Mr. DOUGLAS. I also ask unanimous consent that there may appear in the RECORD at the conclusion of the Senator's remarks an article on this subject, written by Mr. Anthony Lewis, which discusses primarily the constitutional issue, and which appeared in the New York Times, of August 16, 1964.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. MORSE. Mr. President, I appreciate very much the kind words of the Senator from Illinois. I thank him for his leadership in opposition to the Dirksen amendment. He knows the very high regard in which I hold him as a legislator and the deep affection I have for him as a friend.

Once again he has been willing to row against the current, in seeking to stop what I am satisfied would prove to be a horrendous legislative mistake on the part of the Senate if it should adopt the Dirksen amendment. I am delighted that he and Senator CLARK, Senator PROXMIRE, Senator HART, and other Senators seek to have this question postponed for committee meetings come January.

U.S. INVOLVEMENT IN VIETNAM

Mr. MORSE. Mr. President, I ask unanimous consent that there be published in the CONGRESSIONAL RECORD a letter to the editor which appeared in the Washington Post of recent date. Let the RECORD show that the writer of the letter to the editor of the Washington Evening Star is Mark W. Cornelis. It deals with the Vietnam situation.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

RESPONSE ON VIETNAM

To those who have taken the time and effort to inform themselves on the background of U.S. involvement in Vietnam and the alternatives which were open to us to resolve the situation, the military escalation directed by President Johnson comes as an appalling shock.

With only Senators MORSE and GRUENING voicing opposition to our policy, at this writing, it occurred to me to inquire at their respective offices as to the response being registered by their constituents, via letter and telegram, to their dissenting position. I was informed that Senator MORSE had received 200 telegrams by 11 a.m. on the morning of August 6, and that all but one or two congratulated him on his stand, taken the previous afternoon, condemning the actions in Vietnam. Senator GRUENING's office reported on the same morning that of several thousand letters received during the past few weeks on Vietnam the percentage was between 400 and 500 to 1 in support of the Senator.

It may be that the constituents of Senators GRUENING and MORSE are better informed than most of the American public, but a poll of the general electorate in this country might well reveal, on the basis of the above statistics, that our war in Vietnam is not only stupid and unjust, but lacks the support of the average American citizen.

MARK W. CORNELIS.

WASHINGTON.

Mr. MORSE. In yesterday's Washington Post Mr. Jack Anderson wrote an article on the Tonkin Gulf snafu dealing with the fact that the captain of the *Maddox* did not know that the South Vietnamese were raiding the coast of North Vietnam.

I shall ask later to have the entire article published in the RECORD, but first I should like to make a few comments on it.

The research of Mr. Jack Anderson, whether he fully realizes it or not, has borne out completely the position which the senior Senator from Oregon took at the time of the speech in opposition to the South Vietnam resolution and at the time of his protesting the provocative activity of the United States in not only Tonkin Bay but in southeast Asia at the time of the attacks upon the *Maddox* in Tonkin Bay.

The RECORD will show that I said at the time that the briefings indicated that the captain of the *Maddox* was not aware of the bombing of the two small North Vietnam islands by South Vietnam naval ships. The RECORD will show that I pointed out that these naval ships were supplied by the United States as a part of the American military aid, in complete violation of the Geneva accords.

Many proponents and apologists of the administration's action in South Vietnam did not like to face the ugly fact that we have violated the Geneva accords for almost 10 years. The statement of that fact has always met with hush-hush, and has always met with a coverup. We do not help the cause of peace by trying to cover up our wrongdoing. Of course, Red China and North Vietnam and the Pathet Lao in Laos have been violating the Geneva accords. But I never thought I would live so long as to hear the apologists for this administration seek to justify outlawry on the part of the United States because Red China, North Vietnam, and the Pathet Lao in Laos are also outlaws.

The supplying of such arms and naval ships to the South Vietnamese was itself a violation of the Geneva accords.

It is an old story that two wrongs can never make a right. What I pointed out at the time of that debate, I reassert now. It is verified again, by the Anderson article. Before I am through, it will be verified by an article in the Manchester Guardian, as it has been verified by writer after writer since the bombing of the coast of North Vietnam.

It is true that the captain of the *Maddox* did not know of the bombing of the two South Vietnam islands. But of course he was operating under constant, complete, 24-hour-per-day radio communication and electronic communication with the American officials in Saigon and in Washington. They knew about it. Let us get this fact before the American people once again. Their American officials, who have been aiding and abetting our dictator puppet in South Vietnam, knew in advance of the escalating of the war into North Vietnam by the bombing by South Vietnamese naval ships of the two North Vietnam islands. We aided and abetted; we are implicated, and we have helped to provoke an act of outlawry against those two Vietnamese islands. I said so at the time, and every verification since bears out the soundness and accuracy of the report of the Senator from Oregon.

McNamara finally had his way. This has been McNamara's war from the beginning, and still is. He is still calling the tune and the shots.

As I said the other day, as we now remember to the discredit of the United States, the slogan "Remember the *Maine*," grew out of an unfortunate incident that threw the United States into a war with Spain, when the United States had little cause to go to war with Spain, so I am satisfied that historians of the future in regard to this dark page in American history will record the slogan, "Remember McNamara." In history, McNamara will have to assume the chief blame for the unconscionable and inexcusable action of the United States in joining with the South Vietnamese in escalating the war into North Vietnam.

American officials knew where the *Maddox* was. There had been a bombing of the North Vietnamese islands, carried out by that shameful military dictator puppet in South Vietnam—General Khanh. American officials knew where the *Maddox* was. She was entirely too close to those islands not to have produced the result that her presence as a provocateur produced.

I said days ago that the United States was a provocateur in connection with the bombing of the North Vietnamese islands. I repeat that statement today. The hands of the United States are bloody because of our provoking action by escalating the war in North Vietnam. American leaders have protested that they have been against escalating that war; but what their lips have said is quite different from what their hands have done. The United States has participated in the handiwork of escalating that war into North Vietnam.

The presence of the *Maddox* in Tonkin Gulf waters, even though they were international waters, was perfectly proper. National waters extend only 3 miles. Nevertheless, the fact is that the *Maddox* was allowed by American military and diplomatic leaders in Saigon to be in Tonkin Gulf so close to the mainland of North Vietnam that no one should have been surprised that the North Vietnamese looked upon the action as provocation—and they obviously did.

The evidence is also clear that when the PT boats of North Vietnam started out to the vicinity and location of the *Maddox*, the *Maddox* took to sea and was not overtaken by the PT boats until she was some 30 miles out. There is a dispute as to how far out she was, but I say that 75 miles would have been too close. The *Maddox* was satisfied from intelligence reports that had been obtained that the PT boats with their torpedos were after her. She had a perfect right to fire when attacked. I have always said that. Also, at the time of the second attack, she had the right to sink the boats. But the United States had no right under international law to commit war against the mainland of North Vietnam, for that was an act of aggression. That act was not necessary to protect the *Maddox* or any other

American ship on the high seas. We had North Vietnam dead to rights.

North Vietnam was in clear violation of international law. But if we wanted to commit an act of war, we had the duty to declare war. That the President of the United States has not proposed to do, and obviously does not intend to do. Instead, we as a Congress have given him the right to make war without declaring war. History will not record that act to our credit either. We now begin to see that in the course of time this illegal act on the part of the United States will come home to roost.

In the course of his article, Mr. Anderson says:

3. The *Maddox* intercepted Communist messages, and therefore had a 2-hour warning that the three North Vietnamese PT boats attacked.

Pieced together from naval intelligence reports, here is the inside story of what happened:

On August 1, the South Vietnamese Navy landed a raiding party on the Island Hon Me about 10 miles off the coast of North Vietnam. American advisers in Saigon were given advance notice of the attack but neglected to inform the U.S. 7th Fleet, which polices these waters.

