROVINE, ASSISTANT LEGAL
ADVISED FOR TREATY AFFAIRS, DEPARTMENT OF STATE

Mr. Leigh. Yes, Mr. Chairman, I think it is.

Senator Abourezk. Is there anything that you would like to add at this time before we get into some questioning?

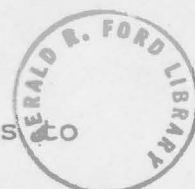
Mr. Leigh. Well, Mr. Chairman, I do not think of anything that I need to add at this stage, but if after the questioning, it appears that there are some things that might be elaborated ~~on~~ from our point of view, then I would like the opportunity to add that ~~into~~ to the record, if that is agreeable?

Senator Abourezk. Yes, it is.

Now, with regard to some other testimony that we have had, Professor Henkin admits to a limited category of sole executive agreements made on the President's own constitutional authority.

However, he is troubled by this category for several reasons. It would depend on the authority of a single person. There was no explicit mention in the Constitution of the power to make them. The scope of the authority to make such agreements is uncertain, and he makes them essential under the foreign affairs power.

Now, in light of this, is the Congress powerless to establish a framework within which the President may exercise



this limited power under the "necessary and proper" clause?

Mr. Leigh. I have to say that I have not seen Mr. Henkin's testimony. I know his writing. He has written one of the best books in this field, and I have great respect for him as a scholar and as a professor of law and as in fact a former colleague in government.

I do not think I understand the argument that is made, but even so, insofar as there are constitutional difficulties, I do not see that legislating under the "necessary and proper" clause is going to be an appropriate method *for* creating a restriction on the President's power now.

One of the difficulties in this area, frankly, is that because we do have a system based on separation of powers and because the Founding Fathers did not see fit to try to draw precise lines, ~~then~~ there is always an area which has to be worked out between the executive and the legislature in succeeding generations, and we are in one of those periods now *in which* where the points of friction have obviously become a great deal heightened over what they have been in most periods, ~~now~~.

Nevertheless, I think it is up to the executive and the legislative branches to try to work out a viable method of cooperation. This is a point which is made in Justice Jackson's concurring decision in the Steel Seizure case, and I think *it is an altogether* ~~one of the~~ valid points.

Senator Abourezk. I was not aware that there was any great



5
1 deal of vagueness in how the separation of powers was drawn.
2 Do you not think that congressional authority is the proper
3 exercise of Congress to preserve our authority in foreign
4 affairs and in usurpations by the executive and give the Senate
5 the final say as to whether its own consent to an agreement is
6 necessary?

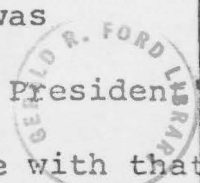
7 If we took your theory, would we not be abrogating our
8 own power?

9 Mr. Leigh. I think the Congress is perfectly entitled to
10 legislate as its understanding of its appropriate role under
11 the Constitution. There is no doubt about that.

12 The difficulty I have here seems to be more fundamental.
13 There is not agreement as to what is the scope of, for example,
14 the most controversial power of all, the commander-in-chief
15 power.

16 Now, probably we ^Could get agreement without too much
17 controversy that the President can conclude a cease-fire
18 agreement, ^{can} direct his commanders in the field to conclude such
19 an agreement, but there are other things which Presidents in
20 the past have done as commander-in-chief which have not always
21 been so lacking in controversy, and that is the grey area.

22 When Professor Bickel testified before the predecessor of
23 this present Committee, he took the position that it was
24 impossible to define with exactitude the scope of the President's
25 powers as commander-in-chief, and I think that I agree with that



general viewpoint. We have to have a specific example of power to be exercised and to focus on ^{that} ~~them~~ in relation to the Constitution to make a determination.

But to decide in advance a priori, so to speak, what the scope of the President's powers as commander-in-chief ^{is} ~~are~~ is extremely difficult.

Senator Abourezk. Now, if we were to carry your argument that Congress is powerless to interfere with the President's constitutional power to enter into an executive agreement to its logical conclusion, then under your argument Congress could not withhold funds to implement such an agreement. Is that correct?

Mr. Leigh. No, I have not gone that far. It may be that there are some areas in which it would be unconstitutional for Congress to withhold funds, but take the very controversial area regarding base agreements abroad. The President makes the typical base agreement, which gives us the right to establish facilities, but no obligations in connection with them, and thereafter Congress disapproves of that kind of involvement and wishes to deny the funds for constructing the facility.

I have no doubt that Congress has the clear power to withhold funds, and I see no constitutional objection to their doing so, and in fact I think that is the principal safeguard for Congress' role in this difficult area.

Senator Abourezk. But it kind of makes it inconsistent, though, your statement that Congress has no power to interfere



1 with executive agreements.

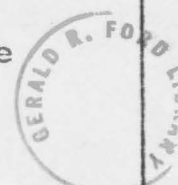
2 Mr. Leigh. I said that Congress has no power to interfere
3 with the President in the negotiation.

4 Senator Abourezk. I agree with that. I think that he has
5 the sole authority to negotiate, but then to carry out, to make
6 the agreement, I think they are two separate things. I do not
7 know that we ever cleared that up in our last dialogue.

8 Mr. Leigh. Well, / frankly ~~say~~, Mr. Chairman, I do not
9 remember our colloquy on this. I think my view has always been
10 that there are certain areas in which Congress cannot restrain
11 a President from making certain types of agreements. For
12 example, a recognition agreement is one which I think the
13 Congress could not restrict the President from making. I think
14 the power to receive ambassadors is an independent,
15 constitutional power.

16 Senator Abourezk. But I think also we agreed, in your
17 last testimony, that while the President has the sole power to
18 negotiate, that is probably to prevent 535 negotiators from --
19 I think that is probably a good idea to do that. However, the
20 power to make an agreement resulting from that negotiation does
21 and really has to have the consultation and, in this case, in
22 the case of treaties, consultation of the Senate.

23 And that is why that is provided. I think that those
24 powers are pretty clearly defined. Do you have any basic
25 disagreement with that?



