GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

19 January 1971

NOTE FOR: MR. HELMS

Attached is a legal memorandum forwarded to you as a member of the Washington Special Action Group at the direction of Deputy Secretary of Defense David Packard.

J. Fred Buzhardt

Attachment - 1

Approved For Release 2003/12/02 : CIA-RDP73B00296R000300090004-6

TS 184080/1, cy 1 of 6 dtd 15 Jan 1971

Approved: Support of US/Vietnamese and Free World Forces in SEA, and Local Forces in Laos and Thailand with Military Assistance Service Funded (MASF)

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

TS 184080/1
Copy 1 of 6

15 January 1971

MEMORANDUM

SUBJECT: Support of South Vietnamese and Free World Forces in SEA, and Local Forces in Laos and Thailand with Military Assistance Service Funded (MASF)

Background of MASF

When MASF requests were initiated to the Congress, the precedent of direct support of Korean forces with Defense appropriations was cited. In the Korean War, indigenous forces were often integrated into U.S. units, and indigenous force units were integrated with U.S. units under unified (U.S.) command. In Vietnam, however, MASF have been administered along the lines of MAP, and generally, arrangements were made for U.S. support of Vietnamese forces through the RVN and for the other free world forces through their respective Governments. For example, support arrangements for the [redacted] was negotiated with 25X6
25X6 and passed through the [redacted] Generally, support of regular South Vietnamese and free world forces was furnished directly by DOD, but support of paramilitary and irregular forces, as well as "local"
25X1 [redacted] were supported through transfer of
25X1C [redacted], not primarily because of the absence of any legal authorization of direct support by DOD, but because of the impossibility of documentation of fiscal accountability generally applicable to DOD funds.

New Constraints

The authorizations for and limitations on use of MASF funds arising out of the authorization-appropriations cycle this year fall into several categories:

(1) Language changes made in Sec. 502 of PL 91-441 (TAB A);

(2) Language in the Senate Armed Services Committee Report and the Senate debate on the Fulbright amendment (TAB B); and

(3) The language of Sec. 838 of the FY 1971 appropriation for the Department of Defense (HR 19590) (TAB C) and the legislative history of the evolution of the language of Sec. 838.

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TOP SECRET SENSITIVE

Changes in Language of Sec. 502 of PL 91-441 and Evidence of Intent

A number of factors arising out of the wording of Sec. 502 of the Armed Services Appropriation Authorization Act for FY 1971 (PL 91-441 (HR 17123) are relevant. Among them are the following:

(1) Subsection (a)(1) of Sec. 502, generally, provides not a limitation or prohibition, but an authorization (". . . are authorized to be made available") for appropriations. The authorization, as enacted, is limited to $2.8 billion for this purpose. In contrast, the second sentence in the subsection relating to pay, per diem, etc., of free world forces constitutes a prohibition ("None of the funds appropriated . . . may be used") against specified actions.

(2) The purpose of the authorization, is "to support: (A) Vietnamese and other free world forces in support of Vietnamese Forces, (B) local forces in Laos and Thailand, and for related costs."

In context, this language, by comparison with language in the FY 70 and previous annual authorization for appropriations Acts, must be construed to have been intended to broaden the purposes for which funds are authorized to be made available under Sec. 502, rather than to limit such purposes.

It is clear from the SASC report that the SASC considered that under prior authorization and appropriations act language, funds were available to support non-U.S. forces operating "in Vietnam" (prior language in clause (A) of Sec. 502(a)) and in Thailand and Laos (clause (B) of Sec. 502(a)), but that authorization for use of DOD funds for support of GVN, Free World, THAI and Laos forces operating in Cambodia was questionable, if it existed at all. From the SASC report, it is clear that the Committee did not intend to withdraw nor to restrict any use of funds for support of Free World Forces which previously existed, but to expand, or to remove any ambiguity about the existence of, the authorization to use funds for the support of GVN and Free World forces operating in some area of Cambodia (sanctuaries). At the same time, the language of the SASC report clearly indicates an intent that the expansion of the authorized use was not so broad as to include support of "Vietnamese and other Free World Forces in support of Vietnamese Forces" for operations in Cambodia to assist the Government of Cambodia.

