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8 October 1956

MEMORANDUM FOR: The General Counsel

SUBJECT : Operation ALERT Documents No. 1, 2 and 3.

1. Document No. 1. This Document is a Presidential Proclamation entitled "Proclamation of an Unlimited National Emergency and State of War". The Document recites that the Korean Proclamation was issued to declare a national emergency but was not based on a threat of war involving the United States and did not call into being certain statutory powers which are based on conditions which may constitute a threat of war. It further recites that the United States is now under attack by a foreign power. The President then proclaims: "that an unlimited national emergency and state of war confront this country, which requires that its military, naval, air and civilian defenses undertake to repel any and all acts or threats of aggression directed toward the United States, its military forces and bases overseas, or toward the national interest elsewhere."

2. In the absence of an indication to the contrary, it will be assumed that the Proclamation is not to be accompanied by a declaration of war by Congress. The effect of the Proclamation therefore is that it invokes whatever powers exist by virtue of statutes the operative effect of which hinges on the fact that "an unlimited national emergency and state of war confront this country". We may note in this connection that CIA is not as dependent upon emergency powers as are other agencies, since the President's constitutional powers as Commander-in-Chief and his inherent powers are available for CIA purposes, and in view of the broad powers provided by the NS Act and the CIA Act.

3. Several important, far-reaching statutes are referred to in other ALERT documents. There follows a brief comment on other statutes which would be activated by the language of Document No. 1, and which might affect the operations of CIA:

(a) Section 278b of Title 40 provides an exception from the provision of Section 278a, which limits the authority to obligate or expend appropriated funds to rent building space. Section 278b removes the limitation during war or a national emergency declared by Congress or by the President with respect to such properties as the Secretary of the Army or Navy or such person as he may designate, may certify as

necessary for the prosecution of the war or vital in the national emergency. Doubtless this authority could be utilized for the Agency.

b. Section 1185 of Title 8 provides that it shall be unlawful, unless otherwise ordered by Congress or the President, for aliens to depart from or enter the United States except as the President may prescribe. It also provides that it shall be unlawful for citizens to enter or leave the United States except with a valid passport. This authority might be useful in keeping track of persons in whom we are interested. However, it would have to be used carefully so as to hide CIA association or interest.

4. Document No. 2. Document No. 2, a Presidential Proclamation entitled "Proclaiming the Existence of a State of Civil Defense Emergency", which proclaims the existence of a state of civil defense emergency, would have no direct effect on CIA activities. What it would do, however, would be to put into operation certain standby emergency powers, provided by the Federal Civil Defense Act of 1950, under which the President and the Civil Defense Administrator may direct other agencies, including this one, to undertake certain activities. The Act provides that during the period of the emergency, under certain terms and conditions to be prescribed by the President and solely for civil defense purposes, the "President may direct, after taking into consideration the military requirements of the Department of Defense, any federal department or agency to provide, and such departments and agencies are authorized to provide" personnel, materials and facilities to the Administrator of Civil Defense "for the aid of the States". Although this language would permit the Administrator to order CIA to make available its personnel, material and facilities, the requirement that the President first take into consideration the military requirements of the Department of Defense would seem to require that the President exclude CIA from his directives, in view of the close relationship between the CIA and military requirements of the Department of Defense. The Agency would be well advised, however, to consult with Defense with a view to having that Department include CIA in any representation it makes to the President concerning the exercise of this power. Further, although the President is required to consider only Defense needs, he may consider any others. The Agency might find it useful to make direct requests to the President concerning our needs.

5. Document No. 3. Document No. 3 is a Presidential Proclamation entitled "Providing Temporary National-Security and Civil-Defense Measures." The preamble recites the fact that the country has been attacked, causing widespread destruction of life and property, and that local governments are unable to perform their functions. The Proclamation then confers a

number of powers on the Civil Defense Administrator, the only one of which having any CIA impact is the authority granted the Administrator to take whatever action may be necessary to discharge necessary welfare and government functions. In order to accomplish this he may, among other things, require "voluntary and involuntary services of all persons (except members of the armed forces)" and move such persons to places where their services are needed. Although the Agency doubtless could negotiate with the Administrator in order to be exempted it would seem that the Agency would be well advised to have the proclamation amended prior to issuance, so that our personnel would enjoy the same exceptions as do members of the armed forces.

  
Assistant General Counsel

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