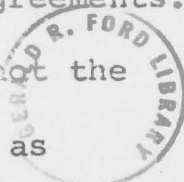
1 Mr. Leigh. When you speak of consultation with the
2 Senate, I assume you mean the process in the Constitution of
3 advise and consent, ~~and~~ ^Nno, I absolutely agree with that.

4 Senator Abourezk. Why do you draw the distinction then
5 between what you call the executive agreements and notice of
6 treaties? Why should there be any difference?

7 Mr. Leigh. Well, I think that this is the constitutional
8 development which has occurred since the very beginning of this
9 system of government that we operate under. It is constitutional
0 in the same sense that the British speak of ^{a governmental} ~~the~~ practice as
1 being constitutional.

2 ~~The~~ ^{The} ~~is every~~ ^{was the} man who drafted the Constitution ~~and every~~ ^{man} man
3 who made the first executive agreements -- and I personally have
4 no doubt that it was their understanding from the very
5 beginning that there would be certain types of international
6 agreements which would not be presented as treaties, but ~~I~~
7 ^{The Supreme Court} ~~assume of course that~~, since that remote day, ^{has} we frequently ^{said} ~~say~~
8 the same thing, ^{quite} ~~one~~ specifically ~~I should say~~, in the Belmont
9 case and the Curtis-Wright case.

0 Senator Abourezk. Although none of the bills we are
1 considering -- and you indicated this when you appeared in May --
2 that none of them can be read as a grant of authority to the
3 President upon which he can conclude the executive agreements.
4 If once again your statement were to control, could not the
5 President conclude all agreements including treaties as



executive agreements in order to avoid the ratification process?

Mr. Leigh. I do not think I said anything ⁱⁿ ~~on~~ my prior testimony that indicated that I went that far. I am perfectly willing to acknowledge that it is a difficult thing to define ~~as to what~~ the difference ~~is~~ between a treaty and an executive agreement.

I think that the principal difference is the significance of the subject matter and the degree to which the implementation of the agreement requires municipal law implementation, and by that I mean domestic implementation within the United States.

Quite clearly we could not ^{legally} make an agreement with the United Kingdom to punish such-and-such conduct as ^a criminal offenses ^{merely} by making an executive agreement. ^{unless of course the existing} I do not think there is any question about that. The President would have to bring that kind of an agreement to the Senate and seek their advice and consent before he could ratify it ^{and there would almost certainly have to be domestic implementing legislation.}

Senator Abourezk. Mr. Leigh, what exists now to prevent any President from concluding that any agreement he makes is an executive agreement and not a treaty? Is there anything?

Mr. Leigh. I think that there is a constitutional tradition that constrains in the first place the examples of what has been treated as a treaty in the past and what has not, treaties of alliance, for example.

~~And~~ ^{— and} ^{secondly}, I think that this is reassuring in the functioning of ^{our} system based on separation of powers. ^T It is



the political constraints which he knows he has to face.

Senator Abourezk. Well, he has not been bothered yet by political constraints. What if a President decided that he would not follow the constitutional conditions, or he just said everything I do is an executive agreement, and therefore the Senate can go to hell, which he has done on a number of occasions, incidentally.

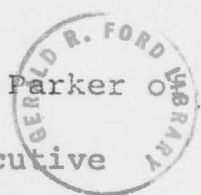
Mr. Leigh. If the President did that, the Congress' remedy is to refuse funds for implementation, if that is necessary, or they can impeach the President, if they think that he is transcending his authority.

Senator Abourezk. So the only deterrent is a political one, not a legal one?

Mr. Leigh. Well, I do not agree with that because you see the courts are not ruling themselves out of this. The courts consider whether an agreement is appropriate under the President's constitutional power. They are perfectly capable of saying that this particular agreement was made, and the President did not have the authority to make it.

Senator Abourezk. I am not aware of any court decisions which have said that this agreement is a treaty and therefore should go through the ratification process, and it is not an executive agreement.

Mr. Leigh. Well, but in the Capps case, Judge Parker of the Fourth Circuit quite clearly stated that an executive



agreement could not constitutionally be made to control the flow of potatoes between Canada and the United States, ~~and~~

Admittedly the Supreme Court acted on a somewhat different basis when they considered the Capps case.

Nevertheless, there is a clear statement in Judge Parker's opinion. I recently have been involved in litigation right here in the District of Columbia where the same question arose, and I think that the lawyers on all sides, and I think that the judges on the bench agreed that there could easily be cases in which the President had transcended his authority in making an executive agreement. I am not sure that a court would go so far as to say that this should have been a treaty. They do not need to go that far.

I think that what they would say is, we find the executive agreement invalid, ^{Then the executive} ~~so it falls into the executive,~~ ^{has} ~~and they have~~ to find some other way to do what they were trying to do.

Senator Abourezk. Do you call that the Capps case?

Mr. Leigh. Let me see if I have the citation.

The Circuit Court opinion in this case is under the style of United States v. Guy W. Capps, and it is 204 Federal ^(2d) ~~Second~~ 655.

Senator Abourezk. The note here said that that was the Fourth Circuit case which invalidated an executive agreement with Canada which allowed the importation of Canadian potatoes.



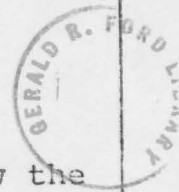
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1 One of the grounds for the court's position was that regulation
2 of foreign commerce lay exclusively within Congress' legislative
3 jurisdiction and that precluded self-executing executive
4 agreements in this area without congressional sanction.

5 What if it were not in the area of potato imports? Now, I
6 think that we have probably established with this case, so far
7 as it has gone, that a particular type of an agreement cannot
8 be made into an executive agreement. What other legal
9 constraints are there upon a President who might choose to make
10 what would ordinarily be a treaty into an executive agreement?

11 Mr. Leigh. Well, if you want to focus on the question of
12 Congress' power to regulate in the sense of legislating with
13 respect to foreign commerce, then it seems to me you get into
14 a very complicated area. Most of the things, most of the
15 international agreements in this area are concluded by the
16 President pursuant to a prior legislative authorization.

