

A Shift in Policy

Nixon's War Powers

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Times-Post Service

Washington

President Nixon has substantially shifted the legal reasoning used by the White House to justify the conduct of war without the sanction of Congress.

At one point in his recent televised interview he promised that he would "bend over backwards" to consult the Senate and House, whenever feasible, and at another point he declared that "in my Administration, we're not going to get involved in any more Vietnams, where we do not get the approval of Congress." Yet he has left himself a door to presidential war-making that can be accurately described as ocean-wide.

In principle there is a big difference between former President Johnson's view — that he had authority to initiate and carry on the war in Vietnam — and President Nixon's contention that he has authority to get the country out of that war. In practice, however, the difference may or may not prove to be significant.

President Johnson did, of course, go to Congress for the Tonkin Gulf Resolution. But he did not ask Congress to give him any authority to carry on military operations in Southeast Asia. Rather, he asked Congress to support him in doing whatever he might think necessary and desirable to carry out his policy of resisting North Vietnamese aggression.

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Analysis**

Monty Gives Nixon A Fitness Report

Washington

Viscount Montgomery of Alamein said in a letter released here yesterday that President Nixon is totally unfit to be supreme commander of the armed forces of the United States.

In his letter, released by United States industrialist Cyrus Eaton, the British World War II hero, then General Bernard Montgomery, said the American president should also realize that the war in Vietnam could only be ended by political means.

The letter, sent to Eaton from Lord Montgomery's home in England, said in part, "President Nixon is, of course, totally unfit to be

commander-in-chief of the armed forces of the U.S.A. It is unfortunate that the American constitution gives him this appointment."

The President's task was to choose good generals, give them political and strategical guidance, and leave the conduct of war to them, Montgomery said.

President Abraham Lincoln understood the problem, the general said.

"It is a great pity that Nixon does not act in the same way," he added.

"He should realize that political end to the war in Vietnam is the only possible way to end that war."

Reuters

The Senate now wants to withdraw that blanket approval which Congress gave in 1964 to full presidential discretion in this area. In the recent TV interview Howard K. Smith asked the President what authority he would have to continue the war if the Tonkin Gulf Resolution should be repealed. The

President replied that his legal justification is "the right of the President of the United States, under the Constitution, to protect the lives of American men."

No one seems to have any doubt that protection of the lives of American troops who have been committed to a war is an important responsibility of the commander-in-chief. It is also obvious that the country expects the President to exercise this authority effectively.

But how far may he go in providing such protection? Is the limit on his authority to safeguard the Nation's defenders to be determined solely by his own discretion?

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There is some comfort in Mr. Nixon's declaration that if the invasion of the sanctuaries had been an attempt to launch a war or to expand the Vietnamese war into Cambodia he would of course "have gone to the Senate."

His contention is that a temporary crossing of the border between South Vietnam and Cambodia to clean out the sanctuaries was well within his constitutional authority as commander-in-chief, because it was a limited protective maneuver.

At one point in the discussion, however, the protection-of-our-boys argument was stretched to the point of transparency. Smith alleged that if there were no authority to continue the war American troops could be brought home without further ado. The President replied: "It isn't just the case of seeing that the Americans are moved out in an orderly way. If that were the case we could move them out more quickly. But it is a case of moving American forces out in a way that we can at the same time win a just peace."

Obviously this introduces another formidable element into the controversy over the

war power. The President seemed to be saying that regardless of how flagrantly presidential power might have been abused in getting the country into a war, the Commander-in-Chief has constitutional authority to continue the fighting until a just peace has been won.

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In this expansive claim he seemed to break away entirely from his previous anchor — the right to protect American troops — unless he was making the farfetched assumption that protection of the troops necessarily involves prosecution of a war to the point of a just peace.

There is another reason for skepticism in regard to the new White House stance on war-making. Assistant Attorney General William M.

Rehnquist pointed out the other day in a hearing before the House subcommittee on national security policy that the President has traditionally used his authority to deploy our Armed Forces in many parts of the world. Today Americans in uniform are stationed at hundreds of military bases on every continent. Under the guise of defending American forces the President could commit the country to war almost anywhere that hostilities break out.

There may be an exception, however, in the case of Israel. Since the President's interview, White House aides have been busy denying that there was any hint that U.S. personnel might be sent to Israel to assist that country in its struggle with its Arab neighbors, who now have formidable help from the Soviet Union. We have no treaty commitment to Israel and maintain no military bases in that country.

Unless the President's concept of his war powers should undergo a dramatic shift, Congressional action would seem to be necessary before any aid could be sent directly involving American military personnel.

In the past, however, presidents have proved to be remarkably adept in adjusting their views of the war power to any situation at hand. In his state-of-the-world message to Congress the President enuniated a policy of extending a protective umbrella over small countries which might be threatened by a nuclear power, without promising to ask Congress to open the umbrella when such an occasion might arise.

The Administration is mounting strong opposition to the efforts in both houses of Congress to bring the power of the executive to make war under some measure of control. But popular sentiment for reforms in this sphere continues to mount. The struggle may be expected to go on until some means of curbing one-man decisions on these life-and-death issues have been found.