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WITHDRAWAL SHEET

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Collection: Baker, Howard H. Jr.: Files
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FOIA ID: F1997-066/6, D. Cohen
Date: 08/10/2004

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo (5443)	memo for the record re 7/17/87 meeting between Jimmy Carter and Frank Carlucci, 2p R 5/24/11 F97-066/6 #131	n.d.	B1
2. memo	William Ball to H. Baker and Kenneth Duberstein re consultations, 2p R 1/10/11 F97-066/6 #132	7/14/87	B1
3. memo	Arthur Culvahouse to Baker re applicability of War Powers Act to situation in Persian Gulf, 4p	6/26/87	B1
4. memo	Dan to Baker re Persian Gulf oil flows, 1p R 3/17/06 F97-066/6 #134	6/23/87	B1 B2

RESTRICTIONS

- B-1 National security classified information [(b)(1) of the FOIA].
- B-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- B-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
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- B-7f Release could reasonably be expected to endanger the life or physical safety of any individual [(b)(7)(F) of the FOIA].
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

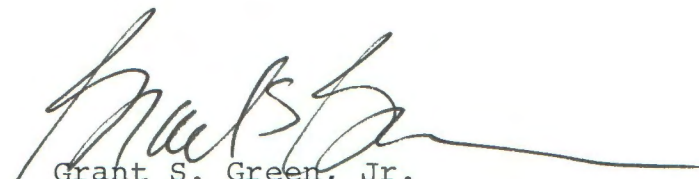
5443

July 20, 1987

MEMORANDUM FOR THE CHIEF OF STAFF

SUBJECT: Briefing of President Carter

Attached is a copy of a memorandum on Frank's meeting with former President Jimmy Carter. Frank wanted you to see it.



Grant S. Green, Jr.
Executive Secretary

Attachment:
As Stated

THE WHITE HOUSE

WASHINGTON

~~SECRET~~

MEMORANDUM FOR THE RECORD

PARTICIPANTS: Former President Jimmy Carter
Frank Carlucci *JK*

PLACE: Plaines, Georgia

DATE & TIME: Friday, July 17, 1987
5:00 P. M. -

SUBJECT: Briefing of President Carter

The main purpose of my visit was to brief President Carter on the Persian Gulf. I went through the actual status of our escorting plan, the vote in the UN and the debate in the Congress. President Carter was interested in all the details, particularly the vote in the UN since he had discussed this on his trip with both the Soviets and the Chinese. He seemed mildly surprised to hear that Dick Walters had received some positive signals from the Chinese with regard to the embargo resolution. He voiced no criticism of our decision other than to note that he thought our escorting was rather provocative. I assured him that this was not our intent; we were simply escorting U. S. Flag vessels on the high seas, and our ships represented a threat to no one. He did not pursue the point further.

China. President Carter seemed more interested in the Chinese portion of his visit than the Soviet portion. He found Deng Xiaoping impressive. Deng assured him that there would be no waivering in China's commitment to modernization. He spent a considerable amount of time discussing the transition and China's problems with Japan, both of which are covered in Carter's reporting cable. On Gorbachev, Deng found him quite capable and thoroughly committed to modernizing Soviet society. Deng thought this modernization process would have favorable repercussions on Soviet foreign policy. In fact, the Chinese saw signs that this was happening already.

President Carter spent a fair amount of time discussing Tibet, an area of special interest to him. He seems to be trying to encourage the Chinese to take a greater interest. He noted the Dalai Lama will be visiting the United States shortly and that he, Jimmy Carter, will try to be helpful to him during the visit.

~~SECRET~~
Declassify on OADR

DECLASSIFIED

NLRR F97-0666 #131
BY *RWS* NARA DATE 5/24/11

Moscow. Carter noted that the Soviets had rolled out the red carpet for him. Like everyone else, he found Gorbachev impressive. He thought that Gorbachev was at a crossroad on the arms control issue. He was debating whether it was in his interest to make an agreement with Ronald Reagan or to wait until the next president. I noted that Gorbachev had commented to Gandhi that it would be in his interest to deal with Ronald Reagan. Carter thought that that might well reflect his thinking but he still hadn't fully made up his mind. When I noted that the Soviets were throwing up essentially false obstacles on INF (100 in Asia and the Pershing 1-A's) Carter did not disagree. In fact he said he told the Soviets this. When he mentioned the 100 in Asia, pointing to the problems that this created for the Japanese and the Chinese, the Soviets responded with a smile, "we don't want to put all our cards on the table at once."

I told Carter we had not seen much Glasnost in Soviet foreign policy. The Angolans were refusing to negotiate seriously on Cuban withdrawal, a massive arms shipment had just arrived in Nicaragua and the Soviet military presence in Afghanistan was 20,000 troops larger than when Carter left office. Progress in human rights was little more than a trickle.