Mr. President, that was where we should have stopped Khanh. That was where we should have served notice that any escalating of that war into North Vietnam would mean the end of American support. That was where McNamara pulled his "sleeper" on the American people. That was where the Secretary of Defense failed the American people and, in my judgment, failed the American President. In my judgment, it was at that point that McNamara owed it to the world to do what he could to stop escalating the war into North Vietnam, for this was a clear, formal attack on the part of South Vietnam upon North Vietnam, obviously with the blessing of the American command in Saigon.

I continue to read from Mr. Anderson's article:

The destroyer *Maddox*, meanwhile, had entered Tonkin Gulf on a routine elint mission. This is the abbreviation for "electronic intelligence" and means that the *Maddox* carried supersensitive electronic gear which could scout the North Vietnamese coast from outside the international boundary.

The *Maddox* was steaming 13 miles off the North Vietnamese shore, which is 1 mile beyond the 12-mile limit which Herbert Hoover established as the American off-shore limit during rum-running prohibition days.

Actually, we have considered 3 miles the international boundary, but the *Maddox* was playing it safe. She was 13 miles out while sniffing Communist radar stations along the coast.

Very casually, the *Maddox* sailed past Hon Me Island, unaware that it had been hit by dynamite-carrying South Vietnamese commandos.

The destroyer was about 10 miles away from the island. But its electronic equipment easily spotted a concentration of North Vietnamese junks and PT boats scurrying around Hon Me like ants whose ant hill has just been stepped on. The *Maddox* crew ignored the flurry until the radio room intercepted an order from the Communist Navy for three torpedo boats to attack.

The *Maddox* skipper, Commdr. Herbert Ogier, sounded general quarters. For 2 hours, the crew waited at their battle stations while they tracked the approaching Soviet-made PT boats on the destroyer's radar screen.

Commander Ogier kept the destroyer's stern turned toward the approaching boats in order to present as slim a target as possible for the deadly torpedos. When the boats came within range, the *Maddox* fired three warning shots, then banged away at the speedy little hornets as they continued to bore in.

The *Maddox* had a clear right and duty to do that. This was an exercise of American rights in self-defense, when the American flag was being attacked on the high seas:

Ogier easily maneuvered out of the path of the launched torpedos, sank one boat with a direct hit.

A careful reading of the intelligence reports convinces diplomats and naval authorities that the North Vietnamese associated the destroyer *Maddox* with the earlier commando attack on Hon Me.

They believe the PT boats were sent to sink the destroyer in retaliation.

Does anyone really believe that if the tables had been reversed and Castro had attacked Key West, with Russian submarines 60 miles off the coast of Key West, we would not have attacked them as provocateurs? Of course, we would have. We would have chosen to do it that way, to get them out of our parts. It is interesting how the flag wavers in this country will wave the flag into tatters when the tables are turned. We never should have had the *Maddox* where she was when this act of war and aggression was committed by the South Vietnamese with boats we had supplied them on the islands belonging to the North Vietnamese.

Mr. Anderson points out further:

President Johnson ordered no retaliation for the first attack on the *Maddox*. It was not until the next day, when both the *Maddox* and the U.S.S. *C. Turner Joy* were fired upon, that the President ordered the retaliatory bombing of PT boat concentrations in North Vietnam.

And when he did, he made a horrendous and historical mistake.

I do not intend to defend the President committing an act of aggression upon the North Vietnamese mainland because there had been an attack on American destroyers. To the contrary, the President of the United States should have taken our case immediately, under our rights under international law, to the United Nations and put these Communists where they belong; namely, on the spot for violating international law. Of course, we should have had to answer for our provocateur conduct in Tonkin Bay, and I wonder whether that is not one of the reasons why we are not so enthusiastic about having the rules of law and reason applied to our shocking warmaking policies in southeast Asia.

Mr. President, I ask unanimous consent that three interesting articles published in the Manchester Guardian of August 13, 1964, one entitled "What Happened in the Gulf of Tonkin?" another written by Wayland Young, and entitled "Debt of Blood"; and another article entitled "A Briefing on Vietnam," be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

WHAT HAPPENED IN THE GULF OF TONKIN?

A new account of last week's events in the Gulf of Tonkin is now emerging in Washington, and it makes a good deal more sense than the original version. According to that, as it was put in statements by President Johnson, Mr. McNamara, and others, the North Vietnamese Government deliberately challenged the 7th Fleet on two occasions by attacking its ships with torpedoes. No one could explain what death wish prompted it to so suicidal a couple of gestures. Its interests, after all, were being served very nicely by the continuous Vietcong successes in South Vietnam, and the Saigon government's increasing weakness; why should its ends be forwarded by an extension of the war—into territory in which it was most vulnerable? General Khanh might want that (indeed he says so, frequently); some U.S. advisers are believed to want it, although not, one has assumed, those controlling policy; but surely not President Ho Chi Minh?

Western commentators made many ingenious attempts to solve this enigma, but the very tortuousness of their answers suggested that something was wrong with the question. To explain the incredible, they sometimes had recourse to the still more incredible, and so we were told, for instance, that the North Vietnamese, like General Khanh in reverse, might be preparing to pour south across the 17th parallel, or that the Chinese for some incrutable reason, might have in mind a world crisis on Korean lines.

Now, however, we are told (still unofficially) that it was all a series of mistakes by North Vietnamese naval officers. The North Vietnamese islands of Hon Me and Hon Ngu had indeed been attacked from the sea, as Hanoi had alleged, before the crisis blew up; this is now admitted in Washington. The attackers were South Vietnamese ships, not the 7th Fleet, but that distinction may not seem so significant in Hanoi as in Saigon, and when at that point the U.S. destroyer *Maddox* sailed into the Gulf of Tonkin (apparently after an absence), the torpedo boat commander jumped to the wrong conclusions. The rest of the story, it is now suggested, was a mixture of misapprehensions on both sides, of muddles, and of decisions taken on the spur of the moment. This new account does not explain everything, but as a working hypothesis it is a great improvement on the old one.

Then what has become of the message that the U.S. airstrike was intended to convey? Well, the North Vietnamese Government has been taught what it can be presumed to have known already: that if you take on the 7th Fleet you are likely to get hurt. But the 25 torpedo boats put out of action were not the main source of American anxieties in Vietnam, and the real test of the theory behind the airstrike will be its effect on the guerrilla campaign in the south. If that now ceases, then those Americans who advocate a strike north will have gone far toward proving their point; if it carries on entirely undisturbed by the loss of northern torpedo boats, then other people's analysis of the war (President de Gaulle's, for instance) will look the more convincing. That need not mean, however, that the U.S. airstrike was a wholly wasted effort. If it makes negotiations easier for the U.S. administration to embark on, then it will indeed have furthered American national interests.

DEBT OF BLOOD

(By Wayland Young)

If the American bombing of the North Vietnamese bases was what it has been pro-

claimed to be, simply condign retaliation for an apparently pointless attack, then there is little cause to rejoice or even approve. Only the Soviet Union stands to gain from worsening of relations between China and the United States, or from an escalation in the sea war. If, on the other hand, it was part of a careful plan to bring on a negotiated settlement, then, though it is obviously extremely risky, it may have good results in the end.

First let us look at the PR picture put out by the U.S. administration for friends at home and abroad. The North Vietnamese are bad, because they are Communists, the South Vietnamese are good because they are anti-Communists and are, therefore, America's friends and allies. But they are weak. So America, which is strong, must help them fight the guerrillas who are operating on their otherwise peaceful territory with North Vietnamese help.

