

MAR 28 1973

Nixon's War Powers

NYTimes

By James Reston

Now that the last of the American prisoners and troops are on their way home from Vietnam, it would be useful if President Nixon would tell the country what authority he thinks he has to carry on military action in Indochina rather than leaving the explanation to Senator Barry Goldwater.

The Senator from Arizona asserts in a letter to The New York Times that the President has the legal authority to punish violations of the Vietnam peace agreement on his own, and says questioning of this authority is "destructive of the peace we all seek."

"The President can, if he sees need," Senator Goldwater writes, "order reprisals in line with more than 24 acts of Congress which were judicially determined in *Orlando v. Laird* to provide Congressional collaboration in the Indochina war. . . ."

Well, this may be so, but that "Congressional collaboration" was authorized before the Congress specifically repealed the Tonkin Gulf Resolution, which had been regarded by Presidents Johnson and Nixon as legal sanction for the war. Also, if the Congress has the power to sanction and finance a war, it also has the power to withdraw both sanction and funds.

"Acting as Commander in Chief, which confers on him supreme direction over the armed forces," Senator Goldwater adds, "the President possesses full constitutional authority to judge that the terms of the armistice which he negotiated have not been met by the enemy and that an actual state of war continues there that carries with it his power and duty to enforce that settlement. . . ."

If this is true, then President Nixon not only has the power but "the duty" without a word to Congress to order the bombers or even American ground troops back into Vietnam to "enforce" one of the most ambiguous settlements ever negotiated at the end of a war.

The fact is that the armistice agreement is being violated constantly by

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both sides, but the main American objective of the agreement was to get the Americans out of Vietnam, not to impose on the President "the duty" to get them back in whenever he personally judged that the armistice was being violated.

"As Chief Executive of a sovereign nation and bearer of primary powers over the conduct of foreign affairs and the maintenance of our national defense," Senator Goldwater remarked further, "the President possesses a constitutional independence in these two fields which reinforces his authority in this situation. . . ."

This is undoubtedly true, but it is not a power "independent" of the Congress in the present situation where the President can no longer claim to be "protecting the lives" of American troops and prisoners. Besides, if Senator Goldwater is correct, Mr. Nixon also has the right and duty to take whatever military action he wants to enforce not only the Vietnam settlement, but the Korean settlement, and for that matter, the World War II settlement.

It is odd that one of the most sincere conservatives in the Senate, who has fought against excessive Presidential power for half a lifetime, should defend such extraordinary authority for the Chief Executive.

And odder still that the President who has taken such credit for getting out of the war, should not explain what the B-52 bombers are doing in Cambodia, and why, and on what authority. This is not a subject that should be left to a couple of non-legal amateurs, but is central to the larger issues of the President's war powers, his executive privilege, and his right to impound funds.

Is it really "destructive of the peace we all seek" to wonder whether the President has the personal right to send his bombers and troops back into the Vietnam struggle? Nobody honestly thinks he is considering such a move in Vietnam, but to assert his "right" and even "duty" to do so if he personally chooses indicates just how much things have changed since conservatives were worrying about "the supremacy of the Presidency."

Besides, it is hard to see the logic in Senator Goldwater's assertion that *Orlando v. Laird* support his case, for what the court said in *Orlando* was that Secretary Laird had the right to send Orlando to fight in Vietnam because the Congress had appropriated funds specifically for such a purpose. The Congress, however, has not appropriated funds to reintroduce troops into Vietnam after the armistice.

The President has asserted an absolute right to shield his staff from Congressional or legal questioning, not only about their personal dealings with him, but about their personal dealings with men convicted of burglarizing Democratic headquarters in the Watergate case. This has aroused a storm over whether or not he has such an "executive privilege," but at least in this case the President issued an official statement defining what he thinks his powers are.

No such statement, however, has been forthcoming from the White House on the President's intervention in Cambodia or his right of re-intervention in Vietnam after the prisoners and troops are home. And oddly enough, the Congress has not yet requested an official explanation of what the President's policy actually is.