(3) The Fulbright amendment adopted by the Senate inserted the language which appears as the last sentence of Sec. 502(a)(1).

It was the position of the DOD prior to the floor debate on the adoption of the Fulbright amendment that its adoption would not in any way diminish the scope of the purposes for which funds were authorized to be made available by the language of Sec. 502(a)(1) of HR 17123 as reported by the SASC and discussed in the SASC report. This position is still valid. If anything, the Fulbright amendment may have expanded the legislative gloss on the purposes for which funds would have been authorized to be appropriated by the language of clause (A) of Sec. 502(a)(1) as reported to the Senate by the SASC and explained in the SASC report.

The debate in the Senate reveals a concurrence in opinion by both the Chairman, SASC, and the author of the amendment that the amendment would not change the scope or intent of Sec. 502(a)(1), and it was on this basis that the amendment was accepted.

The Fulbright amendment language was drawn verbatim from the language of the SASC report, with the exception of the words "or Laos" used in the Fulbright amendment. The SASC report in no way expressly addressed operations in Laos.

Inherent in the SASC amendment to Sec. 502(a)(1) is the acknowledgment and assumption that in prior years, funds had been authorized to be made available to DOD to support non-U.S. forces operating in Vietnam, Thailand and Laos. For Vietnam, those forces contemplated were "Vietnamese and other Free World Forces". In Thailand and Laos, those forces were "local". The SASC amendment to Sec. 502(a)(1) was designed to permit support of non-U.S. forces on temporary or intermittent operations in portions of Cambodia without making funds available for use in supporting non-U.S. forces for continuing operations in those portions of Cambodia, which would have been the legal result had "sanctuary areas of Cambodia" been added to Laos and Thailand in clause (B) of Sec. 502(a)(1). The words "or Laos" in the Fulbright amendment, therefore, have the effect of making it clear that funds could be made available for support of non-U.S. forces on temporary or intermittent operations in portions of Laos, in addition to "local forces" operating in Laos on a continuing basis. In essence, it ratified the use of MASF funds for support of non-U.S. forces engaged in border-crossing operations into Laos (under clause (A)) as well as for those operating in Laos on a continuing basis under clause (B).

(4) The second sentence of paragraph (1) of Subsection (a) of Sec. 502, as enacted in PL 91-441, which relates to pay, allowances, per diem, etc., paid to personnel of non-U.S. forces from funds made available for use under Sec. 502, constitutes a prohibition which is binding on DOD ("None of the funds appropriated . . . . may be used . . ."). Payments made pursuant to agreements executed prior to July 1, 1970, however, are excepted from the prohibition, which alleviates most of the substantive problems which would otherwise pertain.

(5) Paragraph (2) of Subsection (a) of Sec. 502, the entirety of which was added this year in PL 91-441, has the practical effect of constituting a constraint with respect to those non-U.S. Forces which DOD can support directly, as distinguished from those which can be supported [redacted] This provision does not constitute a prohibition on use of funds authorized to be made available by Sec. 502, but establishes administrative and reporting requirements which are incompatible with use of funds for the support of non-U.S. forces which are not administered through or by agreement with a Free World government. Although paragraph (2) of Subsection (a) of Sec. 502 in no way diminishes the substantive purposes for which funds are authorized to be made available, it does require, as a condition to provision of defense articles financed by the funds made available under this Section, that the "government of the forces to which the defense article is to be furnished" give certain assurances related primarily to ultimate disposition of the article so furnished. It further requires that should the President decide to consent to ultimate disposition other than that for which assurances are required from Free World governments, the President must report to the Congress 15 days before his consent is given. In addition, all implementation of agreements entered into with governments of Free World Forces for support from funds authorized to be made available under Sec. 502 after December 7, 1970, must be reported to the Congress. 25X1C

Clearly, the situations where support is provided to paramilitary forces directly and not through any Free World government are not susceptible to this type of administrative and reporting requirements. It is relevant to point out at this point, however, that there are pre-existing administrative procedures required for documentation of fiscal responsibility and accountability generally applicable to DOD expenditures which are also incompatible with direct support of paramilitary forces which do not operate under the auspices of any Free World government. In these cases, it is necessary to obtain the organizational capabilities of [redacted] Accordingly, in the past it has been the practice to use the SWITCHBACK mechanism, whereby the funds are made available to DOD are transferred 25X1C