One night out of the blue, North Vietnamese PT boats attack an American destroyer in the Gulf of Tonkin. This "aggression on the high seas against the United States of America," in President Johnson's words, is a warlike act, although a small one, and America must, therefore, destroy the North Vietnamese PT boats in their harbors to stop it happening again. This will show the "baddies" that it is no good taking on "goodies" when they are stronger than you are.

The real situation is more complicated. America is slightly on the wrong foot even juridically, because neither she nor South Vietnam signed the Geneva agreement of 1954 which created North and South Vietnam at all, though all the other powers concerned did. The North Vietnamese are rather more on the wrong foot, since they are breaking the agreement they did sign by helping the South Vietnamese guerrillas.

Beyond the juridical fact lie the human ones. The Vietnamese are a Mahayana Buddhist people, like other East Asians closely linked to China by history. The Chinese appear to be minding their own business at not interfering in North Vietnam. The Americans are a white Christian people from the other side of the earth who thus appear to be behaving in a colonialist manner. The American presence is incorporated in an army which is being built up from 16,000, under Gen. Maxwell Taylor, who used to be Chief of Staff. The situation is distorted and language debased by calling these troops advisers and their commander-in-chief ambassador. On the other hand, he has neither the power nor the local responsibility of a true colonial governor. The American situation is thankless, endless, and tragically absurd.

There was surely more than met the eye in last week's naval engagements. What were the *Maddox* and the *Turner Joy* doing there in the Gulf of Tonkin at all? It is entirely surrounded by the shores of China and North Vietnam. The Times said they were showing the flag, not trailing their coats. In order to judge, one would have to know how long it was since they last went up there. Perhaps they were trailing the flag, or showing their coats. Perhaps they were on a signals intelligence mission or watching Ho Chi Minh's shipping lanes.

In a press conference, Mr. McNamara said that on the Sunday morning the *Maddox* picked up a fleet of junks on the radar and altered course to avoid them. Five hours later the first engagement with the PT boats took place. The North Vietnamese claim it happened in territorial waters. As to who fired first, here are Mr. McNamara's words: "At 2:40 p.m. August 2 *Maddox* reported she was being approached by the high speed (estimated 45 to 50 knots) craft whose apparent intention was to conduct a torpedo attack and that she intended to open fire in self-defense, if necessary.

"At 3:08 p.m. *Maddox* reported she was being attacked by the three PT craft. She opened fire with her 5-inch battery after three warning shots failed to slow down the attackers.

"At 3:08 p.m. the PT's continued their closing maneuvers and two of the PT's closed to 5,000 yards, each firing one torpedo."

It is not clear who began it.

What had the junks been? North Vietnamese, taking supplies south? Or some of the 555 South Vietnamese junks built and armed partly with American funds? The North Vietnamese say that on the previous Thursday someone had been bombarding their islands of Hon Me and Hon Gnu. The Chinese say it was American ships, but the North Vietnamese say it was South Vietnamese ships. Was it some of the 555? If so, did the North Vietnamese, as it has been suggested in Washington, think the American destroyer was covering that action? And if so, were they right or were they wrong?

Some North Vietnamese PT boats were sunk and damaged; according to some accounts the American ship suffered no damage, according to others one searchlight was put out. There is no doubt who won the battle.

The second engagement was, according to American accounts, another victory for them; according to Chinese and North Vietnamese it never happened at all. Again, Mr. McNamara's statement is obscure about who actually fired what first. But with lightning speed and precision, even before the prior warning and ultimatum could have been properly received, American carrier-borne aircraft bombed four PT bases and an oil depot, destroying half the North Vietnamese PT force.

It was of course escalation and carried the risks of that. An American bomber crashed 10 miles from Saigon during the recent build-up of forces and they could not even get to it because the Vietcong were in the way. One natural response to the bombing of the PT bases would be for the Vietcong to shell Saigon. Or of course the Chinese might walk in as they did in Korea, though this looks less likely. The Soviet Union are busy washing their hands of southeast Asia, but presumably might come back at the price of Chinese or North Vietnamese submission in the great split.

Still the risk may have been worth taking if it was part of a careful plan, and there are indications that it may be. James Reston and Hanson Baldwin in the New York Times harp on the suggestion that the North Vietnamese are now supposed to negotiate an honorable settlement.

If this is the idea it is good. The Americans cannot beat the Vietcong on land; a fact it may have taken the presence of as canny a soldier as Maxwell Taylor to discover. The North Vietnamese even with Chinese help cannot beat America on the sea or in the air. A settlement, as President de Gaulle has been pointing out for some years, can only come by negotiation. The American bombing may have been to give themselves face to lose. The only trouble is that it may deprive the Communists of so much face that they will not negotiate until some further stupid "debt of blood"—it is the Chinese phrase—has been exacted. The European can only hope the Communists realize that face is as important to America as it is to them, and that this year President Johnson's face is supremely important to all of us.

Meanwhile, West European governments should, as the French and German have and the British have not, remained rather cool toward the bombing as such, and to any renewed request for help from Cabot Lodge. This war is not like Korea; that was a United Nations action even if by Russian default. South Vietnam is not even a member of SEATO. This war is a mistake, a freewheeling legacy of former mistakes on all sides. There are adults in Vietnam now whose villages have been shot up by foreign planes all their lives, first Japanese, then French, then American.

If the Americans are really ready to negotiate, perhaps the French can get the message through. They still have links in Hanoi.

A Briefing on Vietnam

1. ORIGINS

Vietnam was grouped with Laos and Cambodia in French Indochina, but in culture and history it is quite different. They received their civilization from India; Vietnam from China. They follow the Theravada Buddhism of south Asia; Vietnam the Mahayana school, as in China, Korea, and Japan. Its political and social traditions are Confucianist, its language is related to Chinese, and China ruled the country for about 1,000 years until it successfully revolted in A.D. 939. Since then its preoccupation has been to remain factually independent of China, even though it paid tribute to the emperors. It has, in fact, always reacted strongly to foreign overlordship, as the French were later to discover. There are also minority peoples (mostly in the mountains) who from time to time have reacted against Vietnamese overlordship.

2. FRENCH RULE

The French conquered the country in actions during the sixties and seventies of the last century; they ruled the south (Cochin-China) as a colony and the center (Annam) and north (Tongking) as protectorates. For the rest of the century the country was often in revolt, and the colonial power's effort to spread its language and culture, spread also the European revolutionary traditions which France has notably embodied. Ho Chi Minh became a Communist in France.

During the war of 1939–45 the Japanese used the territory, but recognized Vichy France's sovereignty until March 1945. With the support of the Nationalist Chinese Government of Chiang Kai-shek various nationalist groups (with the Communist component as the most vigorous) combined to form the League for the Independence of Vietnam known as the Vietminh. Ho Chi Minh was secretary. In revolt against the Japanese and French, it received U.S. supplies from the air. After the Japanese surrendered it proclaimed independence as the "Democratic Republic of Vietnam," with Ho as President.

Negotiations between the republic and the French Government broke down in 1946 and by 1949 the Vietminh was conducting widespread and successful guerrilla warfare against the French Army. In that year the French recognized the independence of Vietnam within the French Union, with the former Emperor Bao Dai as head of state. Bao Dai's government, regarded as a puppet of the French, never acquired popular support; the Vietminh controlled more and more of the countryside, and in 1954 they won a decisive victory at Dien Bien Phu.

3. THE GENEVA CONFERENCE

At the Berlin conference of February 1954, the Foreign Ministers of the Soviet Union, the United States, Britain, and France announced that a conference would be held in Geneva to try to settle the Korean and the Indochinese questions. The conference opened in April, when the fall of Dien Bien Phu was clearly imminent. Mr. Dulles, the U.S. Secretary of State, believed that the French should continue fighting, and was ready to back them with American military power, involving possibly the bombing of China. The British Foreign Secretary (then Sir Anthony Eden) made clear that such action would not have British support, and M. Mendes-France, who became Prime Minister of France during the conference, pledged

his resignation if he had not reached an honorable settlement within a month.