17 Take the question of reduction in tariffs. All of these
18 have been foreseen by the reciprocal trade legislation which
19 ^{renewed} has been ~~reviewed~~ over the years since 1934. Those measures
20 authorize the President to negotiate reductions in tariff on
21 a reciprocal basis and thus the tariff which is imposed ^{at the} ~~that~~
22 ^{— at the Customs House —} borders the United States ~~in the principal's house~~ are the tariffs
23 which have been negotiated by the President pursuant to a
24 congressional delegation of power.

25 I am quite ^{sure} ~~clear~~ that if the President did not follow the



procedures which Congress had specified in its delegation of legislative power^{as to tariffs}, that a court would clearly hold that the resulting action was invalid and would not have legal effect, and there have been many such cases in that field, many such cases.

Well, to come back to my earlier point, you really have to pin down the exact example that you have in mind and try to fit it into the constitutional framework.



1 Senator Abourezk. Actually, what I was trying to determine
2 is, what are the legal constraints? You keep talking about
3 political constraints.

4 Mr. Leigh. Well, this is a legal constraint, the one I just
5 gave. It is a legal constraint.

6 Senator Abourezk. But what if there was no prior statute
7 authorizing some kind of an agreement to be concluded?

8 Mr. Leigh. Well, here again, you have to go into what the
9 substantive^{ce of the} matter is. Let us say it was a question of a President
10 negotiating with East Germany for an exchange of convicted spies;
11 and the President, in order to make this arrangement, had to
12 agree to pardon a spy who had been convicted in this country
13 and was being held in prison. I think the President, perfectly
14 clearly, has the independent power to pardon. He does not
15 require any kind of legislative authorization to exercise that
16 power in order to effectuate an exchange of prisoners of the
17 sort that I have talked about.

18 When you are in the field of foreign commerce, you get into
19 the complicated doctrine of preemption. Sometimes, it has been
20 said by the Supreme Court that if Congress has taken no steps
21 to occupy the field in a particular area, then the President may
22 move into that area, and what he determines becomes a perfectly
23 valid exercise of Presidential power in the absence of any action
24 by Congress.

25 If, on the other hand, Congress has moved into the field,

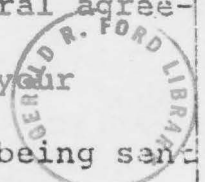
1 and ~~We~~ have legislated with respect to the regulation of foreign
2 commerce, then it is a very different question as to what the
3 President can do.

4 Senator Abourezk. You further testified that Congress can-
5 not make significant change in the allocation of power by simple
6 statute. Yet this legislation that we are considering does not
7 seek to change the allocation of power, but rather to establish
8 a framework within which each branch can exercise its respective
9 powers. Do you disagree or agree with that constriction?

10 Mr. Leigh. I really disagree with that, Mr. Chairman. I
11 think that, obviously, it is intended that the President's power
12 to conclude, for example, a cease-fire agreement must be held in
13 abeyance for 60 days while the proposed agreement lies before
14 Congress, during which time Congress would have the power, if
15 this legislation is constitutionally valid, to negative the
16 President's proposed agreement.

17 So, focusing just on this easy question of power to conclude
18 a cease-fire agreement, it seems to me that it is an attempt
19 by the Congress to legislate, to handle by statute, a matter
20 which they cannot take away from the President, because it is a
21 constitutional prerogative.

22 Senator Abourezk. There is a widespread speculation that
23 Congress is not receiving confidential or classified oral agree-
24 ments and informal agreements under the Case Act. To your
25 knowledge, are all such categories of agreements now being sent



1 to the Congress under the Case Act?

2 Mr. Leigh. Since our last appearance here, we have gone
3 back to some of the assurances that we have from other agencies,
4 and there are a number of areas which we have to explore in
5 greater detail. At the time I was here before, I thought that
6 we had been successful in obtaining copies and passing judgment
7 on every agreement which was required to be sent to the Congress
8 under the Case Act. There are now two or three areas which I will
9 be exploring over the next few weeks to determine whether there
10 may not be a few additional agreements.

11 ~~Let me see.~~ I do not think there is ^a ~~any~~ significant number;
12 and let me say also that I do not think that the subject matter of
13 these agreements is significant. Nevertheless, there may be some
14 which, in the implementation, we have simply not shaken out of
15 the woodwork, so to speak; because there are so many agencies
16 that make certain kinds of arrangements with their counterparts
17 at the agency level in other countries.

18 Senator Abourezk. The Case Act does not make any distinction
19 between significant and insignificant, though.

20 Mr. Leigh. No, but it uses the term international agreement.

21 Senator Abourezk. Whether it is significant or insignificant?

22 Mr. Leigh. No, ^{not textually} But I ~~understood that~~ Mr. Rovine is pointing
23 to the House Committee report on this, and it says that it is
24 clear that the Congress does not want to be inundated with trivia.
25 At the same time, we would wish to have transmitted all agreements

1 of any significance in the guidelines which we laid down in the
 2 rush letter, which was sent by the former Deputy Secretary of
 3 State to all other agencies in the Executive Branch. We did say
 4 that this was one of the criteria which we would look to in
 5 determining whether it was a reportable international agreement.

6 Senator Abourezk. I would like to invite your attention to
 7 Section 112(b), Mr. Leigh, of that Act. "The Secretary of State
 8 shall transmit to the Congress the text of any international
 9 agreement other than a treaty to which the U.S. is a party, as soon
 10 as practicable after such agreement is entered into force with
 11 respect to the U.S.; and no later 60 days thereafter."

12 Mr. Leigh. Well, I certainly understand that language,
 13 Mr. Chairman. I remember once hearing a discussion of the
 14 definition of a book, ~~because it comes out,~~ how many books do
 15 you have in the library? And the first question you have to
 16 decide is, what is a book? Is one sheet of paper a book? Is a
 17 pamphlet a book? Is it every title? ✓

18 And you have the same sort of thing here. I gave ^{an} ~~the~~ example
 19 in my ^{prior testimony.} ~~prepared statement.~~ Suppose that Mr. Rovine receives an
 20 order, from the British stationary office, asking to subscribe
 21 to Treaties and Other International Acts series. Is that going
 22 to be treated as an international agreement? It is no more than
 23 an order for a subscription to a publication. We do not think
 24 that that is the kind of thing that the Case Act embraces.