[redacted] which is not subject to the administrative procedures and reporting requirements imposed on DOD. (For example, it would be impossible for DOD to account for the subsequent disposition of arms provided directly to such irregular forces as the MONTAGNARD tribesman units, which are "local", in that they are residents within the country, but ethnically disparate from the majority of the population and often acknowledge no allegiance to the prevailing government.) Such situations gave rise to SWITCHBACK. (The support of most, if not all, such paramilitary forces is presumptively and in fact within the knowledge of members of the Senate.) The debate on the Fulbright amendment in the Senate is replete with averments that there was no intent by the Senate to withdraw authorization for the types of operations which were being conducted prior to the U. S. Cambodian operations. There is nothing in the new language of Sec. 502, the SASC report, nor the debate in the Senate on HR 17123 which detracts from the authority to continue use of SWITCHBACK to avoid administrative procedures and reporting requirements incompatible with support of paramilitary forces which are operating within the substantive purposes for which funds are authorized to be made available by Sec. 502.

Definition of Terms

In order to assess the extent of purposes for which funds are authorized to be made available by Sec. 502, it is necessary to examine several terms used in the act, or in the SASC report and the Senate Debate.

"Vietnamese and Free World Forces in support of Vietnamese Forces" must, in light of the expressed intent of the Senate, be defined as those non-U.S. forces operating in and from South Vietnam. This would exclude Free World Forces operating, or based in Thailand, for example. The terminology was intended to be interpreted also to include free world forces based in Vietnam and operating in sanctuaries of Cambodia or Laos.

"Local Forces" is not a new term in Sec. 502, but in the past there has been no occasion to make a sharp distinction between "local forces" and other Free World Forces operating in Laos or Thailand. Local Forces would include forces under the control of the Government of the country in which the Forces are operating, Forces composed of residents of the local country who as a practical matter profess no fealty to or are beyond the control of the national government and Forces comprised of non-residents and non-ethnically homogeneous persons, which units are supported and controlled directly and not through any Free

World Government. "Local Forces" could not, consistent with the expressed intent of the Congress, be interpreted to include units controlled by or supported through a free world government other than that of the country in which they are operating.

The definition of what constitutes the "sanctuary areas" is also relevant. From the debate in the Senate, it is apparent that the sanctuary areas in Cambodia lie adjacent to and west of the Cambodian-Vietnamese border and extend for some distance inland into Cambodia, and that the sanctuary areas of Laos lie in the panhandle. The broadest definition which has a probability of political acceptance would include the Laotian panhandle and the area of Cambodia east of a line coinciding with the Mekong River in Cambodia north of Phnom Penh and an extension of that line southwest to a point on the coast near to Kompong Som.

With respect to the Cambodian sanctuary areas, it is clear that the authorization for funds to be made available for support extends only to "Vietnamese and other Free World Forces in support of Vietnamese Forces," that is, to non-U.S. Forces based in and operating from South Vietnam.

Appropriations Language

The language of Sec. 838(a) of the FY 71 Defense appropriations Act is identical to the language of Sec. 502(a) of the authorization act (PL 91-441), with three exceptions:

(a) The language makes appropriations available, rather that authorizing appropriations to be made available;

(b) The authorization for appropriations to be made available under Sec. 502(a) was limited to $2.8 billion, and the appropriations made available were limited to $2.5 billion; and

(c) An additional provision was added in Sec. 838 of the appropriations act to that which was contained in Sec. 502(a) of the authorization act (PL 91-441), to wit: "Provided further, that nothing contained in this section shall be construed to prohibit support of actions required to insure the safe and orderly withdrawal or disengagement of U.S. forces from Southeast Asia, or to aid in the release of Americans held as prisoners of war."

A brief summary of the evaluation of the foregoing conference proviso is useful in determining its intended application.

