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Congress and the question of presidential war powers

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NEW YORK — Sen. Barry Goldwater, who sounds as if he'd still like to lob one into the men's room of the Kremlin, thinks it would be "nothing short of disaster" for Congress to supplant or reduce the President's war powers with some legislative procedure. And he is "sick and tired," he said, with his usual subtlety, of hearing demands, especially by the members of a political party whose leaders got us into this war, that President Nixon end the conflict on their terms."

Goldwater has a solid point about a good many Democrats, including some recent presidential candidates, whose hawk feathers have turned dovish white since Lyndon Johnson left the White House and Richard Nixon came in. And while the matter still needs a lot of study, Goldwater also may be right in warning against tampering with the Constitution in reaction to Nixon's conduct of the war in Vietnam.

Nevertheless, recent events tend to support the conclusion of the historian, Arthur Schlesinger Jr., who wrote in an article in The New York Times Magazine: "The inability to control presidential war is now revealed as the great failure of the Constitution."

Most shocking thing

The most shocking thing about the Christmas bombing campaign launched by Nixon, for example, was that by the admission of official administration sources, it was intended to show Hanoi "the extent of his anger over what the officials say he regards as an 11th-hour reneging on peace terms" and also to force Hanoi to "negotiate seriously." Put briefly, Nixon ordered out the B52s for diplomatic reasons, tinged with personal anger.

It is true that this was done in the context of an actual, if undeclared war; still no one has seriously argued that the Christmas bombing was demanded by the exigencies of the war. Instead, it was necessary — in Nixon's view — to his diplomacy. If he can constitutionally order an act of war for a diplomatic purpose, could he order a similar act at any time he thought it could further his diplomatic or even economic policies?

Could a president, for example, bomb Lima in order to forestall or retaliate for some act of expropriation by Peru? If Fidel Castro refuses to help put an end to airline hijackings to Cuba, can Nixon constitutionally bomb Havana to make him negotiate seriously? Or, during the India-Pakistan war, could he legally have blasted New Delhi in order to show his anger at Mrs. Gandhi's belligerence?

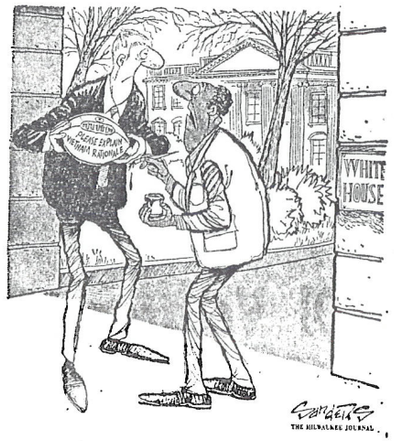
Numerous cases

These may seem frivolous questions—until it is recalled that American presidents often have sent in the Marines in numerous cases not much more outlandish. Bombing is quick and generals would have you believe it is more effective; and a lot of people who might once have thought that American presidents would not do such things have had a bitter education in the Dominican Republic, Guatemala, Laos, the Bay of Pigs, Cambodia and Vietnam.

Another chilling note

Another chilling note was struck by William P. Clements, nominated to be deputy secretary of Defense, who told a congressional committee he "wouldn't eliminate" the possibility of using nuclear weapons in Vietnam but in fact was "not prepared to give you a philosophical view" on what he seemed to think was "a very complicated issue."

The White House, State and Defense Departments immediately put out what appear to be solid pledges that nuclear weapons will not be used in Indochina — whereupon Clements hastily fell in line. But two points can be fairly made. One is that the administration has made a promise which is in no way legally or perhaps even politically binding on Nixon or a successor; the other is that the American people on occasion have heard a president pledge one thing, then seen him finally do another.



'It's worth a try.'

On the other hand, it can hardly be denied that in the era of nuclear-tipped missiles a president must have the power to respond quickly and decisively; without that power the whole idea of a "nuclear deterrent" falls to pieces. Moreover, even if the last decade provides some horrid examples, it is possible to imagine situations in which some quick presidential action or threat might be necessary to preserve or restore peace.

The problem

The problem, therefore, is to retain the President's capacity to function as commander-in-chief, but to define or restrain that function so that he cannot make war, or order acts of war, by whim, impulse, tantrum or imperial decision. The original intent of the framers, after-all, was to place a civilian commander-in-chief in restraint of the military — not to make him their generalissimo.

Restricting presidential powers in such a fashion — or defining them so that such limits are both understood and enforceable — is not going to be easy and Barry Goldwater is probably right that a legislative substitute is not the answer.

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