

# Presidential Powers: Cambodia Becomes a

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WASHINGTON, April 3 — In the growing controversy over the President's war powers, American military involvement in Cambodia is once again raising the question of the Commander in Chief's authority to "make war" without the specific approval of Congress.

With no apparent Congressional sanction, President Nixon has ordered bombing to continue in Cambodia after the cease-fire in Vietnam and the withdrawal of American troops from the South.

The military and political purpose of the bombing is clear—to force the Communist side to accept a cease-fire in Cambodia—but the Administration is finding itself caught in a legal tangle over the President's constitutional powers to continue a war that he has proclaimed to be at an end.

In a curious, unpredictable way, the American involvement in Cambodia, far more than that in Vietnam, has brought the constitutional question to the fore in Congress, and thus the executive branch.

The first time was in the American "incurSION" into Cambodia in 1970—an operation that Mr. Nixon justified as necessary to eliminate Communist supply sanctuaries but that his Congressional critics termed an unwarranted extension of the war.

The action led to the first Congressional restrictions on the President's war-making powers: a measure prohibiting the reintroduction of ground troops or advisers into Cambodia or Laos.

The incursion also prompted a public outcry, and on June 3, 1970—three weeks before the American troops were withdrawn—Mr. Nixon declared

in a television report to the nation that "the only remaining American activity in Cambodia after July 1 will be air missions to interdict the movement of enemy troops and material where I find that is necessary to protect the lives and security of our men in South Vietnam."

**U.S. Bombing Goes On**  
All American forces were withdrawn from South Vietnam six days ago, presumably nullifying at least that one justification for military action in Cambodia.

Meanwhile, American bombing has continued there—apparently at an intensified rate in recent days—partly to interdict North Vietnamese supplies moving toward South Vietnam but also to support the anti-Communist Government of President Lon Nol, who is hard pressed by insurgent forces.

Thus far the new Congressional challenge to this assertion of Presidential power has not crystalized, but on Capitol Hill the question is being raised whether Mr. Nixon has constitutional authority for it.

Senator J. W. Fulbright, chairman of the Foreign Relations Committee, started the interrogation last week with a statement in which he asked: "Does the President assert—as kings of old—that as Commander in Chief he can order American forces anywhere for any purpose that suits him?"

In what is generally regarded as a murky constitutional division of war powers between Congress and President, the question may have been overstated. Thus far there has been no clear-cut formal answer from the Administration.

**Intricate Exercises**  
In many ways the justification for action in Cambodia is far more difficult than it was in Vietnam, where successive Administrations went through intricate exercises to find legal

and constitutional support for military involvement.

The executive branch could rely somewhat on obligations to South Vietnam assumed under the SEATO treaty, although there was always a question whether it provided clear authority. Far more important was the Tonkin Gulf resolution, in which Congress authorized the President in 1964 to take all necessary steps to repel Communist aggression in Indochina.

In the case of Cambodia, on the other hand, the Administration can lean on neither the SEATO treaty nor the Tonkin Gulf resolution.

Unlike South Vietnam, Cambodia eliminated herself from the protection of the SEATO Treaty in 1955. This was recognized in 1970 by Elliott L. Richardson, the Under Secretary of State and now Secretary of Defense, who stated in a letter to the Foreign Relations Committee that the treaty "has no application to the current situation in Cambodia."

As for the Tonkin Gulf resolution, it was repealed by Congress in 1970 with the acquiescence of the Nixon Administration.

**'Legal Gymnastics' Seen**

Now the Administration, caught between the positions it maintained on Vietnam and Cambodia on the one hand and its repeated declarations that the United States would not assume a commitment to protect the Government in Phnom Penh on the other, is going through what its critics describe as "legal gymnastics" to find justification for the continued bombing.

The predicament is illustrated by the on-again-off-again White House plans to issue a statement defining the President's authority. A statement has been drafted by State Department lawyers, but the White House has been reluctant to make it public.

As a result the burden has

fallen on Mr. Richardson, who, in a series of ad-lib opinions before television cameras, has offered the argument that the bombing is justified to wind up a "lingering corner" of the war.

"Basically," he said Sunday on the National Broadcasting Company television program "Meet the Press," "I believe that our constitutional authority rests on the circumstances that we are coming out of a 10-year period of conflict. This is the windup. The fighting in Cambodia is a kind of residue; it is the area where least of all there is now being observed the provisions of the agreements entered into in Paris."

The Richardson argument is that the bombing is justified because it is a continuation of a military action that had the sanction of Congress. Implicit is the view that the President is authorized to bomb in Cambodia to force North Vietnam to live up to the Paris cease-fire agreement, particularly Article 20.

That article, a general statement without enforcement procedures or deadline, calls on foreign powers to end all military activities in Cambodia and Laos. Administration officials have disclosed that it was understood when the agreement was negotiated that the United States would continue bombing until a cease-fire was reached in Cambodia.

In the view of the critics in Congress, the Administration is getting into the position of relying on a secret understand-

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## Crucial Test

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ing of a vague provision in a peace agreement not ratified by Congress to justify the bombing. "If we accepted this incredibly vague provision as justification, we could well be committed to the defense of Cambodia indefinitely," Senator Thomas F. Eagleton, Democrat of Missouri, observed in a Senate speech today.

More ominous to the critics is the possibility that the President, applying the same logic to North Vietnamese violations of the agreement, could use them as the basis for renewing military action in Vietnam.

The Eagleton statement reflects another underlying concern: that the Administration is being dragged into a commitment to defend the Lon Nol Government, something the Administration has said it would never do. If such a commitment is undertaken, the critics argue, it must be with the approval of Congress.

Such is the balance—or imbalance—of the war powers, that the President is considered likely to prevail by continuing the bombing—even without offering a legal justification. For the moment, the critics can find no legislative vehicle to stop it, in effect granting the case of Mr. Nixon.

A possibility remains that Congress may eventually retaliate with legislation restricting the President's authority to engage in military actions. The bombing may provide the impetus.

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