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## Congress and the War...

President Nixon's sudden extension of the Vietnam War into Cambodia, without consent of Congress and against the advice of many members including a majority of the Senate Foreign Relations Committee, brings sharply to the fore a constitutional crisis that has been long in the making.

Since the earliest days of the Republic there have been disagreements over the powers of the President as commander-in-chief and, as John Marshall put it in 1799, as "the sole organ of the nation" in initiation of military actions abroad to protect American lives and property and in defense of the national interest as he sees it. From the time of Washington, some authorities have argued that these presidential prerogatives are strictly circumscribed by the powers vested in Congress "to declare war" and "to raise and support armies."

The Constitution is ambiguous, conferring broad powers on both the Executive and the Legislative branches in foreign affairs. There is no question that the President enjoys wide discretionary powers, as noted by Justice Sutherland in the landmark case, *U.S. v. Curtiss-Wright Export Corp.*, in 1936. At the same time, there is little doubt that the framers of the Constitution, remembering the war-making levies of European sovereigns in the 18th Century, deliberately gave the last word to Congress when they delegated to the legislative branch sole authority to raise and support armies.

As a result of this ambiguity, primacy in foreign affairs has tended to vacillate between Presidency and Congress throughout American history. For the past several decades, the trend has been strongly toward greater and greater assumption of responsibility by the Executive. Until very recently in the present era Congress has generally acquiesced in a secondary, rubber-stamp role on the theory that modern warfare demands prompt, decisive action by an informed leader, unfettered by parliamentary restraints.

This theory has been profoundly shaken by the nation's recent experience in Southeast Asia, where a series of rash actions in pursuit of dubious goals has demonstrated the fallibility of presidential judgments and of the "secret" intelligence on which they have been allegedly based. It has become clear that modern warfare, with its vast destructive power and threat of ultimate annihilation, requires more than ever the checks and balances against human error that the Founding Fathers prudently wrote into the United States Constitution.

It is far preferable, of course, that the President and Congress cooperate in the formulation of foreign policy in order to establish a united, and therefore stronger, United States position in a dangerous world. But if the President persists in his arbitrary escalations of the Indochina conflict, without regard for the strong misgivings expressed by large numbers of Americans, it is the right—indeed, the duty—of Congress to exercise its constitutional powers of restraint.

## ...and the Home Front

The tragic nature of the division of this country exacerbated by escalation of the war was underscored yesterday when four students were killed during a confrontation with National Guardsmen and police at Kent State University in Ohio.

Whoever was responsible for the fatal shots must be brought to justice promptly and steps must be taken to make sure that the forces of "law and order" do not themselves become the instruments of further anarchy.

Student provocation undoubtedly was great and was also unpardonable. The violence instigated by some antiwar protesters is in no way justified by the violence practiced by their Government overseas.

But more violent self-destruction at home will be the inescapable fate of this great nation unless an Administration elected to uphold the law at home and to bring peace abroad lives up to its commitments—or is held to its promises by the representatives of the people in Congress. At home, as in Indochina, responsible political action is the only sane solution to a dual crisis that is threatening to get out of hand.