

The Legal Basis for U.S. Role in Conflict in Cambodia

Special to The New York Times

WASHINGTON, April 30— President Nixon called his powers under the Constitution in a reference in his speech tonight to the legal basis for providing support for South Vietnamese moves into Cambodia.

Provisions of the Constitution bearing on military action are contained in Article I, Section 8, which defines the powers and responsibility of Congress, and Article II, Section 2, which defines the duties of the President.

The clauses generally cited in support of the President's powers in military action are those designating him as Commander in Chief and applying to the making of treaties whose provisions he must enforce.

Other Documents Cited

Several other documents are also designated by experts as having possible bearing on the authority and legal basis for the action. Those include the Southeast Asia Defense Treaty of 1954, whose protection was extended to Cambodia in a subsequent protocol but later renounced by the Cambodian Government.

They also include the Gulf of Tonkin resolution of 1964, which was used by President Lyndon B. Johnson as the legal basis for sending American combat troops into South Vietnam, and a resolution offered by Senator Charles McC. Mathias Jr., Republican of Maryland, and approved by the Senate Foreign Relations Committee, to repeal the Gulf of Tonkin document.

Excerpts from the documents follow:

The Constitution

The Congress shall have the power . . .

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies . . .

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces . . .

The President shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. . .

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur.

Tonkin Resolution

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the Congress approves and supports the determination of the President, as Commander

in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in Southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia collective defense treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia collective defense treaty requesting assistance in defense of its freedom.

This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Southeast Asia Treaty

In order more effectively to achieve the objectives of this treaty, the parties, separately and jointly, by means of continuous and effective self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack and to prevent and counter subversive activities directed from without against their territorial integrity and political stability.

ARTICLE IV

1. Each party recognizes that aggression by means of armed attack in the treaty area against any of the parties or against any state or territory which the parties by unanimous agreement may hereafter designate would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes. Measures taken under this paragraph shall be immediately reported to the Security Council of the United Nations.

2. If, in the opinion of any of the parties, the inviolability or the integrity of the territory or the sovereignty or political independence of any party in the treaty area or any other state or territory to which the provisions of Paragraph 1 of this Article from time to time apply is threatened in any way other than by armed attack or is affected or threatened by any fact or situation which might endanger the peace of the area, the parties shall consult immediately in order to agree on the measures which should

be taken for the common defense.

3. It is understood that no action on the territory of any state designated by unanimous agreement under Paragraph 1 of this article or on any territory so designated shall be taken except at the invitation or with the consent of the government concerned.

As used in this treaty, the "treaty area" is the general area of Southeast Asia, including also the entire territories of the Asian parties, and the general area of the Southwest Pacific not including the Pacific area north of 21 degrees 30 minutes north latitude. The parties may, by unanimous agreement, amend this Article to include within the treaty area the territory of any state acceding to this treaty in accordance with Article VII or otherwise to change the treaty area.

UNDERSTANDING OF THE UNITED STATES OF AMERICA

The United States of America in executing the present treaty does so with the understanding that its recognition of the effect of aggression and armed attack and its agreement with reference thereto in Article IV, Paragraph 1, apply only to Communist aggression but affirms that in the event of other aggression or armed attack it will consult under the provisions of Article IV, Paragraph 2.

Mathias Resolution

To repeal legislation relating to the use of the armed forces of the United States in certain areas outside the United States and to express the sense of the Congress on certain matters relating to the war in Vietnam, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that Public Law 88-408 relating to the maintenance of international peace and security in Southeast Asia, is repealed effective with the sine die adjournment of the 91st Congress.

There is hereby established a joint committee of the Senate and the House of Representatives to be known as the Joint Committee on the termination of the National Emergency (hereinafter in this section referred to as the "joint committee") consisting of 12 members, as follows:

Six members of the Senate, to be designated by the President of the Senate, three of whom shall be members of the Committee on Foreign Relations of the Senate; and

Six members of the House of Representatives, to be designated by the Speaker of the House of Representatives, three of whom shall be members of the Committee on Foreign Affairs of the House of Representatives. The joint committee shall select a chairman and vice chairman from among its members.

It shall be the function of the joint committee to conduct a study and investigation with respect to the matter of terminating the national emergency proclaimed by the President of the United States on Dec. 16, 1950.

The Congress hereby declares its support of the President's efforts to achieve a political solution in Vietnam and of his plan for the accelerated withdrawal of all United States forces from South Vietnam and strongly urges that, in carrying out such plan, the President take appropriate action to seek the creation of an international peace-keeping force under United Nations or appropriate Asian auspices to prevent further hostilities in the Republic of South Vietnam and to prevent reprisals against any people of the country following the withdrawal of United States forces.

The Congress hereby urges South Vietnamese leaders representative of all political, religious and ethnic groups in South Vietnam to initiate serious discussions designed to lead to the creation of a government capable of gaining popular support and sustaining a durable political order after the departure of United States forces.

Congress hereby urges the President, as soon as practicable after the date of enactment of this joint resolution, to invite other nations to participate with the United States in the formulation of a plan for the reconstruction of war-ravaged areas in Southeast Asia through multilateral cooperation and to submit to the Congress as soon as possible recommendations for a United States contribution to such multilateral activity and to submit such proposals for legislation as may be necessary to implement such plan.