The conference ended in July with agreements on a ceasefire in the three countries of Indochina and a declaration on measures to restore peace. A military demarcation line was drawn across Vietnam roughly along the 17th parallel. French forces were to be withdrawn from the north of this line and Vietminh forces from the south. An election was to be held throughout Vietnam within 2 years to reunite the country. No foreign bases were to be established, and neither zone was to join a military alliance. No troop reinforcements from outside were allowed, although replacements on a man-to-man basis might take place. The carrying out of this and other provisions was to be supervised by an Interational Control Commission consisting of representatives of India, Canada, and Poland.

The declaration was subscribed to by all the governments represented at the conference except those of the United States and South Vietnam—that is, France, Britain, China, the Soviet Union, Laos, Cambodia, and the Democratic Republic of Vietnam (North Vietnam). The United States issued a separate declaration promising to refrain from the threat or use of force to disturb the provision of the main declaration.

4. RESUMPTION OF THE WAR

Although the declaration said that the demarcation line was not to be interpreted as a political boundary, that is in effect what it became. It is, indeed, part of the Iron Curtain separating the Communist and non-Communist worlds. No national elections were held, and the two zones developed into two states, each going its own way.

Who first broke the Geneva agreement is disputed. The Communists say that the south did not allow elections; the south says that, in spite of the armistice provisions, armed Vietminh bands (later to be nicknamed Vietcong, or "intruders") were left behind in the south. At all events, guerrilla fighting, which had grown less in the years after Geneva, intensified in 1958 and has grown bolder and more widespread ever since. In December 1960, a "National Front for the Liberation of South Vietnam" was set up to lead the anti-Government fight; it is not composed exclusively of Communists but its policy is to outward apearances identical with that of the party in North Vietnam. The Vietcong now controls more of the countryside than the Government—certainly at night—and many Americans admit that the chief desire of most South Vietnamese is not to win but to end the war.

U.S. intervention has increased to keep pace with the Vietcong's successes, and there are now said to be some 16,000 "advisers" there. That the war nevertheless continues to go badly was last year ascribed to the unpopularity of President Ngo Dinh Diem and his family, and they were overthrown by a military coup d'etat. But morale did not noticeably improve either in the army or in the population, and after a second coup, which brought the present leader, General Khanh, to power, it has declined still further, and Vietcong operations are on an unprecedentedly large scale.

Mr. MORSE. Mr. President, if Senators will read these articles, they will realize that people elsewhere in the world share the point of view which I have tried to warn the Senate about during the past 6 months.

The fact is, we cannot justify our course of action in southeast Asia. The fact is, we are an outlaw nation in southeast Asia, violating time and time again our international commitments.

Yet we talk about peace. Many people state that their only objective is peace: their only objective is not to expand the war; their only objective is merely to contain the threat to the peace in southeast Asia. That spells the word "hypocrisy" in my book.

If we seek peace, we should seek peaceful methods for obtaining it. If we seek peace, we should stop exercising American unilateral military action bringing many deaths throughout that area of the world, including death to an increasing number of American boys.

Election or no election, we should make our record now by going back to the conference table, and stop saying, in effect, that we are going to do what we wish to do in southeast Asia and that the rest of the world can like it or else.

We had better think of the future. We are powerful enough. We have enough destructive power in our nuclear weaponry to take that course of action. The interesting thing is that whenever in the course of the history of mankind powerful nations have abused their power, they have only prepared for their own downfall. We shall all be gone, but if the United States builds on the foundations of unilateral military action and international military outlawry, it will be laying the foundation for its collapse in the decades ahead. No nation can abuse its power and take the position that it is a power unto itself, that it will call the turns and the terms and survive. For we shall continue to build up—as we are building up now—the intense hatred of the yellow races against the people of the United States and eventually they will put us out of Asia, as they put France out of Asia.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial published in the New York Times entitled "Vietnamese Shuffle" of August 17, 1964, as well as an article published in today's New York Times under the title of "Khanh Tightens Vietnam Control, Takes Presidency."

There being no objection, the editorial and article were ordered to be printed in the RECORD, as follows:

[From the New York Times, Aug. 17, 1964]

VIETNAMESE SHUFFLE

The situation in South Vietnam has been getting worse. This is why new measures are being taken to strengthen the internal structure and to give the American forces greater numbers and more authority. The form which these changes are taking is not so important as the fact that General Khanh and General Taylor will have more power.

A world that has seen so many changes in Vietnam while things remained the same must be excused for mingling skepticism with hope in greeting these latest shifts. Americans have been in the paradoxical position of keeping South Vietnam going, providing its military equipment, training its armed forces and guaranteeing its protection against the Communists, under the name of "advisers." While this is largely, although not entirely, a fiction, it cannot overtly be changed because it would put the United States in the position of a white, colonial power intervening to run an Asian nation. Internally, there is the harsh reality of a relatively weak and insufficiently popular government facing an enemy—the Vietcong—which is gradually getting stronger.

This is the difficult situation that is being met by what seems to be a shuffling of the same old deck of cards. The hope is that the changes in the power structure will bring greater efficiency and strength. These are needed to prevent a collapse of the South Vietnam Government. The problems cannot be solved by smashing North Vietnam; they must be solved in the southern zone.

The inability to find solutions for Vietnam, Laos, or Cambodia is bringing mounting pressures for negotiation. The United States has refused to yield to them because of a fear that it would show weakness, because of the need there would be to bring Communist China in on the talks, and because the subject of "neutralization" is for the time being taboo. However, it can be argued that the United States is now in a position to talk from strength, especially after its display of power and determination in the Gulf of Tonkin.

The present situation in southeast Asia is a stalemate in which neither side can win and neither will let the other win. This is normally a good time to talk. The whole region is going through motions and getting nowhere.

[From the New York Times, Aug. 17, 1964]

KHANH TIGHTENS VIETNAM CONTROLS, TAKES PRESIDENCY—GOVERNMENT IS REORGANIZED AT CLOSED PARLEY—MINH OUT AS CHIEF OF STATE—CONSTITUTION IS VOTED—A WAR CABINET IS PLANNED—GREATER ROLE FOR UNITED STATES IN BATTLE DECISIONS HINTED

(By Peter Grose)

CAP SAINT-JACQUES, SOUTH VIETNAM, August 16.—Maj. Gen. Nguyen Khanh assumed the Presidency of South Vietnam today, ousting Maj. Gen. Duong Van Minh, popularly called Big Minh, as Chief of State.

Leaders of the nation's armed forces reasserted supreme authority in the country by voting a new Constitution, patterned after the U.S. presidential system, and then electing General Khanh, the Premier, as President.

After his election, General Khanh received newsmen and pledged adherence to democratic ideals and practices, but he also reserved, under the Constitution, near-dictatorial powers during a temporary state of emergency.

In his remarks he left the way open for greater participation by U.S. military representatives in decisions on the pursuit of the war against the Communist insurgents.

THREE-DAY MEETING WAS SECRET

The Government reorganization was announced after a 3-day closed meeting of the Military Revolutionary Council, the nation's supreme governing body set up by officers who overthrew the Government of Ngo Dinh Diem last November 1.

General Khanh's seizure of power January 30 was accomplished by arresting the council's leader and having himself elected chairman of the body, a post he still retains with the presidency.

General Khanh said his new government, to be announced within a month, would be a "war cabinet."

Because of changes in the government structure after the coup d'état in November, the general becomes the first President of South Vietnam since Ngo Dinh Diem.