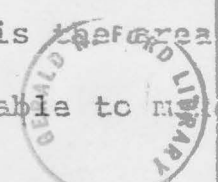
25 Senator Abourezk. Well, I guess there is a problem with

1 leaving discretion to the executive, because President Nixon
2 did not think that his agreement with President Thieu of South
3 Vietnam was good enough to transmit to the Congress. And that
4 is the problem with discretion like that. So I am not sure that,
5 while it makes good copy to say, well, we do not want to send a
6 magazine subscription up. I think that leaving it to the sole
7 Executive, the term of what is significant and what is not
8 significant, is not the best thing under the terms of the Case
9 Act, or under the conditions of what we would like to get done.
10 That is review of executive agreements.

11 Mr. Leigh. May I make the point, though -- although I have
12 not seen Professor Henkin's testimony, I understand that when
13 he went before this Committee, he took the position that the
14 Nixon-Thieu letters, which appeared in the New York Times, were
15 not international agreements; which is the same position that I
16 would take, on the basis of the two that appeared. There are all
17 kinds of things that Presidents do in the conduct of foreign
18 policy which are not international agreements, but are personal
19 statements of intention. The gradations are almost infinite.

20 Senator Abourezk. What about intelligence agreements, so
21 far as agreements that are being sent up under the Case Act, so
22 far as CIA, BIA, and NASA are concerned? Are they all being sent up?

23 Mr. Leigh. We have not sent any to date. This is ~~therefore~~
24 which I am now re-examining, and on which we will be able to make
25 a decision in a few weeks.



Senator Abourezk. Congressman Aspin of Wisconsin has referred recently to 29 agreements which are confidential agreements. Are these confidential agreements as has been referred to -- have they been sent to Congress under the Case Act?

Mr. Leigh. Absolutely, Mr. Chairman. I am astonished by the statement as it was quoted, — when Congressman Aspin made the statement that they had not been sent to Congress. We are required by the Case Act to provide the agreements, and to provide ^{classified} ~~those~~ agreements, not technically to the Congress, but rather to two designated Committees. And that is exactly what we did, and this is where the number 29 comes from.

I testified in May that there had been 29 such agreements, which we had sent to the two Committees, and we believe that that is exactly what the statute contemplates.

Mr. Tobias. Mr. Leigh, you mentioned the Nixon-Thieu correspondence, and you said that, in your opinion, that was not an international agreement. What do you consider that to be?

Mr. Leigh. I stated -- and if I may slightly correct what you said -- I did not consider the two which appeared in the New York Times to be international agreements. I would characterize these as statements of personal intention on the part of the President.

Mr. Tobias. But the President is the chief of the Executive branch, and the commander-in-chief, and has all of these other powers that you proclaim so highly. And yet, in this instance,

1 you denigrate his authority to make commitments.

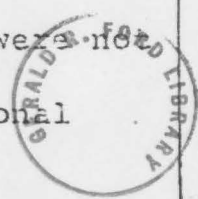
2 Mr. Leigh. Well, in everyday intercourse with the rest of
3 the human race, you and I are constantly stating ~~things~~ as what
4 we plan to do. ^{But} ~~and~~ I do not say, ~~if~~ I make an agreement with
5 you unless there is a certain formality about it, and frequently
6 certain form. It depends, really, on the intention of the parties,
7 basically. You cannot escape the necessity of examining the
8 intention of the parties.

9 Mr. Tobias. But that also depends on the title that the
10 party holds, and this party was the President of the United
11 States.

12 Mr. Leigh. But are you really going to say that every word
13 that the President ^{utters} ~~states~~ is binding by the United States
14 government? Is that the position you are going to take?

15 Mr. Tobias. Not necessarily, but I think that there were
16 some pretty strong assurances.

17 Mr. Leigh. I admit that this is a perfectly legitimate
18 position to take, and as I said when I was here before, this is
19 an area where the President has made these decisions regarding
20 these papers, and I really am not free to go into this area. ~~and~~
21 I limited my comment in response to the Chairman's observation
22 to the two which appeared in the New York Times, and which were
23 the basis for Professor Henkin's observation that they were ~~not~~
24 international agreements, but rather statements of personal
25 intention.



1 Mr. Tobias. Do you concur with Professor Henkin's
2 opinion? Is that correct?

3 Mr. Leigh. I do.

4 Mr. Tobias. Just a few minutes ago, we were discussing the
5 Case Act, and your Department's submission of agreements to the
6 Congress under that Act. Could you explain to us the procedures
7 which the State Department follows in attempting to comply with
8 the Case Act?

9 Mr. Leigh. Well, first of all, I start with ~~the~~ Rush letter.
10 The State Department is not in a position to look at every U.S.
11 government document and determine, after looking at it, whether
12 it is an international agreement. The volume is simply too
13 great. So what we have to do is to write to the other agencies,
14 and that is what the Rush letter did. In the Rush letter, a copy
15 of which we put in the record, I believe, at the prior hearing,
16 and which you are perfectly free to have ^{in any event} ~~if you do not have it~~,
17 we called on all the agencies to supply us with international
18 agreements other than treaties which were required to be reported
19 under the Case Act.

20 In the paragraphs of the letter, we tried to lay down the
21 criteria for determining whether a particular piece of paper is
22 an international agreement which is required to be reported. In
23 addition, we stated that if there were any doubt whatsoever about
24 it, it should be submitted to the Assistant Legal Advisor of the
25 State Department for Treaty Affairs so that the final determination

1 will be made in the treaty affairs office. This is the way the
2 system is intended to work.

3 Now, I would like to call on my colleague, Mr. Rovine, to
4 describe what he does about a very large category of agreements
5 called -- or papers, I should say -- which are developed in the
6 Defense Department, because they are quite numerous; and his
7 practice on the invitation from the Department of Defense is to
8 go to the Pentagon and look through their files of papers from
9 time to time, and make a determination as to which ones would be
10 required to be reported under the Case Act.