As reported by the House Appropriation Committee and passed by the House, Sec. 838 of the Appropriations bill provided:

"Appropriations available to the Department of Defense during the current fiscal year shall be available for their stated purpose to support: (1) Vietnamese and other free world forces in support of Vietnamese forces; (2) Local forces in Laos and Thailand; and for related costs, on such terms and conditions as the Secretary of Defense may determine."

As reported by the Senate Appropriations Committee and passed by the Senate, Sec. 838 was amended to limit the available appropriations to $2.5 billion and to add verbatim the so-called "restricting" language included in Sec. 502(a) of the authorization act, which includes the Fulbright Amendment.

In the first conference report on the appropriations bill, a proviso was added at the end of Sec. 838(a) at the insistence of the House conferees which stated:

"Provided further, that nothing contained in this section shall be construed to prohibit support of free world or local forces in actions designed to promote the safe and orderly withdrawal or disengagement of U.S. forces from Southeast Asia or to aid in the release of Americans held as prisoners of war."

In the second conference, this language was modified in wording to the version finally passed. It is significant that the second conference also modified Sec. 843 (prohibiting use of U.S. ground combat forces in Laos and Thailand) by deleting the Senate extension of this prohibition to Cambodia. These were the only two changes made in the second conference.

In explaining the position of the House conferees on Sec. 838, after the second conference, Chairman Mahon, after quoting the Fulbright Amendment, which the Senate had added to the authorization bill, stated:

"This provision appeared to be a direct denial of any right on the part of the President to use funds in the Defense appropriation bill for the support of the South Vietnamese or other free world forces in their efforts to prevent a Communist takeover in Cambodia or Laos.

From the standpoint of the House conferees on the Defense appropriation bill, this language, which had been enacted into law, was intolerable at this particular point in time.

"Almost identical language was incorporated in the Senate version of the Defense appropriation bill. The House conferees refused to adopt the language, tie the President's hands, and make it impossible for him to use funds in the bill to support South Vietnamese and other free world forces in their efforts to prevent a Communist takeover in Cambodia or Laos.

"So, in the first conference we had with the other body, we left this language, which became known as the "Fulbright amendment," in the bill, but we modified the amendment by attaching the following proviso:

> "Provided further, That nothing contained in this section shall be construed to prohibit support of free world or local forces in actions designed to promote the safe and orderly withdrawal or disengagement of U. S. forces from Southeast Asia or to aid in the release of Americans held as prisoners of war.

"That language gave the President considerable latitude in the use of Defense funds to support the Vietnamese and other free world forces in their efforts to make Vietnamization operative, in their efforts to make the disengagement of U. S. troops possible, and in their efforts to prevent a very drastic deterioration in their military situation by a complete Communist takeover in Cambodia or Laos.

"So, in the conference today with the other body we agreed to include the objectionable language, which I have quoted, but we insisted upon a proviso which in substance is approximately the same proviso as was contained in the original conference agreement. This relates to section 838 of the Defense appropriation bill. The new proviso is as follows:

> "Provided further, That nothing contained in this section shall be construed to prohibit support of actions required to insure the safe and orderly withdrawal or disengagement of U. S. forces from Southeast Asia, or to aid in the release of Americans held as prisoners of war.

"We thought that this sufficiently modified the provision in the bill which relates to the same subject and which was very restrictive upon the President.

"The fact is that the language in the Defense Procurement Authorization Act -- Public Law 91-441 -- raised grave doubt in my mind as to whether or not that language actually would control the Defense appropriation bill carrying the money, but since this language had been almost identically repeated in the Defense appropriation bill in the Senate, it was thought we should take some action to modify what we consider to be the very damaging language to which I made reference.

"So it seems to me the House of Representatives has performed a good function in making it possible for the President to have the latitude which is required to exercise his judgment, to meet the situation in Southeast Asia from the standpoint of the use of South Vietnamese and other free world forces."

