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Soviets play it cool and cozy

By JAMES RESTON

The Soviets are playing a very clever waiting game with President Nixon. They are spanking him publicly for his latest air offensive against North Vietnam, but corresponding with him privately, allowing their officials to get their pictures with him at the White House, and acting in general like disappointed friends dealing with a misguided and reckless child.



Their diplomatic note on the Vietnam crisis is a masterpiece of hypocrisy, defending the principles of international law which they defy whenever it suits their purposes, condemning Nixon for using force against the weapons shipped into Haiphong, and howling against the American blockade as if Moscow were merely engaged in nothing more than the innocent passage of food for hungry children.

THE WORRIED MEN in the White House, of course, are delighted with all this. Moscow didn't respond to their ultimatum with a bang. Maybe the Nixon visit to Moscow will go on after all, they hope, and by the end of the month, there will be agreements, signed on television in the Kremlin, on the control of strategic arms, more U.S.-Soviet trade and cultural relations, and space cooperation, and a European Security Conference.

All this is not only possible, but likely. For the Soviets have good reason to believe they and their allies have already won the long struggle for Vietnam, and can now wait for the forthcoming battles around Hue and Kontum to come to their bloody conclusions.

Moscow is in no hurry. It is on the point of a critical treaty over Berlin with the West Germans, who are in a political crisis over signing that treaty, and Germany and Berlin are more important to the Soviet Union than Vietnam.

Nothing could block the Berlin accord quicker than a sudden test of strength between Washington and Moscow over Haiphong, so the Soviets are avoiding the confrontation and having their pictures taken in the White House, and planning for the Nixon visit to Moscow, and waiting for the German vote and the outcome of the battle in Vietnam for Hue.

MOSCOW TAKES no chances by waiting and pretending to be generous. It has already delivered enough tanks, artillery, fuel, and antiaircraft guns to Hanoi to give the North Vietnamese a chance to take Hue and demoralize the South Vietnamese army and government, and even if Hanoi and the Vietcong don't make it in the next month, which they probably won't, Moscow still has other alternatives.

It can always go back to Peking and ship arms by rail from the Soviet Union through China to Hanoi, and this is one of the ironies of the Nixon policy, for despite his spectacular mission to Peking and his planned visit by Moscow, he has taken such dramatic action against the North Vietnamese, that he has almost forced the quarreling Communist giants to get together to supply Hanoi across the Trans-Siberian railroad and

down through China to North Vietnam.

PRESIDENT NIXON, and the secretaries of state and defense, but not, noticeably, Henry Kissinger, have been saying publicly that the United States will take "whatever action is necessary" to stop the flow of Communist arms to Hanoi, not only by mining the Haiphong harbor but also by bombing the supplies on the Moscow-Peking-Hanoi Railroad line.

This at a time when Nixon is shaking his fist at Moscow, planning to go there on May 22, boasting about his new friendly relationship with Peking, backing Thieu in Saigon, and withdrawing his troops from Vietnam as fast as he can—in short fighting a political war at home and a complicated war in Vietnam.

No wonder, then, that the Soviets have played it all cool and cozy. They understand the President's problems at home and abroad. They want the settlement in Berlin. They want the agreements with the United States on trade, and nuclear arms control. They want a European security arrangement for Washington to withdraw some or all its troops between the Ruhr and the Elbe, and they're not too worried about Vietnam.

FOR THEY THINK they have won there, and are even trying without much success to convince Hanoi not to press their military advantages too far. Moscow gives the impression that it is rather satisfied with things as they are. It is willing to let the world see Nixon take dramatic military action at Haiphong and avoid any spectacular military response itself.

In another time, the Germany of Hitler would have picked up Nixon's challenge at Haiphong and brought the world to the edge of the precipice, but the Soviets have been less spectacular. They have provided the arms and left the battle to Hanoi, and put it up to Nixon to make up the difference, if he can.

MEANWHILE, they have not challenged, but merely chided the President. They have not said he could not come to Moscow to talk about other larger questions. They have left him to decide whether he wants to call off the Summit, and use "whatever means are necessary" to stop the flow of arms by rail from the U.S.S.R. through China to North Vietnam.

In short, they are condemning the mining of Haiphong but avoiding the challenge Nixon thought might bring the war to an end, and letting him try to prove how his blockade will stop the battle in Hue, and figure out where to go from here.

