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NYTimes

# Letters to the Ed.

## Undeclared War Is Not Unconstitutional

To the Editor:

Your editorial ["The Real Issue," July 31] purports to rely on an article by Professor Alexander M. Bickel, but it misreads that article. Professor Bickel does not contend, as you do, that the war in Vietnam is unconstitutional because Congress failed to pass a resolution "declaring" that a state of war exists between the United States and North Vietnam.

Professor Bickel fully accepts the fact that the United States, like every other nation, has the capacity under international law to engage both in "declared" wars, invoking the law of war, and signalling maximum hostility, and in limited, "undeclared" wars, involving the measured use of force in time of peace for the purpose of redressing violations of international law. The Supreme Court made it clear as early as 1800 that the Constitution fully respected the distinction between "declared" and limited wars in international law.

Professor Bickel's thesis is quite different. He argues that the Tonkin Gulf Resolution, which put Congress behind the President's interpretation of the SEATO Treaty, was unconstitutional because it involved an excessive delegation of legislative power to the President. According to Professor Bickel's theory, the Javits Bill, which you supported, would also be unconstitutional, for it contemplates the

possibility that both treaties and Congressional resolutions could be enacted, if they specifically authorized the President to use force in the future. In any event, Professor Bickel's theory is contrary to a consistent pattern of practice going back to Washington's first Administration, and to all the judicial precedents on the subject, starting with Justice Story's opinion in *Martin v. Mott*.

The "real issue" about Vietnam in the campaign, as Senator Cooper has said, is that responsible leaders of opinion should not rewrite history. Through the SEATO Treaty, and successive votes of Congress and decisions of the President, reaffirming its policies for many years, the nation did commit itself to a line of policy which many now regret, and wish to change. Those decisions were not made secretly, behind closed doors. They were made by Presidents and Congress after extended debate, and fully understood and supported by public opinion at the time. We only confuse and deceive ourselves by pretending that these events never happened, or can be exorcised as unconstitutional and void.

EUGENE V. ROSTOW

New Haven, Conn., Aug. 10, 1972  
*The writer served as Under Secretary of State for Political Affairs, 1966-69, and is now Sterling Professor of Law and Public Affairs at Yale Law School.*