His election took place by secret ballot in a cramped and stuffy room in the palace of the former Emperor, Bao Dai, where generals and colonels had been meeting. The result was 50 votes for General Khanh out of 58 members attending, 5 for the Defense Minister, Gen. Tran Thien Khiem, 1 for General Minh, 1 for the II Army Corps commander, Maj. Gen. Do Cao Tri, and 1 blank ballot.

Immediately after the annoucement of the result, General Khanh stood in his camouflage military fatigue uniform to take the oath of office and pledge fidelity to the new Constitution, which moments before had been unanimously approved.

Then a military band in an adjoining room played South Vietnam's national anthem and a 10-gun salute was fired from hilltops around the old imperial palace overlooking the South China Sea.

General Minh, President Khanh's predecessor as chairman, did not attend the meeting. He sent word that he was ill in Saigon, 40 miles northwest of this seaside resort.

General Khanh announced that only this morning General Minh agreed to accept the council's decision and step down as chief of state, a post in which he played no significant role in governing. According to General Khanh, a general from the council left the deliberations and informed General Minh of the imminent action between 7:30 and 9 a.m. today.

MINH STILL POPULAR

Though inactive during the 6 months of General Khanh's regime, the affable General Minh retains considerable popularity and prestige among the South Vietnamese people and soldiers. The risk of dropping him was apparently outweighed in eGneral Khanh's thinking by the need for a tight government team.

General Khanh said that, "as of the present," General Minh remains as a general of the South Vietnamese Army and an adviser with unspecified duties to the Military Revolutionary Council.

Senior American officials were kept informed during the talks leading up to the Government shuffle. Ambassador Maxwell D. Taylor and other representatives conferred with General Khanh and his aides here Friday.

General Khanh was asked about possible changes in the relationship between the South Vietnamese Government and the American advisory mission, which has no command role in the anti-Communist war effort although the United States is heavily supporting it.

It has been reported that a plan is being worked out for a kind of joint command relationship at the top level, although not at field-officer levels.

COOPERATION WITH UNITED STATES CITED

The President replied: "Everything we do, we do in very close cooperation with the American authorities. All of the military tasks that have to be done in connection with them will have to depend on the requirements of the situation."

In earlier statements he has been more positive in stating that there would be no sharing of command responsibilities.

The effect of the new constitution will be to give General Khanh more direct and sweeping control over the Government. By clearly reiterating that supreme authority and responsibility lie with the Military Revolutionary Council, it leaves in doubt the status of leading civilian figures, notably Nguyen Ton Hoan. He was a Deputy Premier under the old constitutional regime and has tried to build his Dai Viet, or greater Vietnam movement, into a potent governmental force.

General Khanh rejected suggestions that he was in effect becoming a military dictator.

The basis of the new Constitution is a separation of powers among three branches of government—executive, legislative, and judiciary—as in the American Constitution.

POWERS ARE GRANTED

However, article 39 endows the President with broad emergency powers. It states:

"In case the independence of the nation and the integrity of the national territory are seriously and urgently threatened, and in case the functioning of the basic institutions of the republican regime or the carrying out of international commitments are seriously hampered, the President of the Republic shall make all decisions and take all appropriate measures after consultation with the president of the Provisional National Assembly and with the approval of the Military Revolutionary Council."

The preamble of the Constitution makes clear that the conditions described in the article exist in the Vietcong insurgency.

Legislative powers under strict limitations are conferred on a Provisional National Assembly until elections can be held in peace and security. A third of the 150 members are to be representatives of the armed forces, a third representatives of province, municipal, and Saigon city councils, and a third appointed by the Military Revolutionary Council from "the personalities within or without the political groups." (The President acquires veto powers, but can be overridden by a three-fourths majority of the Assembly, United Press International reported.)

The judiciary is to be independent, with judges appointed by the President.

Mr. MORSE. Mr. President, what a shocking performance we are supporting in South Vietnam. Our corrupt little military puppet is having a so-called reorganization of his regime over the week end. We shall hear pontificial statements from the leaders of government in short order on what a great improvement it is, yet all it is is a strengthening of the noose around the throats of millions of South Vietnamese, bringing them completely under the control of this dictator. For, in his own pronouncement, he points out that they will get rid of those who are even neutral, to say nothing of those who are opposed. Do not forget that in this so-called reorganization, all the civil liberties of the rights of individuals are suspended. Yet our Government continues to talk about freedom in South Vietnam. There has never been any freedom in South Vietnam since John Foster Dulles got by with convincing the South Vietnamese that they should join the United States in not signing the Geneva accords of 1954. That is when the blow for totalitarianism was struck in South Vietnam by the Secretary of State of the United States.

Ever since, we have made a black, sordid, and sorry record in South Vietnam. In hyprocritical fashion, we have talked about foreign aid in South Vietnam and supported dictatorship. We have talked about the rights of individuals in South Vietnam, and we have supported the imposition upon them of a military dictator puppet. It is a shameful chapter in American history.

I know full well how unpleasant and discordant my words are to many Americans who refuse to stop and study the the facts about our sordid record; but the fact is that the United States, in keeping faith with its professings, should get to the conference table—and fast.

We should recognize that the issue should be taken to a 14-nation conference table, or to the United Nations—I prefer the latter—but I shall continue to raise my voice in protest against American foreign policy in South Vietnam so long as our foreign policy is characterized by three main principles—first, hypocrisy; second, support of dictatorship; and, third, unilateral American military action in clear violation of our obligations under the Geneva accords of 1954, the United Nations, and the spirit and intent of the SEATO treaty.

Mr. President, I yield the floor.

EXHIBIT 1

[From the New York Times, Aug. 16, 1964]

REAPPORTIONMENT

Senator DIRKSEN's rider to the foreign aid bill, delaying reapportionment of State legislatures to allow time for a constitutional amendment on the issue, has been criticized on three grounds: that reapportionment should not be delayed at all, that a rider is a bad method to use and that Congress should not interfere with Supreme Court rulings. Following are comments from the Nation:

The Atlanta Journal: "Senator DIRKSEN's motives are clear. In his some State, reapportionment of both houses of the legislature means not only urban control but Democratic Party domination. * * * If such an amendment were offered, Congress could stipulate that two-thirds of the State legislatures, still under rural domination, pass on what would amount to nothing less than a life and death issue for them. There can be little doubt as to what such bodies would do. There is no concern in the Dirksen proposal for the one-man-one-vote principle. The Senator hopes to serve his own ends and those of some fellow politicians, not the people."

The Plain Dealer, Cleveland: "Allowing State legislatures to mark time from 2 to 4 years in applying the Court directive may be debatable. The point is that congressional action on reapportionment, especially important in Ohio, should stand on its own. It should not be pinned to to the coattails of foreign aid."

The Providence Journal: "The principal objection to the Dirksen proposal is that it constitutes legislative infringement on the judiciary. * * * Nowhere in the Constitution is there any passage that permits Congress, by simple passing a bill, to postpone the application of a decision by the court, as the Dirksen rider would attempt to do.

[From the Philadelphia Inquirer, Aug. 15, 1964]

CONGRESS AND THE COURT

At the crux of a stormy debate in both Houses of Congress over the issue of legislative reapportionment is the central question of what procedure may be legitimately used to nullify the effect of a Supreme Court decision.

Ever since the Supreme Court handed down its decision in June declaring it unconstitutional for either house of a State legislature to be apportioned on any basis other than population, there have been numerous proposals in Congress to circumvent or postpone the effect of this decision.

Nearly all the States are vitally concerned by the ruling because most legislatures are modeled, to some degree, after the Congress, where the House of Representatives is apportioned by population and the Senate on a geographical basis, with each State having two Senators regardless of population. This is a fundamental part of the American system of checks and balances in government, designed to protect majority and minority rights.