(C) New York Times

You can throw a bum out

15th in a series

Reformers are disappointed and stand paters will find little objectionable in Article VII, The Judiciary, in the proposed new constitution for Montana on which you will vote June 6.

There are changes, yes, but modernization, not much, in the proposal.

Two true "reforms," an attempt to upgrade the Montana judiciary, are offered. A third "part reform" constitutionally allows for addition of more courts, such as "small claims," and "other courts with the same power as district courts" at legislative discretion.

THE MAJOR REFORM comes under Sec. 14. Removal and Discipline, a new provision. Under it the Legislature is mandated to create a judicial standards commission consisting of five persons. It will consist of two district judges, one attorney and two citizens who are neither judges or attorneys.

The official explanation from ConCon states it "may investigate whenever a judge, because of disability or bad habits, does not perform his duties properly. The commission can recommend to the Supreme Court that the judge be retired, censured, suspended or removed."

The ultimate decision would be up to the Supreme Court, which could be determining the fate of one of its own members. The section states "any justice or judge" is subject to the commission's purview.

The net result is a constitutional provision for throwing out an obvious bum.

A LESS SIGNIFICANT reform involves

selection and retention of judges and in filling vacancies. At present the governor appoints to fill judicial vacancies with or without advice.

Sec. 8, Selection, of the proposed constitution modifies both appointment and election procedures.

Justices and judges will stand for election in the usual manner on a nonpartisan ballot. If a judge retires, dies or is removed from office by the Supreme Court during his term, the governor must select his replacement from a list of nominees "selected in a manner provided by law (legislative action)." If he doesn't make a choice within 30 days, the chief justice or acting chief justice shall make the nomination—which must be confirmed by the Senate. (That's new. No confirmation is now needed.) The governor can make interim appointments to serve until confirmed or rejected.

If a judge is unopposed, as now exists in a number of judicial districts, the new constitution would require voters be given a ballot option of rejecting him. If rejected, the appointment procedure would be followed. The section does not specify if the appointed judge serves until the next election or the full term. This presumably was left to statute.

ANOTHER NEW PROVISION bans judges from filing for elective offices other than judicial during his term or from leaving the state for more than 60 days.

Some lawyers object to the office seeking restriction which does not pertain to other elective officers of Montana.

Strict constructionists would contend that a judge could not run for governor or attorney general without resigning at the time of filing even though his current term was expiring that year. It does seem discriminatory.

As for the 60 days out-of-state travel provision, that should be enough time for travel.

MOST OF THE 11 sections in Article VII contain only modifications or revisions of the present constitution.

Terms of office for Supreme Court judges are extended from the present six to eight years, for district judges from four to six years and for justices of the peace from two to four years.

Yes, the justices of peace are constitutionally retained. Their monthly pay, qualifications and training will be fixed by law and they shall be provided such facilities "that they may perform their duties in dignified surroundings."

That would appear to mean regular salaries, not case fees, and established offices instead of whatever is handy at the moment. Statutory law will outline their original jurisdiction, barring felonies except as an examining court. This is the status at present.

Instead of two for every township at present, a practice not observed, the new constitution requires one justice of peace in each county. Specifically, it states "at least one," which would mean more if the traffic requires.

THE SUPREME COURT is constitutionally allowed to make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and conduct of its members — subject to disapproval by the Legislature within two sessions following promulgation. The latter is new, a legislative veto over what that body may deem high-handed.

The Legislature may increase Supreme Court numbers from five to six.

District courts will have the constitutional right to review decision of administrative agencies if the Legislature so provides.

The chief justice of the Supreme Court may assign district judges for temporary service in other districts but only on request of the presiding district judge.

DEAN ROBERT E. SULLIVAN of the University of Montana School of Law, views a few of the changes as impediments to modern judicial procedure.

He doesn't like provisions that judges are assigned to other district only upon request or the legislative veto of Supreme Court procedural choices.

Sullivan views the first as restrictive in the administration of justice and the second as disregard of the inherent powers of the court as a separate independent entity in a tripartite allocation of governmental authority. His objections are well taken.

He also decries retention of the justices of the peace without supervision of their judicial activities within the court system as effective prohibition of a unified court system.

DEAN SULLIVAN'S summation tells the story:

"It appears that improvements proposed are not significant, while restrictions limit the flexibility to prepare for problems of the future; the expectation of modernization and improvement in the administration of justice is minimal.

"Other articles of the proposed constitution may offset these inadequacies. This is conjectural."

Reform? Not much. Change? Yes. Next: Article VIII, Revenue and Finance, the red-hot potato.



