

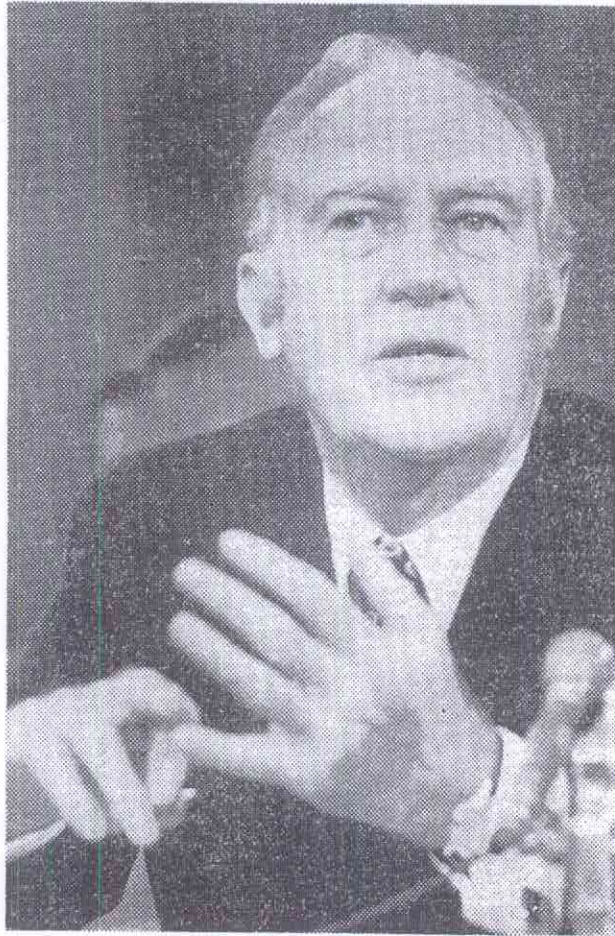
# Text of Rogers Note on Authority for

Special to The New York Times

WASHINGTON, April 30—Following is the text of a State Department memorandum presented to the Senate Foreign Relations Committee today by Secretary of State William P. Rogers, setting forth the basis of Presidential authority to continue bombing in Cambodia:

The purpose of this memorandum is to discuss the President's legal authority to continue United States air combat operations in Cambodia since the conclusion of the Agreement on Ending the War and Restoring Peace in Vietnam on Jan. 27, 1973, and the completion on March 28, 1973, of the withdrawal of United States armed forces from Vietnam and the return of American citizens held prisoner in Indochina. The memorandum also discusses the background of the agreement of Jan. 27 and the purposes of various United States actions in order to clarify the legal issues.

For many years the United States has pursued a combination of diplomatic and military efforts to bring about a just peace in Vietnam. These efforts were successful in strengthening the self-defense capabilities of the armed forces of the Republic of Vietnam and in bringing about serious negotiations which culminated in the Agreement on Ending the War and Restoring Peace in Vietnam, signed in Paris on Jan. 27, 1973. This agreement provided for a cease-fire in Vietnam, the return of prisoners, and the withdrawal of United States and allied armed forces from South Vietnam within 60 days. The agreement (in Article 20) also required the withdrawal of all foreign armed forces from Laos and Cambodia and obligated the parties to refrain from using the territory of Cambodia and Laos to encroach on the sovereignty and security of other countries, to respect the neutrality of Cambodia and Laos and to avoid any interference in the internal affairs of those two countries. This article is of central importance, as it has long been apparent that the conflicts in Laos and Cambodia are closely related to the conflict in Vietnam and, in fact, are so interrelated as to be considered parts of a single conflict.



United Press International

Secretary of State William P. Rogers testifying yesterday before the Senate Foreign Relations Committee.

## Matter of Reciprocation

At the time the Vietnam agreement was concluded, the United States made clear to the North Vietnamese that the armed forces of the Khmer Government would suspend all offensive operations and that the United States aircraft supporting them would do likewise. We stated that if the other side reciprocated a de facto cease-fire would thereby be brought into force in Cambodia. However, we also stated that if the Communist forces carried out attacks, Government forces and United States air forces would have to take necessary countermeasures and that, in that event, we would continue to carry out airstrikes in Cambodia as necessary until such time as a cease-fire could be brought into effect. These statements were based on our conviction that it was essential for Hanoi to understand that continuance of the hostilities in Cambodia and Laos would not be in its interest or in our interest and that compliance with Article 20 of the agreement would have to be reciprocal.