Picking up on the latter point, Carter said he had met with refuseniks during his visit. He was more upbeat on the human rights issue than I was but acknowledged that emigration was still far too low. He noted, however, that a number of refuseniks with whom he had met preferred to stay in the USSR.

Carter asked how we might bring about a thaw in US-Soviet relations. I responded that it was very simple. All they needed to do was remove the obstacles to an INF agreement and go ahead with the Summit. At the same time it was important that we both make progress with SALT. This was an agreement that stood on its merits, and we needed to push it. The Soviets had to recognize that SDI was going forward. Once they did and stopped trying to kill it via START, we could negotiate with them on a period of stability. Carter did not argue this point.

Middle East. I told Carter about the Thatcher visit and the Middle East peace conference. He continues to push the conference very hard. I told him we were prepared to examine it but we were very leery of getting involved in Israeli internal politics.

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AB

THE WHITE HOUSE

WASHINGTON

July 14, 1987

MEMORANDUM TO SENATOR HOWARD BAKER
KENNETH DUBERSTEIN

FROM: William L. Ball, III *WB*
SUBJECT: Persian Gulf Consultations

At the 4:00 meeting today in the Capitol, Frank Carlucci, Secretary Shultz, Secretary Weinberger and Admiral Crowe carried out the latest in a series of consultations with a bipartisan group of House and Senate leaders and interested members.

After Carlucci's introduction, Secretary Shultz discussed the Iran/Iraq cease fire vote expected in the U.N. Security Council on Monday (PRC and Soviet Union expected to vote with us). He addressed the concept and the expectations of the first resolution (cease fire, withdrawal etc.) and was questioned by Aspin and Glenn about the second U.N. Resolution on sanctions. He responded that naturally the timing of the second resolution and its contents would depend on what takes place with passage of the first resolution. He indicated the U.N. Secretary General would go to the region after the first resolution. John Warner followed up with questions about what effect a 90 day delay in reflagging would have on our policy and our ability to get U.N. action. Shultz allowed that a delay gave Iran the upper hand.

Weinberger briefed on specifics indicating reflagging is complete and that we are now getting ship masters moved to the region in preparation for escorting next week. He indicated either July 21st or 22nd as the first date for escorting a single tanker, with a second escort to occur a few days later (Aug. 6, according to Admiral Crowe). Results of the past three tests of our escorting resources were discussed as well as plans for future tests.

Majority Leader Byrd took issue with our intent to reflag, suggesting that since we are a superpower, we can afford to take the time to do it right and that a 90 day delay would not hurt us in any way. He followed that with a statement that he and Dole would introduce an amendment this afternoon on trade restrictions to Iran (if Iran fired Silkworms).

DECLASSIFIED
NLRR F97-0666 #132
BY RW NARA DATE 1/10/11

Pell summarized recent votes in both the House and Senate as expressing the will of a majority of the members of Congress that we should not reflag. Quayle countered that the opposition was not to reflagging, but to doing anything, and said that a majority of members would not vote for a prohibition on reflagging.

Chairman Boren spoke as the only Democrat to vote with us on the cloture motions. He reiterated comments from his floor statement to the effect that while he did not agree with the decision when it was made, it is important for all members to join with the President and support the decision, and further stated that he will be supportive, hoping for improvements in the process along the way. The briefing closed with Admiral Crowe announcing the French intention to escort their vessels.

In summary, while there was some recognition that our plans had improved and briefings and consultations had contributed to a better understanding and appreciation of what we were trying to do, there still remains strong opposition to reflagging, in large measure because they believe the decision was made before they were consulted.

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AB

THE WHITE HOUSE

WASHINGTON

July 14, 1987

MEMORANDUM FOR SENATOR BAKER
KENNETH DUBERSTEIN

FROM: William L. Ball, III 
RE: Cloture Vote on Byrd-Moynihan Persian Gulf
Amendment

The Senate has voted 53-40 not to invoke cloture on the Byrd-Moynihan Amendment to delay reflagging pending completion of several initiatives with our allies.

We lost Senators Kasten and McClure both of whom missed the vote. There will be another cloture attempt on the Bumpers Amendment (90 day delay) tomorrow.

RONALD W. REAGAN LIBRARY

THIS FORM MARKS THE FILE LOCATION OF ITEM NUMBER 3 LISTED ON THE
WITHDRAWAL SHEET AT THE FRONT OF THIS FOLDER.

WAR POWERS RESOLUTION

For Legislative History of Act, see p. 2346

PUBLIC LAW 93-148; 87 STAT. 535

[H. J. Res. 542]

Joint Resolution concerning the war powers of Congress and the President.
*Resolved by the Senate and House of Representatives of the United
States of America in Congress assembled, That:*

SHORT TITLE

Section 1. This joint resolution may be cited as the "War Powers Resolution".

57. 13 U.S.C.A. § 712.