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CALCULATED RISK

Nightmares appear in safety act

By JAMES J. KILPATRICK

Industrial safety is one of those things, politically speaking, that no prudent politician can oppose and every prudent politician must support. It stands in a class with clean air, clean water, pure food, and non-flammable nighties for little girls.

Thus it was, seventeen months ago, that the Senate voted 83-3 and the House 309-60 for the Occupational Safety and Health Act of 1970. The act went into effect April 28, 1971. American employers and employees now have been struggling with its provisions for a little more than a year. It will be another year before even tentative conclusions can be drawn on the law's effectiveness.

MEANWHILE, the verdict seems to be mixed. There is some reason to believe that the law's impact is like the little boy's book report on a 600-page volume dealing with penguins: "This book told me more about penguins than I really wanted to know." With its sweeping and detailed regulations, the act of 1970 may have imposed upon industry more safety than really

is required. One hesitates to venture such a judgment. The figures (excluding mining casualties, which are compiled separately and are covered by another law) offer a sobering picture of conditions in need of correction: In 1970, some 14,500 persons died and 2.2 million suffered disabling injuries in industrial accidents. An estimated 250 million man-days of work were lost.

Beyond dispute, many employers have been negligent, and many workers have been careless. By and large, safety laws of the individual States appear not to have been doing an effective job.

GRANTED ALL THAT an impression is growing that the 1970 act is developing, just as its critics have protested all along, into a lawyer's dream and an engineer's nightmare. In their eager-beaver zeal to make an impressive splash, safety inspectors from the Department of Labor have made more than 22,000 inspections in their first nine months of enforcement. They have recommended penalties in a startling 40 percent of their investigations—penalties adding up to nearly \$1.5 million in fines.

If the penalties were imposed only for serious infractions of safety rules, employer protests would have a hollow ring. But in thousands of instances, it appears, elaborate citations are drawn up for the most trivial offenses: An electric extension cord is not precisely secure, a hardhat is not precisely the approved weight, a toilet seat is not exactly so many inches off the floor, an appropriate receptacle has not been provided for used paper cups at the water container.

Employers complain that the system leaves them virtually at



the mercy of two groups—their own workers, and the Labor Department inspectors. Under the law, the burden of maintaining safe conditions falls entirely upon management; if an inspector finds a laborer bareheaded,

when he should be wearing a hardhat, the employer is penalized—even though he may have pleaded repeatedly with his workers to observe the rule.

In most instances, the recommended fines are more in the nature of harrassment than punishment—\$25 to \$100; it costs an employer less to pay them than to fight them.

SMALL EMPLOYERS are protesting bitterly, with apparent justice, at the heavy burden of record-keeping demanded by the act. Statistics to the bureaucrat are like cud to the cow. It is understandable that the Department of Labor wants to feed its computers all kinds of lovely figures. But the forms are demanding; the records are tedious; and compliance takes endless time.

Admittedly, accidents cost

money; but so does safety. Last week the U.S. Chamber of Commerce heard from a manufacturer of earth-moving machines. Between 1969 and 1975, some 350,000 such machines will have been built. Under the law, each must carry \$2,000 in new roll-over protection. This represents an added cost of \$70 million which must be recaptured somehow.

Employers undeniably have an obligation to provide safe and sanitary conditions for their workers. Who could quarrel with that? But some noise, and some dust, and some hazards are inescapably part of the world of manufacturing and building.

If the administrators of the act get excessively finicky, they will succeed only in driving cost up, and cooperation down

Chinese had right idea

By SYDNEY J. HARRIS

A medical friend of mine took a trip to the Far East this spring in order to study, among other things, the Chinese art of acupuncture, which is several thousand years old. This ancient Chinese healing technique is only now beginning to arouse interest in Western medical circles. Recently, Vintage Books issued a paperback edition of Dr. Felix Mann's treatise on "Acupuncture," published 10 years ago in England and largely ignored at the time.

IN CASE YOU haven't heard about it, acupuncture is a method of piercing below the skin with needles into a specific area of the autonomous nervous system. This can not only (its prac-

itioners and patients say) produce anesthesia and the alleviation of symptoms, it can also cure many diseases, ranging from migraine headaches to arthritis and peptic ulcers.