11 Mr. Rovine. Actually, in recent months, they have been
12 sending material to me rather than my going over there to the
13 Pentagon. But the effect is exactly the same. I get from Mr.
14 Forman's office all of the documents which may or may not
15 constitute international agreements, and then I review them all,
16 or have a colleague help in that effort. And we simply decide,
17 right there, what is an international agreement within the
18 meaning of the Case Act, and what is not. And those that are,
19 of course, are transmitted to the Congress.

20 We send over every couple of weeks or so a batch of
21 agreements to the Congress with a covering letter, with also
22 background statements. This is not required by the statute, but
23 we do it nonetheless, because it is sometimes difficult to fully
24 understand an agreement just by reading its text. The background
25 statements are often a help. and so we transmit those as well.

1 The classified agreements are transmitted to the Senate
2 Foreign Relations Committee and the House International Relations
3 Committee, again with background statements. And, as Mr. Leigh
4 pointed out, since the passage of the Case Act, the nation has
5 entered into 29 of those classified agreements, and they have all
6 been transmitted to the two Committees.


7 Mr. Tobias. Mr. Rovine, what documents are being given
8 by the Department of Defense to you for review?

9 Mr. Rovine. Everything that might constitute an agreement.
10 They come to Mr. Forman's office, and he sends them to me.

11 Mr. Tobias. How do you know that that is everything? What
12 do you mean, everything?

13 Mr. Rovine. Well, at some point in this process, there is
14 no escaping the fact of reliance upon the good faith of some-
15 body or other is necessitated. There is no way for me to have
16 absolute assurance that I am seeing every single scrap of paper,
17 nor in my view is there any way for Congress to know with
18 absolute assurance. Even if you had a system under which you
19 asked that any piece of paper that might remotely resemble an
20 agreement be transmitted to the Congress for their view, you
21 would still have to rely on a judgment made by somebody as to what
22 remotely resembles that agreement.

23 It seems to me that with the large number of transactions
24 in which this government is engaged, there is no way to escape
25 good faith reliance at some point.



1 Senator Abourezk. May I interrupt? Under the Case Act,
2 who has ultimate responsibility to turn over executive agreements
3 to the Congress -- the Secretary of State?

4 Mr. Rovine. The Secretary of State is designated by the Act.

5 Senator Abourezk. And who is responsible? Should somebody
6 in the Pentagon to withhold a significant agreement, is it the
7 Secretary of State's responsibility then to go out and seek out
8 those additional agreements, or does he just say, well, they did
9 not exercise good faith?

10 Mr. Rovine. It is not specified in the Act, but we have
11 interpreted our responsibilities to mean that the Secretary of
12 State is responsible for seeing to it that he gets all agreements
13 that must be transmitted under the Act. This is why the ^Rush
14 letter was sent.

15 Mr. Leigh. May I just add to that, Mr. Chairman, by saying
16 that if we thought that a department was being recalcitrant, or
17 was holding out, we would simply go to the President. ^{He has} ~~We have~~
18 the constitutional responsibility to see to the execution of the
19 laws, and ^{we would} ask him to direct them point-blank to produce the
20 documents for our inspection. We have not had that kind of a
21 confrontation.

22 Senator Abourezk. What about after the fact? What if an
23 agreement has been concluded secretly, and let us take an instance
24 of the Thieu agreements. There was an agreement concluded secretly
25 upon which President Thieu relied. And then, when the Congress

1 publicly refused to appropriate money to finance the war over
2 there, he said the agreement was broken, and everything is all
3 over with now, and all political hell has broken loose because of
4 what some people say is a broken commitment by the United States,
5 a commitment that we did not know that we had. Who was respon-
6 sible for that -- and say it is concluded in the Pentagon and not
7 in the White House, just as an example? It then becomes
8 responsible, and the Secretary of State says, well, we blew that
9 one. We will see about it next time.

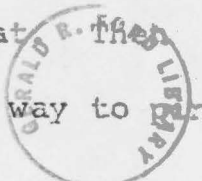
10 How do you pin the responsibility down?

11 Mr. Leigh. If a Cabinet officer has secretly made a
12 commitment without the approval of the President, I think the
13 President would request his resignation.

14 Senator Abourezk. So again it is political. There is no
15 legal -- and then again, let us go further.

16 Mr. Leigh. I have not really considered, Mr. Chairman, the
17 question of whether it is a criminal offense for a subordinate
18 official in the Executive Branch to conclude an unauthorized
19 agreement. I would not be surprised to find that there was some
20 criminal sanction available, but I frankly have not studied it.

21 Senator Abourezk. Let us go a little further. Let us
22 assume the President chose not to ask for his resignation. What
23 if he thought there was not enough heat to require that
24 there really is no recourse of any kind. There is no way to pin
25 the responsibility.



1 Mr. Leigh. Well, I think that there is a way to pin
2 responsibility. There can be a Congressional hearing to expose
3 what happened and reveal the fact that the cabinet officer or
4 the subordinate official had exceeded his authority and may
5 even have disregarded explicit instructions of the President.

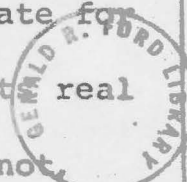
6 Senator Abourezk. Would that include the Administration
7 turning over the documents themselves?

8 Mr. Leigh. That's a complicated question as I'm sure
9 you realize in asking it. There will be a balancing of considera-
10 tions, obviously. I believe that the recent experience and
11 the decision of the Supreme Court shows that the doctrine of
12 executive privilege is not available in criminal prosecutions
13 to withhold documents which are necessary to the prosecution.

14 Senator Abourezk. Will you explain why this Committee
15 is unable to get copies of those letters, of those agreements,
16 from the White House?

17 Mr. Leigh. Well, I stated why, Mr. Chairman, that this
18 had been a decision which had been made by the President at
19 the highest level regarding Presidential documents. You, yourself,
20 have corresponded with the President on this subject, and I am
21 simply not in a position to elaborate further.