PURPOSE AND POLICY

Sec. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

CONSULTATION

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

REPORTING

Sec. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces;

or

(2) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

CONGRESSIONAL ACTION

Sec. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a decla-

ration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

Sec. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

Sec. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent

resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

Sec. 3. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the head-

Nov. 7

WAR POWERS RESOLUTION

P.L. 93-148

quarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

SEPARABILITY CLAUSE

Sec. 9. If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

Sec. 10. This joint resolution shall take effect on the date of its enactment.

Passed over Presidential veto Nov. 7, 1973.



9 AM - June 26th

- Pension bill situation - Nunn ltr to Bowen
- Bipartisan mtg Tuesday?

-- Supplemental - looks like arms control provisions will be dropped

-- Bernie Rogers

-- RR medical today

-- Appropriations - even Republicans not supporting cuts in House

-- Ozone

Security Council
Foreign Ministers

Sec General
call for cease-fire general

Iraqi needs to accept.
Arab League foreign ministers try

from conveyor to Protection scheme
Refloating go forward
UN Force

THE WHITE HOUSE
WASHINGTON



June 25, 1987

MEMORANDUM FOR SENATOR BAKER
KEN DUBERSTEIN

FROM: WILLIAM L. BALL, III *WB*

Speaker Wright has requested a joint House-Senate bipartisan leadership meeting on the Persian Gulf with the President for Monday afternoon, June 29. He would propose including the Chairmen/Ranking Members of the committees of jurisdiction. He has told the press that he is making this request.

As you know from your own discussions, there remains division in the ranks on the Hill as to what type of resolution, if any, could pass both Houses on the subject of reflagging and Gulf policy generally.

The Speaker is quite mindful of this division. He has not accepted our offer of last week to have Carlucci/Crowe and others brief him again on our plans. By requesting this meeting, he will secure a forum for stating his reservations and sending whatever message he wishes without endorsing any particular alternative approach. He could come down to urge the President to delay reflagging, appear reasonable in doing so, and thus set the stage for taking up a resolution when the President "flaunts his advice" and goes ahead. The Speaker's main concerns in our previous discussions were focused on energy security and independence from "Arab sources of oil."

I recommend we agree to the meeting, with the full cast of participants. Republicans may not like coming down to give the Speaker bipartisan cover, but we could always put taxes on the agenda too. Since the Senate will not be in session on Monday, we should set it for Tuesday morning at the regular time of 9:30 a.m.

SAM NUNN, GEORGIA, CHAIRMAN

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United States Senate

COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510-6050

June 25, 1987

The Honorable Robert C. Byrd
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Byrd:

In accordance with your request of June 16th, I am working on a report on U.S. policies in the Persian Gulf region, especially the Administration's plan to reflag and protect Kuwaiti tankers.

It is my understanding that the Senate Committee on Foreign Relations will today begin consideration of legislation relating to the reflagging of Kuwaiti tankers. The House Committee on Foreign Affairs will soon consider a similar measure.

My more detailed analysis will not be completed before Friday or Saturday of this week. Because of the timing of the work of the Committees on Foreign Relations and Foreign Affairs, I thought that it might be useful to present a summary of my recommendations. If these recommendations merit further consideration, they could take the form of a congressional report or resolution.

In summary form, I recommend that --

-- the Administration delay implementation of its plan to reflag and protect eleven Kuwaiti tankers to permit an opportunity to pursue diplomatic efforts listed below.

-- the Congress agree, at the same time, to delay any restrictive legislative action on this issue.

-- the Administration, with strong Congressional support, push its Iran-Iraq war initiative in the United Nations Security Council which calls for a ceasefire.

-- the Administration call for the convening of a conference of major exporters and importers of Persian Gulf oil to assess means for ensuring the free flow of oil, promoting freedom of navigation, deescalating tensions and hostilities, and contributing to the search for a negotiated end to the Iran-Iraq war.

-- the Administration join with other interested parties to seek an immediate halt to attacks on ships in the Persian Gulf in order to facilitate the work of the conference.

-- the Administration explore alternative arrangements with Kuwait, including the lease of American vessels.

-- the Congress express bipartisan consensus on the vital U.S. interests in the Persian Gulf region, the U.S. military presence in the region, and the U.S. commitment to ensure freedom of navigation through the Strait of Hormuz.

I hope that this preliminary summary of my views is useful.