In the Senate, after noting that the Senate had amended the section 838 of the appropriations bill to include the Fulbright amendment, and after reading the language of the amendment, Senator Ellender, Chairman of the Senate Conferees, and Manager of the appropriations bill in the Senate, stated:

"The Senate amended section 838 of the bill dealing with funds for the support of free world forces to include the following provision which was included in section 502 of the Department of Defense Procurement and Research and Development Authorization Act:

> "Provided further, That nothing in clause (1) of the first sentence of this subsection shall be construed as authorizing the use of any such funds to support Vietnamese or other free world forces in actions designed to provide military support and assistance to the Government of Cambodia or Laos.

"The House conferees strongly opposed this provision on the ground that it tied the hands of the President in his efforts to bring about a withdrawal of U. S. forces from Southeast Asia. However, they

finally agreed to accept this amendment if the following provision were included, which is applicable to all of section 838:

> "Provided further, That nothing contained in this section shall be construed to prohibit support of free world or local forces in actions designed to promote the safe and orderly withdrawal or disengagement of U.S. Forces from Southeast Asia or to aid in the release of Americans held as prisoners of war.

"The Senate conferees accepted this proposal.

"I was surprised to learn that there was considerable opposition here in the Senate to this provision, and as I stated, it is one of the issues that prompted me to move to table the first conference report and send the bill back to conference to attempt to get the House conferees to recede on this point.

"I regret to inform the Senate that the House conferees were again adamant on this provision, and after considerable discussion in the second conference on this matter, the Senate conferees accepted the following new proviso:

> "Provided further, That nothing contained in this section shall be construed to prohibit support of actions required to insure the safe and orderly withdrawal or disengagement of U. S. Forces from Southeast Asia, or to aid in the release of Americans held as prisoners of war.

"I am convinced that in order to obtain an agreement in the conference committee, we had to accept this proviso.

"Mr. President, I think the intent of this provision was fully discussed in a colloquy here on the floor earlier this evening. However, as chairman of the Senate conferees, I want to make my position on this matter abundantly clear. It is certainly not the intent for the executive branch of the Government to interpret this proviso as the authority for a large-scale invasion, by South Vietnamese or other free world forces of North Vietnam, Laos, Cambodia, or any other country, and I am confident it will not be so interpreted.

"Throughout the consideration of this bill, and especially with respect to the $2-1/2 billion that is authorized for the support of free world forces, it has been my position that these funds were to be used in order to restrict the scope of the present conflict in Southeast Asia, and I know of no possible way to place an interpretation on these various provisions that would justify an expansion of this conflict."

The tenor of the earlier Senate debate referred to by Senator Ellender, although not free of ambiguity, was consistent with the above quoted position of Senator Ellender. (A substantial part of that debate focused on the meaning of the "Prisoners of War" portion of the proviso and the change to section 843, which are not pertinent to the issues which are the subject to this memorandum). For example, in that earlier debate, Senator Stennis stated that:

"The added House language merely allays any fears on the part of the House that this restriction would in any way prohibit actions designed to promote a safe and orderly withdrawal.

"Let me emphasize, Mr. President, that there is no intent to permit an expansion of the war with any of this added language. There is no intent to authorize the use of South Vietnamese or other free world forces to go to the rescue of the Government of Cambodia or Laos with the use of these funds. I consider that the colloguy between myself and Senator Fulbright on the procurement bill still stands - that is, that none of these restrictions are intended to prevent actions intended to keep the sanctuaries clear and to prevent Vietnamization. At the same time the line is clear that it is not meant to provide a device for military support of these two governments with Department of Defense funds." [emphasis added]

Following that statement by Senator Stennis, Senator Fulbright observed that: "I think that what the Senator from Mississippi has in mind about this matter is very similar if not the same as mine - that is not to expand the scope of the war and not to authorize the payment with our money for the Vietnamese Army to go in and occupy indefinitely the territory of Cambodia - or Laos for that matter - but Cambodia is the one that has been primarily and directly involved." [emphasis added]

Thereafter, in response to a question by Senator Fulbright, Senator Ellender answered as follows: "We have made it clear that these funds cannot be used to support the South Vietnamese in actions to support the governments of Laos and Cambodia. However, this proviso makes it clear

that these funds can be used to support South Vietnamese and other free world forces in actions designed to bring about the withdrawal of U. S. forces from Southeast Asia, and to aid in the release of American prisoners of war.