22 Senator Abourezk. Does not that experience then, and I
23 know you are not in a position, but does not that militate for
24 some kind of very strong legislation to give Congress its real
25 share of authority in this entire matter because we do not,



1 based on this experience and others, we do not have the authority
2 and, if it is there, it is some kind of a theoretical authority
3 that we are really unable to enforce very handily, and it would
4 seem to me that a flat-out requirement that executive agreements
5 come through the Congress, for some kind of approval, is abso-
6 lutely necessary to preserve the separation of powers. Otherwise,
7 you could jack around, just as we have been jacked around by
8 the President, like the Congress has been jacked around, and
9 I just think that he has made the case for us.

10 Mr. Leigh. Well, there are many parts to that question,
11 Mr. Chairman.

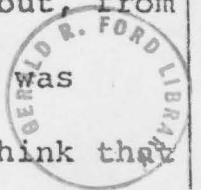
12 Senator Abourezk. That was a speech.

13 Mr. Leigh. Let me say, though, that the proposition
14 really depends on the assumption that this was an executive
15 agreement, and Professor Henkin, who I think is an independent
16 judge, ~~to agree on this~~, concluded that it was not an international
17 agreement.

18 Ms. Margolis. I hate to interrupt you. I just want to
19 make sure that we are all quoting Professor Henkin, and I would
20 like to read his testimony as to what he said, because I think
21 that he is getting a bum rap.

22 "With the Nixon-Thieu Agreement, how would you classify that?"

23 Mr. Henkin. "I do not know what was said there, but, from
24 what I have read in the papers, it is not clear that it was
25 intended to be a legally binding agreement. I do not think that

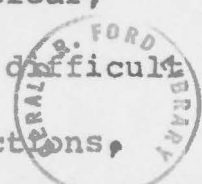


1 we would be subject to an international act for violating it.
2 Political commitments, I was suggesting, may be beyond the
3 reach of the Senate of legislation designed to support the
4 authority of the Senate. Political commitments may also be
5 incidental to and implicit in the process of diplomacy and the
6 conduct of international relations which are the President's
7 domain. Of course, the United States is not legally bound
8 by such commitments, but as you implied earlier, Mr. Chairman,
9 the President can pledge the political faith of the United
10 States -- I am sorry -- the U.S.A., as effectively by these
11 as by legal agreements, and the Congress will be hard put to
12 refuse to carry out the commitment."

13 Mr. Leigh. Well, I think it is very helpful to have
14 that read into the record at this point because it seems to me
15 it does confirm my understanding of what Professor Henkin
16 testified to, namely, that there was not a legally binding
17 international agreement.

18 Ms. Margolis. But he also said that under the terms of
19 what he read the Senate would be hart put not to enforce it.

20 Mr. Leigh. This is a truism in our Constitutional
21 process. This has been true in any number of instances, that
22 the President can take certain actions, ~~and there is clear~~
23 ~~independent Constitutional power~~ which makes it very difficult
24 for the Congress not to take certain consequential actions,
25 ~~and~~ I understand this to be the motivation behind the war powers



1 resolution as one example.

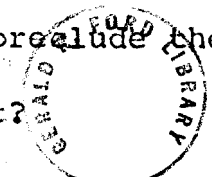
2 Ms. Margolis. But, if you were saying that the President
3 cannot include these agreements and they are political agreements
4 but they have the same effect as a legally binding commitment
5 with regard to what Congress can or cannot do, it is then
6 inconsistent to say that Congress can have no role in it, if
7 the end result is the same as what you term the treaty or a
8 legally binding commitment.

9 Mr. Leigh. We were making a distinction here between
10 what is an international agreement, a commitment in that sense,
11 and a political commitment. On the other hand, the Congress can
12 do all sorts of things which force the President to do things
13 he does not want to do. This is not anything new in our
14 Constitutional system. We have the example of what is happening
15 on questions of aid for example. Congress is frequently denying
16 the President the authority to continue an aid program which
17 causes great difficulty, I can assure you, down at the other
18 end of Pennsylvania Avenue.

19 This is the business of checks and balances.

20 Ms. Margolis. The aid conflict is within the Constitu-
21 tional system and this political agreement, if you are going
22 to start terming things political agreements or contingent
23 agreements, you still have to consider --

24 Mr. Leigh. But, surely, you do not want to preclude the
25 President from ever making a political commitment?



1 Ms. Margolis. But if he makes that political agreement
2 with another country and then determines that we have to live
3 up to that agreement --

4 Senator Abourezk. That is what this argument is all about,
5 that we may not want to preclude him from it, but we want to
6 sure give him the advice and consent of this body if he makes
7 a political agreement.

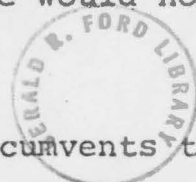
8 Mr. Leigh. But, as I understood you to read Professor
9 Henkin's testimony, this is the very point he was making, that
10 probably Congress could not Constitutionally prevent the
11 President from making certain kinds of political statements.

12 Ms. Margolis. He can make the statements, but then if
13 he has to rely on Congress to enforce them, then I think if
14 there was a clear Congressional role --

15 Mr. Leigh. But then you have anguish because the Congress
16 and the President are at loggerheads about it. Sometimes they
17 support it, and sometimes they do not. More frequently still,
18 they feel that they must support him, even though they do not
19 want to, and they do support him. But it is the other way
20 around, too; ~~that~~ many things the Congress tells the President,
21 he would prefer not to have to follow through on.

22 This is inherent, as I see it, in the separation of
23 powers system. If we had a parliamentary system, we would not
24 have this kind of difficulty.

25 Mr. Tobias. It seems to me your reliance circumvents the



1 Constitution. We are talking about what you call a political
 2 agreement as opposed to an international agreement or executive
 3 agreement, and, in practical effect, it has the same -- it may
 4 very well have the same binding effect. It ends up that the
 5 country is embarrassed internationally on occasion because of
 6 this very circumvention of what the Constitution attempted to
 7 prohibit.

8 Mr. Leigh. Well, but that is no more true in this area
 9 than there was embarrassment by the experience on the Treaty
 10 of Versailles. I ^{can do nothing} think that it would be more embarrassing
 11 to the President ^{than} ~~in~~ the failure to ^{secure} advise and consent on the
 12 Treaty of Versailles.

