

Nixon's Bombing Authority Questioned

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WASHINGTON, April 11—

Two legal scholars and a former Attorney General argued before the Senate Foreign Relations Committee today that President Nixon had no constitutional authority to continue bombing in Cambodia.

The opinions were delivered by Alexander M. Bickel of Yale Law School, Raoul Berger of Harvard Law School and Nicholas deB. Katzenbach, general counsel of the International Business Machines Corporation, who was Attorney General and an Under Secretary of State in the Johnson Administration.

Mr. Berger found the President's military action in Cambodia "utterly without constitutional foundation"—a judgment seconded by Mr. Bickel, who said that "all the old and somewhat strained" justifications offered by the Administration were "gone" now that all American troops have been withdrawn from Vietnam.

Mr. Katzenbach said the argument offered by Defense Secretary Elliot L. Richardson that the President could continue bombing to wind up "a lingering corner" of the war "not sufficient."

Sponsored by 60 Senators

The three appeared before the committee to support legislation defining and restricting the war powers of the President as a step to help redress the balance of war-making power between Congress and the White House.

The legislation, co-sponsored by 60 Senators led by Jacob K. Javits, Republican of New York, would authorize the President to use the armed forces in certain specified emergency situation but provide he could not continue days without Congressional approval.

Identical legislation passed the Senate last year but died in a Senate-House conference, the revival underscores the political quandary of Congressional critics in challenging the President's use of his war powers.

Two Senators Retreat

The Senate is willing to act in the abstract, such as passing once again a war powers bill. But it is reluctant to challenge the President in specific cases, such as with the Cambodian bombing.

Senators Clifford P. Case of New Jersey and Frank Church of Idaho, for example, have retreated from their plan to offer legislation prohibiting

further military action in Indochina without Congressional approval.

At this point, for all the protesting speeches, no other Senator appears willing to take the initiative in offering legislation to challenge the President's action in Cambodia.

The reason commonly given by the Senate critics for their inaction is that the "political mood is not right" for such a challenge. But there is also a concern that they might be blamed for the "loss of Cambodia" if they took steps to stop the bombing and then the London Government collapsed.

House Weighs Stiffer Bill

Instead, the critics are falling back on the longer-range alternative of legislation that would curb the future authority of the President to undertake military actions abroad. Partly in reaction to the Cambodian bombing, it now appears likely that some form of war powers legislation will be passed by this Congress.

The House of Representatives approved a far weaker bill last year, but now is moving in its Foreign Affairs Committee toward stronger legislation, more along the lines of the Senate bill.

At today's hearings, Senator J. W. Fulbright, the committee chairman, suggested that even

if the legislation was passed, it would be vetoed by the President and "the whole issue would go down the drain."

Mr. Katzenbach expressed doubt that as a practical matter the legislation would provide an effective check on Presidential power. But it would be "unfortunate," he said, if Congress failed at least to attempt to reassert its role in the formulation of foreign policy.

In the same vein, Senator Javits said: "If ever we have faced the 'twilight zone' of the Constitution in terms of the war-making power, it is now. We cannot dare to keep quiet now, lest this be the final act of surrender."

In January, Secretary of State William P. Rogers agreed to testify after American troops were withdrawn from Vietnam. Now the committee has been told that Mr. Rogers is "too busy."

Describing this as "prudent evasiveness," Senator Fulbright said he had "total confidence in the ability of this Administration to come up with some specious legal justification for doing exactly what it wishes to do."