It has recently been suggested that the withdrawal of all U.S. armed forces from South Vietnam and the return of all U.S. prisoners has created a fundamentally new situation in which new authority must be sought by the President from the Congress to carry out air strikes in Cambodia. The issue, more accurately stated, is whether the constitutional authority of the President to continue doing in Cambodia what the United States has lawfully been doing there expires with the withdrawal of U.S. armed forces from Vietnam and the return of American prisoners despite the fact that a cease-fire has not been achieved in Cambodia and North Vietnamese troops remain in Cam-

## Bombing Cambodia

bodia contrary to clear provisions of the agreement. In other words, the issue is not whether the President may do something new, but rather whether what he has been doing must automatically stop, without regard to the consequences even though the agreement is not being implemented by the other side.

#### Objectives of U.S.

The purposes of the United States in Southeast Asia have always included seeking a settlement to the Vietnamese war that would permit the people of South Vietnam to exercise their right to self-determination. The President has made this clear on many occasions. For example, on May 8, 1972, when he made the proposals that formed the basis for the ultimately successful negotiations with North Vietnam, he said there were three purposes to our military actions against Vietnam: First, to prevent the forceful imposition of a Communist government in South Vietnam; second, to protect our remaining forces in South Vietnam; and third, to obtain the release of our prisoners. The joint communiqué issued by the President and Mr. Brezhnev in Moscow on May 29, 1972, in which the view of the United States was expressed, said that negotiations on the basis of the President's May 8 proposals would be the quickest and most effective way to obtain the objectives of bringing the military conflict to an end as soon as possible and insuring that the political future of South Vietnam should be left for the South Vietnamese people to decide for themselves, free from outside interference. The recent opinion of the United States Court of Appeals for the District of Columbia Circuit in *Mitchell v. Laird* makes it clear that the President has the constitutional power to pursue all of these purposes. In the words of Judge Wyzanski, the President properly acted "with a profound concern for the durable interests of the nation — its defense, its honor, its morality."

#### Importance of Article 20

The agreement signed on Jan. 27, 1973, represented a settlement consistent with these objectives. An important element in that agreement is Article 20, which recognizes the underlying connections among the hostilities in all the countries of Indochina and required the cessation of foreign armed intervention in Laos and Cambodia. The importance of this article cannot be overestimated, because the continuation of hostilities in Laos and Cambodia and the presence there of North Vietnamese troops threatens the right of self-determination of the South Vietnamese people, which is guaranteed by the agreement.

The United States is gratified that a cease-fire agreement has been reached in Laos. It must be respected by all the parties and result in the prompt withdrawal of foreign forces. In Cambodia it has not yet been possible to bring about a cease-fire, and North Vietnamese forces have not withdrawn from that country. Under present circumstances, United States air support and material assistance are needed to support the armed forces of the Khmer Republic and thereby to render more likely the early conclusion of a cease-fire and implementation of Article 20 of the agreement. Thus, U.S. air strikes in Cambodia do not represent a commitment by the United States to the defense of Cambodia as such but instead represent a meaningful interim action to bring about compliance with this critical provision in the Vietnam agreement.

#### A 'Self-Defeating' Step

To stop these air strikes automatically at a fixed date would be as self-defeating as it would have been for the United States to withdraw its armed forces prematurely from South Vietnam while it was still trying to negotiate an agreement with North Vietnam. Had that been done in Vietnam, the agreement of Jan. 27 would never have been achieved; if it were done in Cambodia, there is no reason to believe that a cease-fire could be brought about in Cambodia or that the withdrawal of North Vietnamese forces from Cambodia could be obtained. It can be seen from this analysis that unilateral cessation of our United States air combat activity in Cambodia without the removal of North Vietnamese forces from that country would undermine the central achievement of the January agreement as surely as would have a failure by the United States to insist on the inclusion in the agreement of Article 20 requiring North Vietnamese withdrawal from Laos and Cambodia. The President's powers under Article II of the Constitution are adequate to prevent such a self-defeating result. It is worth noting that, in reaching a similar conclusion, the report entitled "Congress and the Termination of the Vietnam War," recently prepared for your committee by the Foreign Affairs Division of the Congressional Research Service, arrived at the same general conclusion as to the President's constitutional power.