It seems to us that the House Rules Committee has gone completely overboard with its proposal that Congress pass a bill intended to nullify the Court's decision on reapportionment. Presumably, any such bill, if enacted, would itself be declared unconstitutional by the Supreme Court.

Southerners are pushing this bill because they see in it a possible precedent for nullifying court decisions on civil rights.

If Congress had the power to overrule the Supreme Court on questions of constitutional interpretation, the Court would be reduced to a meaningless nonentity. Its decisions would be subject to veto by a majority of Congress. Thus Congress, rather than the Court, would become the final arbiter on constitutional questions.

The proper way to overcome a Supreme Court decision on constitutional interpretation is to amend the Constitution, if this be the will of Congress and the required number of States.

It would be wise, in any event for the Federal courts to exercise discretion and avoid a wholesale upset of State governments by setting arbitrary reapportionment deadlines that cannot reasonably be met. In many instances, however, it is the legislatures themselves that are to blame for the reapportionment mess because they have failed to comply with the requirements of their own State constitutions stipulating periodic reapportionment.

The separation of powers between Congress and the Supreme Court, each a separate branch of the Federal Government, is clearly defined in the U.S. Constitution. Congress, alone, cannot change this.

EXHIBIT 2

[From the New York Times, Aug. 16, 1964]

DECISION TO REAPPORTION THE STATE LEGISLATURES STIRS OPPOSITION

(By Anthony Lewis)

Conflict between the Supreme Court and the political branches of government is hardly a novelty in American history. It goes all the way back to the time of John Marshall, who wrote one of his brethren on the bench a gloomy letter predicting a successful effort by Congress to "prostrate the judiciary."

Relations between Congress and the Court have moved in great cycles. A strong court, determined to put its imprint on society, has inevitably aroused resentment among legislators. Sometimes when under attack, the justices have moderated their course until a new turn in the cycle.

The great recent example is the crisis of the 1930's, when a strong-willed majority on the Supreme Court tried to stand against the New Deal. The result was public loss of confidence in the Court, then a direct attack from President Franklin D. Roosevelt in his plan to pack the bench with new Justices. The Roosevelt plan failed, but the Court majority did shift, abandoning the effort to put constitutional limits on social and economic legislation. The Supreme Court faded from the headlines.

Then, slowly, new issues arose in the ferment of constitutional litigation. The Court became more and more deeply involved in the protection of human liberty and equality. New animosities were aroused, and the Court was again in controversy.

RISE IN HOSTILITY

At the American Bar Association meeting here last week, a man who has been a close Washington observer of the Supreme Court for more than 20 years remarked soberly that he had never sensed so much hostility in Congress toward the nine men in their marble palace across the lawn. The angry feelings erupted during the week in the form of urgent legislative moves to upset or limit the historic decision of the Court last June, that the districts in both houses of State legislatures must be substantially equal in population.

There is no secret about why the Supreme Court is in controversy today: its decision in a number of areas have disturbed powerful forces in the community. The results reached by the Court in these areas have outraged not only Members of Congress but also significant sections of the public.

The decisions requiring equality of all races before the law are the most obvious example. Others are cases broadening the freedom of books and movies from censorship, enlarging procedural protections for criminal suspects and prohibiting required school prayers. All have aroused broadside attacks. The Justices have been called soft on criminals or obscenity or atheism. And underneath these exaggerated words there is real feeling on the part of some citizens.

The curious thing about the current furor over the legislative apportionment decision is that that case cannot really be shown to have aroused large-scale opposition among the public. The idea that all citizens should be represented equally in the legislatures, regardless of where they live, has hardly shocked the man in the street.

REVOLT OF POLITICIANS

This would seem to be strictly a politicians' rebellion. It is easy to understand why the politicians are upset. Their own seats may be in jeopardy, and beyond that, the stake in the reapportionment field is nothing less than basic political power. That is what explains the week's explosive events in Congress, not any abstract philosophical proposition.

"If we do nothing, this is the end of an era in America." Those were the strong words used by an ordinarily mild-mannered man, Representative WILLIAM M. MCCULLOCH, Republican, of Ohio.

The era of which he spoke was the era of rural dominance in the Nation's legislatures. For decades, a vote has been worth much more in country areas than in cities. There has been similar rural bias in districts for the National House of Representatives, dealt with an another Supreme Court decision last term. While not directly involved in the current maneuvers, this decision was doubtless in the minds last week of some Representatives who fear it may cost them their seats.

H. L. Mencken said in the 1920's that rural overweighting in legislatures was too absurd to last, but he has not been proved right yet. A major reason is that the bias, once built in, is almost impossible to remove by political means because the politicians will not vote themselves out of office.

There are various ways that apportionments have achieved their rural character. Some go far back into history, as with Connecticut's town-based house. Many States started with districts of equal population in both houses, then shrewd politicians saw the population trend and froze their control by apportioning on nonpopulation factors. Or often the rural bias came from simple failure to redistrict. In Tennessee, the unequal districts which first brought the Supreme Court into the problem in 1962, the State constitution calls for population equality but there had been no reapportionment since 1901.

RECENT CONCESSION

The Supreme Court's critics now talk a good deal about the desirability of having one house based on population, the other on different factors. But that is a latter-day concession under pressure from the Court. Until the justices stepped in, the controlling rural forces most often declined to consider strict population representation in either House.

In New York, for example, the complex apportionment formula introduces nonpopulation elements into the makeup of both Houses. Some 35 percent of the State's population can thus elect a majority in the assembly now, 42 percent in the Senate.

Mr. MCCULLOCH was certainly correct in saying that an era would come to an end if the Supreme Court's decision is enforced. The idea that one part of the State can be given more representation in proportion to population than another would simply be eliminated. That would mean sweeping changes affecting a majority of the States.

New York's present districts, for example, are probably a little better than the national average in terms of numerical equality. In Connecticut, by comparison, a mere 12 percent of the people can elect a majority in the lower house and 32 in the upper. The percentages are 47 and 19 in New Jersey, 45 and 11 in California.

The political effects of change toward equal districts would primarily be to increase the power of the suburbs, for the old city cores are declining along with the country in their share of population. Since the suburbs are traditionally Republican, it may seem puzzling that Republicans are playing so large a part in the drive to undo the Supreme Court decision. When the case came down last June, Representative WILLIAM E. MILLER—then the party's chairman, now the Vice Presidential candidate—hailed it as good for the Republicans.

SUBTLE DIFFERENCE

The explanation seems to be that this is a more subtle issue than party. Even if as many Republicans were elected in an Ohio Legislature districted by population, they would be a different breed of Republicans. They would be the new, smooth politicians of the suburbs instead of the solid country types familiar to Mr. MCCULLOCH, and they would vote differently.

Something similar would be true in the South, which is experiencing full-scale the rise of the middle class suburbs. But in the South a shift to population equality would more clearly help one party—the Republicans—who are reaping in those southern suburban votes. The Republican State chairman in Virginia was one of the politicians who opposed some of the congressional moves last week.

Congress has before it now several proposals aimed at the districting decision. Some follow the straightforward route of a constitutional amendment. Similar amendments sponsored by Mr. MCCULLOCH and Senate Minority Leader EVERETT MCKINLEY DIRKSEN, of Illinois, would have the general effect of permitting one house of the State legislatures to reflect factors other than population if the people of that State approved the apportionment in a referendum.

Senator DIRKSEN offered last week a legislative measure that he said was designed to allow time for consideration of the constitutional amendment. As originally drafted, it rather bluntly directed the courts to suspend proceedings in all districting cases for from 2 to 4 years. But a compromise was then worked out with Justice Department lawyers and offered as a rider to the foreign aid bill.