13 Mr. Tobias. Historically, that is a different situation.

14 Mr. Leigh. It is still an embarrassment.

15 Senator Abourezk. But that was all concluded in public
 16 and everybody knew that he would have to come back to the Senate.
 17 We are really talking about a different area.

18 They were talking about secret commitments or agreements
 19 concluded not within the glare of publicity like the Treaty
 20 of Versailles was.

21 Mr. Leigh. Well, is it your position that you want
 22 every political commitment made by the President to be made
 23 public? Do you want to deny the President ^{the right} to have ~~certain~~
 24 confidential statements ^{of} ~~like~~ intention?

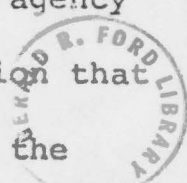
25 Mr. Abourezk. I am not here to talk to you about that.

1 I am talking about commitments that are made by him that are
2 not necessarily available to the public, not debated in public,
3 but should therefore then come to the Senate for ratification.
4 That is exactly what we are talking about. We are not talking
5 about whether or not he has the right to do something without
6 them being made public, because there are some agreements
7 probably that, for example, intelligence agreements that would
8 have to be made in secret. Those should only be rare and
9 very infrequent, and at least the appropriate Congressional
10 Committee ought to know about those kinds of agreements.

11 But it should not -- what we are saying, I guess, is
12 that it should not be a one-man show on his part, and that is
13 exactly what this legislation seeks to prevent. We have one
14 or two more questions, Mr. Leigh.

15 Mr. Tobias. Mr. Rovine said that the Department of State
16 has interpreted the Case Act to hold the Secretary of State
17 responsible for insuring that all such agreements under the Case
18 Act be transmitted to the Congress. What are you doing to insure
19 that all of these other agencies are sending all such agreements
20 to you so that then you could pass them along to the appropriate
21 committees here?

22 Mr. Leigh. Well, primarily we send a letter in the most
23 formal sense by the Deputy Secretary of State to every agency
24 telling them of this requirement, stating our expectation that
25 they would report to us any documents that came within the



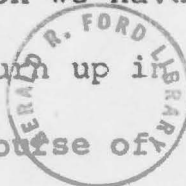
1 range of those that might be required for reporting under the
2 Case Act and stating that if there was any doubt about it,
3 they should submit the document to the State Department for final
4 determination. That is primarily the framework. If we get infor-
5 mation one way or another that the Department has not construed
6 the request properly, then I go to the General Counsel of that
7 agency and say, how about it. I want to see this. And, as I
8 stated earlier, as a result of one or two leads that we have
9 received, I will be reviewing a few additional documents to
10 determine whether they should be reported.

11 Mr. Tobias. What are you doing actively to insure that
12 these documents are coming to you?

13 Mr. Leigh. I do not think I have to write a letter
14 every day to every department, saying, have you sent me what
15 I asked you for yesterday.

16 Mr. Tobias. Well, I agree with that, but is there any
17 type of check that you use, or do you just wait until a situa-
18 tion occurs where --

19 Mr. Leigh. Well, I think there is a kind of practical
20 check in the sense that the State Department is focusing, maybe
21 it should be more of a focus, on all of our contacts with foreign
22 governments and foreign agencies, so that if there is any kind
23 of an understanding of this sort, which for some reason we have
24 not been told about, sooner or later it is bound to turn up in
25 traffic that passes through the Desk offices in the course of



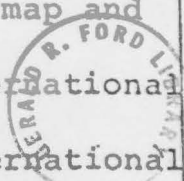
1 business, and we will hear about it.

2 Mr. Tobias. Mr. Rovine stated that once all the agree-
3 ments from other departments come to his office, he and, perhaps,
4 one other person reviews those documents and decides which are
5 executive agreements and which are not, which should then be
6 transmitted to the Congress. I would like to ask what type of
7 criteria governs his determination as to whether the documents
8 are executive agreements and, therefore, should be transmitted?

9 Mr. Rovine. The criteria are set out in the ^Rush letter
10 itself. If you look at page two, the bottom of page two, and
11 the top of page three, of the ^Rush letter, you will find the
12 criteria set out right there, and we do our best to comply with
13 them.

14 Mr. Tobias. What was the source of those criteria?

15 Mr. Rovine. The source of those criteria -- these were
16 written by the Office of the Legal Advisor itself; that is, it
17 is our understanding of what was intended by the authors of the
18 Case Act. It does necessitate in some cases the judgment as to
19 significance; that is to say, I think that one of the most
20 difficult conceptual problems here is to try to understand that
21 a good bit of this is a matter of degree. I like to give an
22 example much like the example that Mr. Leigh gave in his testimony.
23 The foreign government official asks me for a copy of a map and
24 I send it to him. That is a form, I suppose, of an international
25 commitment, but nobody would consider that to be an international



440
1 agreement, but suppose he asked for 500,000 maps, we now
2 might have an international agreement. Now, what point between
3 one and half a million would it become an international agreement?
4 Nobody can say. It is a matter of judgment and they have to
5 be made on grounds of significance in some cases.

6 Mr. Tobias. I take it that where there is any doubt
7 you would go ahead and forward the document?

8 Mr. Rovine. Where there was any doubt, we would simply
9 make a decision one way or the other.

10 Mr. Tobias. But, in close cases, I take it you err
11 on the side of submitting the document?

12 Mr. Rovine. Very frequently, yes, as a matter of fact.
13 I have heard from informal sources that a good many of the
14 things sent over to the Congress are really very trivial in
15 nature, and that we are sending too much. So, I suppose I
16 am erring on the side of liberality, yes.

17 Senator Abourezk. One more question.

18 Ms. Margolis. I would like to give you copies of
19 Professor Fish's testimony. It might be helpful to arrive at
20 a definition.

21 Mr. Leigh. Mr. Chairman, I have in front of me now
22 page nine of Professor ^{Fish's} ~~Henkin's~~ testimony, and he has introduced
23 in that portion a test which is based on so-called restatement of
24 foreign relations law for which he was ~~a~~ principal supporter.
25 I served on the Advisory Committee for that document, for that

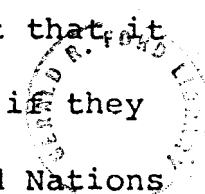
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1 volume. I do not think I have any particular quarrel with the
2 criteria which he has mentioned here, and I would be glad to
3 respond to specific questions, if the staff may have any.