"As I said, what was intended and what the House voted on was simply to give the President the right to support Vietnamese and other free world forces in order to help extricate Americans from Southeast Asia if it becomes necessary. It is just that simple. And that is all that language means." [emphasis added]

Subsequently, in a colloquy with Senator Allott, Senator Fulbright stated that, except for that part of the proviso dealing with prisoners of war, he was not "bothered" by the proviso "as interpreted by the Senator from Mississippi and other language he put into the report."

Finally, at the conclusion of this earlier debate, Senator Stennis remarked: "I think this is a final solution that resolves the consensus of opinion. I am happy that those on the other side, if I may use that term, see a foundation for coming together.

"I want to make clear, though, that we must leave that authority with the President to act in the circumstances as outlined by the Senator from New York with reference to Vietnamization, the protection of our troops, or the invasion, reinvasion, or incursion, whatever the Senator might call it, of Cambodia, if reasonably necessary to carry out the protection and the drawdown, which has many problems."

As a consequence, the conference proviso, consisting of the last proviso of Sec. 838(a), must be construed as intended to provide additional latitude for the support of Vietnamese and other free world forces in support of Vietnamese to operate in Cambodia if necessary to "insure the safe and orderly withdrawal or disengagement of U. S. forces in Southeast Asia." It is clear from the record that the Senate considered the first conference proviso as a substantial modification of the Fulbright amendment, for it prompted Senator Ellender, according to his own statement to go to conference a second time. There was little, if any, change in the thrust and meaning of the proviso in the second conference, which Senator Ellender "regretted", but on which he advised the Senate that House conferees were "adamant".

Clearly, the final conference proviso provides authorization to use MASF funds for support of Vietnamese and other free world forces in support of Vietnamese forces, and "local forces" engaged in activities which exceed the limits intended in Sec. 502(a) of the authorization act.

Conclusions

Without regard to the conference proviso in Sec. 838(a) of the FY 1971 Department of Defense Appropriations Act, the use of MASF for the following purposes is authorized:

(1) Support of Vietnamese and other free world forces in support of Vietnamese forces operating:

(a) In Vietnam;

(b) In "sanctuary" areas of Laos and Cambodia.

(2) Support of "local forces" operating in Laos and Thailand.

In contrast, the use of MASF, in the absence of the conference proviso, does not appear to be intended to be authorized for the following:

(1) Support of Vietnamese and other free world forces in support of Vietnamese forces if they are engaged in actions in Cambodia or Laos

(a) beyond the sanctuary areas or

(b) in actions in support of the governments of Cambodia or Laos.

(2) Support of "local forces" in Laos or Thailand if they become engaged in actions outside the one of the two countries in which they are "local".

The conference proviso, to be given any meaning, must be construed as extending the purposes for which the funds are made available by modifying, to some extent, the foregoing limitations, under circumstances where the action supported is "required to insure the safe and orderly withdrawal or disengagement of U.S. forces from Southeast Asia, or to aid in the release of Americans held as prisoners of war".

From the debate in both the House and Senate, it appears that the conference proviso was believed by the House to be required because of the insertion of the Fulbright amendment to moderate its insertion. The Fulbright amendment is drafted as a limitation on authority otherwise extended. No authority was included for support of "local forces" in Thailand and Laos outside those countries, so the conference proviso could not be construed to expand the purposes for which funds are made available in Sec. 838(a)(2) (support of "local forces in Laos and Thailand").

(It should be noted that although the Fulbright amendment is applicable only to clause (1) of Sec. 838(a) (Vietnamese and other free world forces in support of Vietnamese forces), the conference proviso is applicable to the entire section (including "local forces" in Laos and Thailand)).

Consequently, it must be concluded that the conference proviso has the effect of expanding the purposes for which funds are otherwise available for the support of "Vietnamese and other free world forces in support of Vietnamese forces".

The most significant limitation applicable in the absence of the conference proviso is the sanctuary area limitation. The most logical construction of the intent of the conference proviso is therefore to make the funds available for the support of Vietnamese and other free world forces in support of Vietnamese forces "to engage in actions beyond the sanctuary areas of Cambodia and Laos when necessary" to insure the safe and orderly withdrawal or disengagement of U. S. forces in Southeast Asia or to aid in the release of Americans held "prisoners of war".