CURB ON COURTS

The compromise would leave the courts free to declare existing districts unconstitutional. But action would then be stayed for a year or two, as the Justice Department read the language, to let a legislature try to reapportion itself. If it did not act, the Dirksen rider would affirm the power of the courts to do the job.

A third and more drastic route is followed in a bill proposed by Representative WILLIAM M. TUCK, Democrat, of Virginia. This bill was sent to the floor by the House Rules Committee last Thursday in a sudden and dramatic move.

The Tuck bill states that the jurisdiction of all Federal courts to hear districting cases is entirely revoked. If valid, then, the effect of the bill would be to leave intact the constitutional standard of equality just declared by the Supreme Court, but to prevent anyone from enforcing it in Federal lawsuits. The State courts would still be free to hear districting cases, and so the result could be 50 different interpretations of the Constitution on this subject.

Whether Congress has the constitutional power to limit the functions of the courts in these ways by simple statutes is a question debated by scholars. Congress has done so only once before, in 1868, when it cut off the Supreme Court's jurisdiction to hear habeas corpus appeals because it believed the Court was about to declare Reconstruction laws unconstitutional in a habeas corpus case known as ex parte McCardle. The Court upheld Congress action then.

The Tuck measure follows the McCardle approach. Experts disagree sharply on whether it would hold up now.

For one thing the McCardle decision has been much criticized as inconsistent with the independence of the judicial process. For another, some argue that the McCardle statute, a removal of Supreme Court jurisdiction in a general class of cases, habeas corpus appeals, was less a violation of the separation of powers than would be a bar to judicial enforcement of one particular constitutional right.

A PRECEDENT

Foreclosing enforcement of the right to equal representation would be a precedent for picking out any other constitutional right that Congress did not like at the moment and excluding it from the courts.

On the other side, scholars point out that article III of the Constitution gives Congress specific powers to regulate the appellate jurisdiction of the Supreme Court and to fix the jurisdiction of all lower Federal tribunals. As to the latter, indeed, it is up to Congress which, if any, to establish.

The Dirksen rider as redrafted rests on a different constitutional basis—the section of the 14th amendment saying that Congress may enforce the amendment by legislation. The theory is that since the Court has now construed the amendment to require equity in districts, Congress may exercise its power to lay down a rule of decision requiring a reasonable delay for legislatures to act. The argument on the other side is that the measure violates the separation of powers.

POWER AND WISDOM

Some suggested that the Justice Department really considered the Dirksen rider unconstitutional but went along on the theory it would fall in a court test. That is not correct. High officials of the Department, at least, believe that the rider is a valid invocation of Congress powers under the 14th amendment.

The wisdom of the Dirksen proposal is another matter, and there the Justice Department certainly does not agree with the Senator from Illinois. The administration supports the Supreme Court's apportionment decision and would prefer to have no legislative interference with it. The compromise was made with Senator DIRKSEN for one blunt reason: Officials were afraid that they would get something worse if they did not take this. The subsequent progress of the Tuck bill suggested that they were right.

Should the Dirksen rider become law in some form, the next question would be whether a constitutional amendment would be adopted during the period delay. That might well depend on whether President Johnson is reelected this fall and, if so, whether he took a strong position against any constitutional change. Thus far in the current battle he has not spoken out.

The question posed by the present conflict between Congress and Court is in any event larger than the apportionment problem. What is now at issue is the status of the Supreme Court and the continuance unimpaired of its historic power to enforce the citizen's constitutional rights.

MEASURE SCORED

That the issue is the Court as an institution explains the willingness of 15 prominent law deans and professors last week to attack such proposed curbs on the apportionment decision as the Tuck bill. A telegram from them called the proposals drastic ones that would dangerously threaten the integrity of our judicial process.

Some of the signers of that telegram had themselves opposed the apportionment decision. Some have sharply criticized the present Court as too hasty, too confident of its own wisdom, too ready to use bootstrap history in its opinions. The professors can be just as sharp as politicians in their criticism. The difference is that they do not lose their reverence for the institution of the Court.

It is easy for sophisticated analysts to the law to condemn sweeping, ill-considered personal attacks on the Justices who so evidently are trying honestly to tackle the intolerably difficult problems put to them.

But, as Prof. Louis Jaffe of the Harvard Law School has said, the Supreme Court cannot expect only careful appraisals. It must justify itself in the crude marketplace of public opinion precisely because it deals not only with esoteric lawyers' questions but with great social issues.

What is about to be tested is whether the recent line of Supreme Court decisions protecing individual liberty has offended public opinion so much that the political forces arrayed against the apportionment decision will be able to limit or overcome it. On the answer depends not only a good measure of the States' future political makeup but the great role of the Supreme Court in the American system of government. It is hard to imagine a more fascinating or more vital struggle.

CALL OF THE ROLL

Mr. DOUGLAS. Mr. President, I suggest the absence of a quorum, and ask that the quorum be a live quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 547 Leg.]

Aiken	Gore	Mundt
Allott	Gruening	Muskie
Anderson	Hart	Nelson
Bartlett	Hartke	Neuberger
Bayh	Hayden	Pastore
Beall	Holland	Pearson
Bennett	Hruska	Pell
Bible	Inouye	Prouty
Boggs	Jackson	Proxmire
Brewster	Javits	Randolph
Burdick	Johnston	Ribicoff
Byrd, Va.	Jordan, N.C.	Robertson
Byrd, W. Va.	Jordan, Idaho	Russell
Carlson	Keating	Salinger
Case	Kuchel	Saltonstall
Church	Lausche	Scott
Clark	Long, Mo.	Simpson
Cooper	Long, La.	Smathers
Cotton	Magnuson	Smith
Curtis	Mansfield	Sparkman
Dirksen	McCarthy	Stennis
Dodd	McClellan	Symington
Dominick	McGovern	Talmadge
Douglas	McIntyre	Thurmond
Eastland	McNamara	Tower
Edmondson	Mechem	Walters
Ellender	Metcalf	Williams, N.J.
Ervin	Miller	Williams, Del.
Fong	Monroney	Young, N. Dak.
Fulbright	Morse	Young, Ohio
Goldwater	Morton	

Mr. MANSFIELD. I announce that the Senator from Minnesota [Mr. HUMPHREY], the Senator from Alabama [Mr. HILL], the Senator from Utah [Mr. MOSS], and the Senator from Texas [Mr. YARBOROUGH] are absent on official business.

I also announce that the Senator from Massachusetts [Mr. KENNEDY] is absent because of illness. I further announce that the Senator from Nevada [Mr. CANNON] and the Senator from Wyoming [Mr. MCGEE] are necessarily absent.

Mr. KUCHEL. I announce that the Senator from Iowa [Mr. HICKENLOOPER] is absent on official business as a delegate to attend the meetings of the Interparliamentary Union at Copenhagen, Denmark.

The PRESIDING OFFICER. A quorum is present.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

The Senate resumed the consideration of the bill (H.R. 1380) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes.

Mr. JAVITS. Mr. President, on behalf of myself and the Senator from Minnesota [Mr. MCCARTHY], I send to the desk a proposed substitute for the amendment offered by the Senator from Illinois [Mr. DIRKSEN] and ask that it be printed under the rule.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

Mr. JAVITS. Mr. President, the amendment in the nature of a substitute (No. 1215), proposes a sense of Congress resolution, as follows:

It is proposed to strike out all on and after line 1, page 1, and insert in lieu thereof the following:

SEC. 402. It is the sense of the Congress that in any action or proceeding in any court of the United States or before any justice or judge of the United States in which there is placed in question the validity of the composition of any house of the legislature of any State or the apportionment of the membership thereof, adequate time should be accorded first, to such State to conform to the requirements of the Constitution of the United States relating to such composition or apportionment consistently with its electoral procedures and proceedings and with its procedure and proceedings for the amendment of the constitution of such State, and second, for consideration by the States of any proposed amendment to the Constitution of the United States relating to the composition of the legislatures of the several States, or to the apportionment of the membership thereof, which shall have been duly submitted by the Congress to the States for ratification.