What particularly impressed me about Dr. Mann's book is the Chinese approach to the problem of disease. Unlike the West, which is "dualistic" in its attitude, Chinese medicine is "monistic." This means that while we continue to look upon body and mind, matter and energy, as separate and opposed entities, the Chinese (following the ancient Yin and Yang principle) regard all things as inter-related and part of a basic cosmic harmony.

practiced both "psychosomatic medicine" and "preventive medicine." In the first case, they recognized that many "mental" illnesses may have physical causes and many "physical" illnesses may have mental causes, treating the whole patient rather than the disease in isolation.

It was the task of the doctor (whom he visited every three or six months) to keep him well, and for this he paid a fixed fee. When he took ill, he suspended payments until he was cured or much improved. This seems to make a lot more sense than our curious reversal of the process.

Was there a deal?

By C. L. SULZBERGER



PARIS — Unable to square the Vietnamese circle, President Nixon apparently hopes to triangulate it. Addressing himself particularly to Russia and China, Hanoi's great power backers, he opened wider the doors marked "war" and "peace" and seemed to suggest a choice.

Judging by their actions, not their professions, the Communist behemoths have so far chosen peace.

Nixon offered both an implicit pledge of more generous terms for compromise and an actual demonstration of tough resolve if this pledge is ignored. Should Moscow and Peking accept the embargo imposed on arms shipments or do nothing violent to try and break it, Washington hopes to enlist their tacit support in bringing the conflict to an end.

JUST WHAT this could mean is hard to say. Britain urges Russia to join in reconvening the lapsed Geneva Conference on Indochina. Meanwhile the Paris Peace talks are suspended—but not dead.

The diplomatic game around the bloody battlefield is apparently being played in quiet among Washington, Moscow and Peking rather than near the Paris discussions. Only sound and fury emerge from the stalemated conference's periphery.

One is led to suspect that Moscow still plans to welcome President Nixon this month, is calmly continuing the SALT negotiations and wishes to avoid a naval confrontation with the United States. Thus a Kremlin decision appears to have been taken to join in constricting Vietnam's global risks.

ONE CANNOT help wondering if a preliminary undertaking to limit these risks was not agreed upon by Brezhnev and Kissinger before Nixon announced his blockade. Secret contacts between Washington and Peking have also been exceptionally active. It is safe to assume that American assurances were given that military activities would be kept adequately far from China and that Chinese concern with southeast Asia is understood.

The policy of triangulating the interests of the U.S.A., the U.S.S.R. and China involves

imagination and risk. However, Washington claims it is making insistent efforts to limit that risk and describes it as "acceptable."

Zealous aviation and naval commanders over and around North Vietnam must now be cautioned to avoid anything that might enrage either Moscow or Peking. This adds a difficult but not insurmountable responsibility to officers in charge of the air-sea operation designed to slowly induce a more compromising mood in Hanoi.

THE IMMEDIATE problem facing the United States and still threatening its new effort to achieve settlement by diplomatic triangulation is the problem of the battlefield itself. One knows that General Giap, a great captain, is painstaking in repositioning the supplies his forces require. Therefore it is axiomatic that large stockpiles still exist in and near South Vietnam on which Giap can draw for at least another month.

If during that time, the Communists are able to roll up Saigon's forces at Hue, in the Central Highlands, or near the capital itself, the entire South Vietnamese political and army structure might crumble before Nixon's new diplomatic effort has even a chance to take effect.

Should Giap produce a climactic victory during the next few weeks he could disintegrate the Saigon state. Then no diplomatic settlement—either ratification of chaos—would be left, either among the three great interested capitals or in Paris or London.

ON THE OTHER hand, if Giap is not able to destroy southern defenses with fresh hammer blows, the American naval blockade would be felt and Hanoi would have to reduce its sights. Then, as Nixon hopes, the basis for an acceptable compromise solution could be found and Washington, Moscow and Peking might all in one or another way endorse if not actually guarantee it.

Either Hanoi nor Saigon would be entirely happy about such an outcome but Washington would be hugely relieved to find itself at last rid of an uncomfortable burden. Peking cannot say as much but obviously welcomes a solution that doesn't give all Indochina to tough and militant Hanoi.

Even Moscow, while seeing its dream of a pro-Soviet Southeast Asian bloc fading, is interested in peace to the west of Russia and a reduction in rearmament expenses.

Its primordial problem remains the long-range competition with its only worrisome neighbor, China. Vietnam is only one piece in that puzzle.

(C) New York Times

the small society



EVERYBODY LOVES HIS NATIVE LAND—

WHETHER HE WAS BORN THERE OR NOT—

BRICKMAN

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