A second significant limitation which debate on the Fulbright amendment indicates was intended is the exclusion of availability of funds to support Vietnamese and other free world forces in support of Vietnamese forces in actions to support the governments of Cambodia or Laos. It is less clear whether the conference proviso is intended to make funds available for support of such forces in operations to support the government of Cambodia or Laos under circumstances where such actions are determined to be necessary to insure the safe and orderly withdrawal or disengagement of U. S. forces from Southeast Asia. The conference proviso is susceptible to an affirmative conclusion, although the contrary view could be supported with some substantive arguments, and there is a probability of a political confrontation with some members of the Senate should such a conclusion be reached.

Fund Limitations

As a practical matter, the most constraining provision applicable to MASF in FY 1971 may prove to be the $2.5 dollar limitation of funds available for the purpose. No dollar limitation has been effectively imposed on the availability of defense appropriations in prior years.

In FY 1971, a total of $2.3702 billion of the $2.5 billion available is currently programmed for ongoing programs. This leaves relatively little for financing new programs from MASF, and requires alternative financing sources, such as Cambodia MAP and PL 480 of the 83rd Congress, to be utilized to the extent possible.

Summary

Based on the conclusions of this analysis, support of operations can be financed or appear to be improper as follows:

(1) Vietnamese and other free world forces stationed in or operating from Vietnam can be financed from MASF for operations in sanctuary areas in Cambodia and Laos.

(2) By virtue of the conference proviso in Sec. 838(a) of the FY 1971 appropriation act, such forces can be financed from MASF for operations beyond the sanctuary areas in Cambodia and Laos if a determination has been made that they are necessary for the "safe and orderly withdrawal or disengagement of U.S. forces" from SEA, or to aid in release of American POWs. 25X1

[redacted]

(5) MASF should not be used for the support of any free world forces engaged in actions designed to support the government of Cambodia unless a determination has been made that such support of the Cambodian

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[redacted]

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[redacted]

(5) MASF should not be used for the support of any free world forces engaged in actions designed to support the government of Cambodia unless a determination has been made that such support of the Cambodian government is required to insure the safe and orderly withdrawal or disengagement of U.S. forces from SEA, and then only if no other alternative is available.

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(6) MASF funds are programmed for ongoing programs nearly to the extent of funds available ($2.3702 of $2.5 billion), and the resulting limited flexibility should be considered in selecting the method of financing new operations.

J. Fred Buzhardt

J. Fred Buzhardt

Concurrence:

State Dept. George H. Aldrich

SECRET

25X1

5. [redacted] Briefed Bill Woodruff, Counsel, Senate Appropriations Committee, on two major failures in the Soviet space program and the promising initial performance of a sensitive Agency project.

I provided Woodruff with a breakdown of the figures for operations involving the Agency in Laos for FY 72 - both our own operations and those financed by DOD.

In discussing Chairman Ellender's plans for the community Defense budget, Woodruff commented that the testimony of Admiral Gayler in defense of NSA has not gone over at all well. He said Chairman Ellender remained determined to make substantial cuts in the budgets of NSA and DIA and estimated that these cuts might approximate $400 million. 25X1

[redacted]

Woodruff feels there is an even or better chance that some form of the Symington amendment limiting U. S. expenditures in Laos to $200 million for FY 72 would pass the Senate.

25X1

6. [redacted] Briefed Ralph Preston, of the House Appropriations Committee staff, on two recent Soviet space failures and promising initial performance of a sensitive Agency project.

In response to my question, Preston said he thought the House would welcome, and follow along with, major cuts in the community Defense budget advocated by Senator Ellender.

25X1

7. [redacted] Met with Senator Peter Dominick (R., Colo.) of the Agency's Armed Services Subcommittee, and briefed him on two recent Soviet space failures and status of Soviet ICBM silos.

25X1

8. [redacted] Briefed Russ Blandford, Chief Counsel, House Armed Services Committee, on two recent Soviet space failures and promising initial performance of a sensitive Agency project.

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