#### 'Rarely Free From Dispute'

One must recognize that the scope and application of the President's powers under Article II of the Constitution are rarely free from dispute. Under the Constitution, the war powers are shared between the executive and legislative branches of the Gov-

ernment. The Congress is granted the powers "to provide for the common defense," "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," and "to make all laws which shall be necessary and proper for carrying into execution and foregoing powers." On the other hand, the Constitution provides that "the executive power shall be vested in a President," that he "shall be Commander in Chief of the Army and Navy of the United States," and that "he shall take care that the laws be faithfully executed." The President is also given the authority to make treaties with the advice and consent of two-thirds of the Senate, to appoint ambassadors with the advice and consent of the Senate, and to receive ambassadors and other public ministers.

The proceedings of the Federal Constitutional Convention in 1787 suggest that the ambiguities of this division of power between the President and the Congress were deliberately left unresolved with the understanding that they were to be defined by practice. There may be those who wish the framers of the Constitution would have been more precise, but it is submitted that there was great wisdom in realizing the impossibility of foreseeing all contingencies and in leaving considerable flexibility for the future play of political forces.

#### 'An Important Role'

The Constitution is a framework for democratic decision and action, not a source of ready-made answers to all questions, and that is one of its great strengths.

There is no question but that Congress should play an important role in decisions

involving the use of armed forces abroad. With respect to the continuation of U.S. air combat activity in Cambodia, what is that role? The Congress has cooperated with the President in establishing the policy of firmness coupled with an openness to negotiation, which has succeeded in bringing about the agreement of Jan. 27 and which can succeed in securing its implementation. This cooperation has been shown through consultations and through the authorization and appropriation process. The Congress has consistently rejected proposals by some members to withdraw this Congressional participation and authority by cutting off appropriations for necessary military expenditures and foreign assistance. The Congress has also enacted several provisions with specific reference to Cambodia. The President's policy in Cambodia has been and continues to be fully consistent with these provisions.

It was, of course, hoped that the agreement signed at Paris on Jan. 27 would be strictly implemented according to its terms, including the prompt conclusion of cease-fires in Laos and Cambodia and the withdrawal of foreign troops from those two countries. What has happened instead is that, in Laos, the cease-fire has been followed by continuing Communist stalling in forming the new government and, in Cambodia, the Communist responded to the efforts of the Khmer Government to bring about a de facto cease-fire with a fierce general offensive. North Vietnamese forces remain in Laos and Cambodia and continue to infiltrate men and war material through these countries to the Republic of Vietnam.

#### Value of U.S. Air Strikes

North Vietnamese forces in Cambodia continue to par-

ticipate in and to support Communist offensive operations.

United States air strikes in Laos were an important element in the decision by North Vietnam and its Laotian allies to negotiate a cease-fire in Laos. If United States air strikes were stopped in Cambodia despite the Communist offensive, there would be little, if any, incentive for the Communist to seek a cease-fire in that country, and the temptation would doubtless be great for North Vietnam to leave its troops and supply lines indefinitely in Laos and Cambodia. Such a situation would be the opposite of that prescribed by Article 20 of the Vietnam agreement and would so threaten the viability of the settlement in Vietnam and the right to self-determination of the South Vietnamese people as to be totally unacceptable to the Republic of Vietnam and to the United States. In light of these facts, it seems clear that the argument that the Constitution requires immediate cessation of United States air strikes in Cambodia because of the Paris agreement is, in reality, an argument that the Constitution, which has permitted the United States to negotiate a peace agreement—a peace that guarantees the right of self-determination to the South Vietnamese people as well as the return of United States prisoners and withdrawal of United States armed forces from Vietnam—is a Constitution that contains an automatic self-destruct mechanism designed to destroy what has been so painfully achieved. We are now in the process of having further discussions with the North Vietnamese with regard to the implementation of the Paris agreement. We hope these discussions will be successful and will lead to a cease-fire in Cambodia.