

NYTimes

APR 19 1973

Law and the President

By Anthony Lewis

AT HOME ABROAD

LONDON, April 18—In the course of a recent trip to the Soviet Union I heard about a Russian, denied an exit visa though he was ready to pay the tax, who tried to find out the legal basis for the decision. He asked the men of the Interior Ministry whether there was anything in the Soviet Constitution restricting the right to emigrate. No. Could they show him any law that did so? No. What then? "We have our internal regulations."

Visiting a country where power is so often arbitrarily exercised intensifies one's belief in law—law in our deep sense of the word, as a set of rules that binds governed and governors alike. It was with special feeling, therefore, that while in the U.S.S.R. I read the most revealing statement of the American legal position in Cambodia.

William H. Sullivan of the State Department was asked what constitutional authority there was to bomb Cambodia. He reportedly replied: "For now I'd just say the justification is the re-election of President Nixon." In coarse cynicism Sullivan nicely matched the Soviet Interior Ministry men.

Cambodia presents the most extreme example so far of all American Presidents' claim of absolute power to make war. It goes well beyond the confines of the long debate about Vietnam, since the bombing of Cambodia lacks even a colorable basis in specific Congressional authorization or prior treaty commitment.

There has never been a Tonkin Gulf Resolution on Cambodia, a Congressional expression addressed however vaguely to the question of authority. Nor is the Southeast Asian Treaty arguably relevant; Cambodia is not a member of SEATO, and in 1970 the Under Secretary of State, Elliot Richardson, rightly said the treaty had "no application" to the Cambodian situation.

President Nixon long ago gave an explicit undertaking that is violated by his current bombing. As his 1970 invasion of Cambodia drew to a close, he said: "The only remaining activity in Cambodia after July 1 will be air missions to interdict the movement of enemy troops and materials where I find this necessary to protect the lives and security of our forces in South Vietnam."

There are no American forces in South Vietnam any more, so that excuse for bombing Cambodia—whatever its legal weight—is finished. What else is offered?

Elliot Richardson, now Secretary of Defense, said the other week that "We are engaging in air strikes only at the

request of the Cambodian Government." He seemed to argue also that the Paris agreements on Vietnam gave the President some kind of inferential authority to go on bombing in order to force a cease-fire in this "lingering corner" of the Indochina war.

Legally, that is pathetic stuff. Putting to one side any questions about the nature of the Government in Phnom Penh, no foreign government's request can by itself add to an American President's warmaking power. Is it seriously suggested that Mr. Nixon could lawfully bomb Uganda if President Amin asked him to? Nor can a cease-fire agreement never presented to Congress provide any independent legal authority.

On the most expansive modern theories of Presidential power the bombing of Cambodia has not been shown to have any legal basis. Even *The Economist* of London, a faithful supporter of the American war in Indochina over many years, has said that in Cambodia "President Nixon appears to be short of a legal or constitutional justification for using force."

Perhaps some Administration lawyer has a theory. If so, no high official has bothered to argue it, and that is almost worse. For the prevailing attitude seems to be one of contempt for the whole idea of law as it affects Presidential power—an attitude most candidly displayed in William Sullivan's not-so-facetious remark.

The case of Elliot Richardson is especially puzzling. He is a highly regarded lawyer, a onetime law clerk to Mr. Justice Frankfurter, a possibility for the Supreme Court himself. Does he ever consider the standards that would be brought to this kind of problem by Felix Frankfurter, or by Frankfurter's exemplar of integrity in public service, Henry Stimson?

The point about Frankfurter and Stimson is that they were conservatives in a constitutional sense. They put respect for the institutions of American government ahead of causes they favored, ahead of their own power. Surely conservatives today, the ones distressed by the Watergate scandal, should care all the more about a President making war without a showing of legal justification.

Does it really matter? After all, the bombs are falling on a little far-off country, and as yet no Americans are being killed or captured. But those who founded the United States wanted its very character to lie in the principle that law limits the authority of every American, up to the highest.