Sincerely,



Sam Nunn
Chairman

cc: Senator Pell
Senator Boren
Senator Moynihan
Senator Glenn
Senator Sasser
Congressman Wright
Congressman Foley
Congressman Fascell
Congressman Aspin
Congressman Coelho

June 23, 1987

TO : Senator Baker
FROM: Dan
RE : Persian Gulf Oil Flows

The following estimates pertain to Persian Gulf countries inside the Strait of Hormuz:

Total Production	12.0 million barrels per day (Mb/d)
Domestic Consumption	2.0 Mb/d

Available for Export	10.0 Mb/d
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Pipeline Capacity	5.5 Mb/d
-------------------	----------

Shortage of Gulf Oil	4.5 Mb/d
----------------------	----------

Excess Capacity outside Gulf	2.0 Mb/d
OPEC	(1.8)
non-OPEC	(.2)

Potential World Shortage 2.5 Mb/d

World-wide SPR Capacity is approximately 1 billion barrels, but extraction systems are untested and could take considerable time to implement. The best we could hope for is 2-2.5 Mb/d after several months.

Even though the potential shortage (2.5 Mb/d) is only 5% of the current 47 Mb/d world demand, the impact on prices could be much greater than the proportion implies. Oil analysts cannot provide a precise figure—it depends critically on market perceptions of the duration of a disruption and the nature of any U.S. response. The two analysts I spoke with agreed that prices would immediately jump to the \$30-35/barrel range and approach \$40/barrel as the disruption continued. Even if SPR withdrawals eventually cover the full 2.5 Mb/d shortage, prices would remain in the mid-\$30's/barrel until the flow was resumed with some certainty of continuation. They also concluded that some portion of the initial increase would be permanent.

DECLASSIFIED/RELEASED
NLS F97-066/6 #134
BY LOT, NARA, DATE 3/17/06

THE WHITE HOUSE
WASHINGTON

July 13, 1982

MEMORANDUM FOR THE PRESIDENT

FROM: FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT: Applicability of War Powers Resolution
to the Situation in Lebanon

In anticipation of your meeting with Congressional leaders this afternoon, we have prepared a synopsis of the War Powers Resolution (attached at Tab A) as it applies to the situation in Lebanon.

REQUIREMENTS OF THE WAR POWERS RESOLUTION

The Resolution imposes three types of duties upon the President:

1) Consultation: Section 3 of the Resolution requires that the President "consult" Congress "in every possible instance" before introducing the Armed Forces into "hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances" and regularly thereafter. As a practical matter, consultation in such instances with more than a select group of Congressional leaders has never been attempted. In the instant case, informal consultation has occurred.

2) Reporting: Relevant to Lebanon, section 4 of the Resolution requests that the President "report" to Congress within 48 hours after U.S. Armed Forces are introduced:

- "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances" [§4(a)(1)]; or
- "into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments" for supply, replacement, repair or training [§4(a)(2)].

3) Termination: The termination provisions of the Resolution apply only to those situations involving hostilities or the imminent threat of hostilities [§ 4(a)(1)]. The Resolution requires that the President must terminate the use of armed forces in those situations within 60 days after a report is submitted or required to be submitted under § 4(a)(1) unless the Congress i) has specifically authorized U.S. involvement by statute or a declaration of war; ii) has extended by law such 60-day period; or iii) is physically unable to meet. (The President may obtain a 30-day extension of the 60-day period by certifying to Congress that the extension is needed to achieve the safe withdrawal of U.S. Armed Forces.) If armed forces are actually engaged in hostilities, Congress may order their removal by concurrent resolution at any time. If troops are introduced "equipped for combat," absent "hostilities" or "imminent threat of hostilities," [§ 4(a)(2)] the termination provisions are not applicable.

RESOLUTION AS APPLIED TO LEBANON

In a letter to you dated July 6, 1982 (attached at Tab B), House Committee on Foreign Affairs Chairman Clement Zablocki concludes that because U.S. troops deployed to Lebanon would be entering a situation involving hostilities or the imminent threat thereof, you must report their deployment under § 4(a)(1) of the Resolution. Zablocki fears that you will seek to avoid the termination provisions of the Resolution by filing a report under § 4(a)(2) instead. While Congress might conceivably invoke the termination provisions of the Resolution even if you filed a report under § 4(a)(2), the legal dispute that might ensue creates a strong Congressional preference for § 4(a)(1) reports in borderline situations where the presence of "hostilities" or the "imminent threat" thereof can be legitimately questioned.

The Executive Branch has consistently defined "hostilities" and "imminent hostilities" more narrowly than Congress, and has noted that both terms are "definable in a meaningful way only in the context of an actual set of facts." Neither term necessarily encompasses irregular, infrequent or isolated violence which may occur in a particular area.

RECOMMENDATIONS

1. That you stress that our current efforts are being directed to the development of a situation where hostilities are not imminent.
2. That you respond to any Congressional inquiries to the effect that the terms of U.S. participation in the Lebanon situation and the circumstances prevailing at the time will determine under which section of the War Powers Resolution you report to Congress. No decision can be made at this time, and we will continue to consult with Congress as events occur.

[NSC concurs with these recommendations.]

Attachments

cc: Edwin Meese III
James A. Baker III
William P. Clark
Michael K. Deaver