4 Ms. Margolis. On page eleven, which you also have, he
5 has a definition which he thought might be helpful to increase
6 the precision as to what is meant by an international agreement.
7 It reads, "As used herein, the phrase, 1 international agreement
8 other than a treaty means any agreement or understanding, written
9 or oral, other than a treaty that purports to create change or
10 define relationships under international law including in
11 particular, an agreement that purports to commit the United States
12 to an obligation to follow a course of action requiring subsequent
13 Congressional authorization or approval or the expenditure of
14 funds not yet authorized or appropriated. No arrangement or
15 understanding which is not transmitted to Congress pursuant
16 to this section shall be binding under United States."

17 I think he proposed that as an amendment to the Case Act.
18 Is that definition too broad, not broad enough or troublesome
19 to you in any way?

20 Mr. Leigh. Well, there are two aspects of this. The last
21 sentence of this section on page eleven, adopts a kind of proce-
22 dure which is obviously copied from Article 102 of the United
23 Nations Charter. Article 102 of the Charter says, not that it
24 is illegal for nations to have secret agreements, but if they
25 are not registered publicly and openly with the United Nations



1 the nation which is a party to that agreement may not envoke it
2 in any legal proceeding before any organ of the United Nations.
3 This is saying that no arrangement or understanding which is
4 not transmitted to the Congress pursuant to the section shall
5 be binding on the United States. This seems to be adopting the
6 same theory, but I do not see that this gets at the area which
7 the Chairman a few moments ago described as the very heart of
8 the problem, and that is when the President makes a statement
9 of political intention, I do not know that ~~that, that~~ even
10 this definition, ^{reaches} reaches that because when the President makes
11 a statement about political intention, he is talking about
12 what he personally will do, and I do not -- it would be easy
13 enough for him to say, that is not binding on the United States.

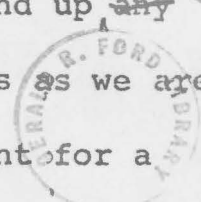
14 Now, in Circular 175, we had gone at this problem, not
15 trying to be comprehensive, by laying out some of the criteria
16 which we consider ^{relevant,} and if you will look at Section 721.3, we
17 mentioned the factors which we take into account in making a
18 decision, the extent to which the agreement involves commitments
19 or risk, affecting the nation as a whole, whether the agreement
20 is intended to affect state laws of the United States, whether
21 the agreement can be given effect without the enactment of
22 subsequent legislation by the Congress, past United States prac-
23 tice with respect to similar agreements, and the preference
24 of Congress with respect to a particular type of agreement.

25 One of the ironies, if I may put this in as an aside, ^{is this} In

1 1954 when they were proposing to have a new agreement with
2 Spain regarding base rights, the Eisenhower Administration came
3 to the Senate leaders and asked, do you want this as a treaty
4 or as an executive agreement, and they said, we want to have it
5 as an executive agreement. Obviously, the sentiment has changed
6 now, but, nevertheless, I think it illustrates that you cannot
7 be categorical. This is a flexible process, depending in
8 considerable measure on the political relationship between
9 the two parts of the government, ^{with our criteria} But to go on [^] and I will
10 complete this, the degree of formality desired for an agreement,
11 the proposed duration of the agreement, the need for prompt
12 conclusion of an agreement, and the desirability of concluding
13 a routine or short-term agreement, and finally, the general
14 international practice with respect to similar agreements.

15 Ms. Margolis. That is to fall in between a treaty or
16 an executive agreement, but I think what Professor Fisher was
17 saying is that in an effort to get as many agreements as
18 possible submitted to the Congress, that those that were not
19 submitted --

20 Mr. Leigh. Would not be binding, and this is what I
21 call the Article 102 technique. Mr. Rovine was just pointing
22 out to me that if you take this language literally in the
23 Fisher proposal it would mean that we would not send up ^{many} any
24 agreements, we would not send up as many agreements as we are
25 now sending up because there would be no requirement for a



1 subsequent Congressional authorization, nor for the approval
2 of expenditure of funds. We are now sending up agreements
3 which do not require any expenditure of funds, ~~for the information~~
4 ~~to Congress.~~

5 Senator Abourezk. Do you think that that established good
6 criteria?

7 Mr. Leigh. I am not sure that it does. I frankly would
8 like to consider this further. There are plenty of things
9 that do not require any expenditure of funds but which, never-
10 theless, are of very great importance in the international
11 relations of the United States, so I would really like to study
12 this more carefully before --


13 Senator Abourezk. Would you give us a written critique
14 on that, of your views? I have one more question and then I
15 will adjourn the hearings.

16 I wonder if you might amplify briefly on the two or three
17 areas of agreements that you say we are not exploring, and give
18 me an estimate of how many agreements have not been
19 submitted to Congress.

20 Mr. Leigh. I do not believe the number would exceed a
21 half dozen, at most.

22 Senator Abourezk.. That have not been submitted?

23 Mr. Leigh. That may not have been submitted, ~~when they~~
24 should have been, perhaps. I have to examine those. They are
25 all in the area of intelligence cooperation.



1 Senator Abourezk. All of them are intelligence cooperation?

2 Mr. Leigh. Yes, the ones that I have now under considera-
3 tion.

4 Senator Abourezk. In the two or three areas of agreements
5 that you say you are not exploring, one of them is intelligence
6 operations? What are those areas that you are exploring?

7 Mr. Leigh. All of them are in this area of intelligence
8 cooperation.

9 Senator Abourezk. Can you be more specific or more
10 detailed than that?

11 Mr. Leigh. I do not really think I can in an open
12 session; I could in an executive session tell you more about
13 the kind of considerations that we are going through at this
14 point.

15 Senator Abourezk. Well, Mr. Leigh, Mr. Rovine, thank
16 you very much for your appearance up here today. We appreciate
17 your cooperation, and the hearings are now adjourned.

18 (Whereupon, at 11:25 o'clock a.m., the Subcommittee
19 adjourned, subject to the call of the Chair.)

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