Mr. President, I will, in consultation with the Senator from Minnesota [Mr. MCCARTHY], call up the amendment in the nature of a substitute at the appropriate time for consideration by the Senate.

The first proper question is, Why submit the amendment? Perhaps the corollary to that question has already been put in his usual picturesque way by my leader, the Senator from Illinois [Mr. DIRKSEN], who, I understand from the press, called it meaningless.

There is a very real purpose in submitting the amendment. I believe it would avoid a grave danger to the constitutional establishment of our Government posed by the so-called Dirksen amendment, in which the Senator from Montana [Mr. MANSFIELD] is joined. As I shall develop in a few moments, the

Senator from Montana [Mr. MANSFIELD] joins in it on very different grounds from those relied on by the Senator from Illinois [Mr. DIRKSEN]. I believe that the sense-of-Congress resolution which the Senator from Minnesota [Mr. MCCARTHY] and I propose as a substitute is entirely in accord with the constitutional separation of powers as between the legislative and judicial branches of the Federal Government. It would not jeopardize our governmental establishment but it would frankly meet what I recognize to be a difficult issue. Most importantly, it would have the desired effect without the deleterious effects upon our system of government which I see in the Dirksen amendment.

It is also assumed, in saying that a "sense" resolution is "meaningless," that the Dirksen amendment would be meaningful. In my judgment, the Dirksen amendment would not have the operative effect of law which is claimed for it, if that is what is meant by "meaningful," but would purport to have such operative effect without in fact having it. Hence it would work an injury both to the prestige of the Congress and, by an effort which would miscarry or misfire, to the relationships between the Congress and the judiciary. Therefore, a frank statement of what we have the power to do—namely, to request the Court to stay its hand for appropriate reasons—is the most honest procedure in this situation.

There is a real situation of difficulty which faces the Nation in the State legislative reapportionment decision of the U.S. Supreme Court, the so-called "one-man-one-vote" decision. The problems which are thereby created are twofold. First is the problem of conformance without unduly upsetting our whole society.

I should like to say just a word on that subject, because I believe it is important. There has been altogether too much loose talk about the possibility that the enactments of State legislatures which are organized on bases different from the one-man-one-vote concept, including those which are subject to the mandate of the Supreme Court in the six cases which the Court has already decided are unconstitutional, void, illegal, invalid, or in question.

One can speak as a lawyer only with considered judgment, and I speak in that way. I cannot conceive of the Supreme Court upsetting the acts of a State legislature which is organized in a way which is not approved by one of these decisions. I can understand the Court making every effort to bring about the organization of a legislature upon a proper apportionment, but I consider it inconceivable that the Court would invalidate the enactments of a legislature functioning for decades, in the case of many of them, and organized along lines of which the Court disapproves.

That is a very important point, because if we did not grant that point, we would face a great national crisis and emergency; but no one, including the Supreme Court, has given any indication that this will be the fact.

If we do not face that danger—that the acts of our State legislatures are invalid because they are not organized according to the principles laid down in those cases which have brought on the present problem, then we are entitled to proceed with such speed—or deliberate speed, if we want to use the words of the civil rights case—as to balance the public interest and the stability of governmental organisms with the requirement of the Supreme Court that legislatures be organized based upon lawful apportionment.

The assumption on which I am proceeding would also include approval by a legislature of a proposed amendment to the U.S. Constitution. It should always be kept in mind that in every State—if the U.S. Constitution is to be amended to allow one house of the State legislature to be organized on a basis other than population—which is the effort to be made by the Senator from Illinois [Mr. DIRKSEN] and other Senators who are seeking time for such a constitutional amendment to take effect—it will be a question, in the final analysis, for the people of that State to decide. Once such a constitutional amendment is adopted, the people of each State will have to decide whether they will avail themselves of it or not.

The fact that a State legislature will or will not approve a constitutional amendment permitting the people of each State to make their choice represents only one element of the constitutional process—the people of each State must decide on their State constitutions. At this time no legislature can organize one house of its State legislature on the basis of population and the other house on some other basis without running afoul of the 14th amendment, under the Supreme Court decision. Something should be done, under the Constitution, for the people to be able to act in each State upon that matter as they deem advisable.

The other point is that the lower Federal courts have proceeded to press the matter of reapportionment in some cases in a manner which can turn out to be inimical to the very objective to be served. Let us remember that these malapportionments have been going on for decades, in many cases over a century, and somehow or other we have managed to survive. I am all for changing the system and for giving proper representation to our urban and suburban areas, which have grown so much larger in population, but I am not for tearing the country up by the roots. Hence, the Senator from Minnesota [Mr. MCCARTHY] and I have offered what we consider to be a fair compromise.

The question is being pressed by some of the lower courts too hard. For example, in my State of New York the State has been given, under Court order, the direction to reapportion by April 1, 1965. In the interim the Court has ordered three separate elections in 2 years. Our State legislators hold office for 2 years. The court in New York has held that they shall hold office for only 1 year, and that we shall have an election this fall, one next fall, and one the fall after that. It is rather difficult when a Federal court tells a State that it must curtail the constitutional term of its legislators. That is pressing the matter a little further than it should be pressed. I hope the Supreme Court will hear me and others like me who have been indefatigable in its defense, when the Court considers, as it will, whether these mandates are really what is intended.

There are other States in which the courts have held that there should be weighted voting in the State legislature—that is, one senator or one assemblyman shall have one and a half votes, or one and three-quarter votes, and another shall have half a vote. Again, this is completely inimical to the American system. We have never operated that way, and I do not see why the Court should impose such a system on us.

There are other cases. In Vermont the Court has told the legislature it must meet and reapportion and then must adjourn, that the legislators must go home and cannot transact any other business. Mr. President, that is straining the judicial authority a little bit further than it should be strained.

However, that does not mean that we in our turn must be guilty of the same thing. We must express ourselves very clearly, and the residual power, even if we have it, must be very sparingly and very judiciously exercised.

Mr. NELSON. Mr. President, will the Senator yield for a question?

Mr. JAVITS. I yield.

Mr. NELSON. As I understand this resolution it purports effectively to act as a kind of interlocutory decree running against the Supreme Court and postponing the effect of its decision. It that correct?

Mr. JAVITS. When the Senator says "this resolution," does he mean the Dirksen amendment?

Mr. NELSON. Yes.

Mr. JAVITS. Yes; it purports to do that. I had intended to develop that point a little later. Perhaps it is just as well that I tell the Senator now what I have in mind. It purports to do what the Senator has indicated. However, it contains an escape hatch. The escape hatch is "in the absence of highly unusual circumstances." If the Court finds highly unusual circumstances, it may deny the application for a stay.

In my judgment, had the Dirksen amendment omitted that provision, it would have run directly in the face of at least two U.S. Supreme Court decisions, which I shall cite in the course of my speech this afternoon, and would have been held to be unconstitutional. It would therefore have been thrown out by the Court. That is my considered judgment as a lawyer.

The Justice Department felt that the addition of the words, "in the absence of highly unusual circumstances" meant that a court could say, "We are not absolutely bound, because of the language highly unusual circumstances, and we can therefore deny the stay."

I feel that the original Dirksen proposal, which lacked such an escape clause, would have been thrown out as unconstitutional, or run the danger of a serious confrontation between the power of the Supreme Court and the