

Rogers Gives Legal Case For Bombing

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Secretary of State William P. Rogers said yesterday that the continued American bombing in Cambodia is legally justified by the Constitution and is "a meaningful interim action" to force the Communists to agree to a cease-fire there.

Testifying before the Senate Foreign Relations Committee, Rogers presented the administration's long-awaited legal justification for the Cambodia bombing — an issue that has aroused considerable criticism from members of the committee, including its chairman J. W. Fulbright (Dem-Ark.).

They have argued that President Nixon had no legal basis for the bombing now that all American troops have been withdrawn from South Vietnam.

SWAY

Although the committee members generally treated Rogers in a friendly fashion, his arguments, both in his comments to the committee, and in his 13-page legal

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memorandum, failed to sway the most vocal critics, such as Senators Jacob K. Javits (Rep-N.Y.), Stuart Symington (Dem-Mo.), Edmund S. Muskie (Dem-Maine), Clifford P. Case (Rep-N.J.) and Fulbright — all of whom repeated their sharp criticism of American bombing in Cambodia.

"It seems incredible to me," Symington said, referring to the daily B-52 missions. He said the raids were giving the U.S. "a bad name" for "bombing the heck out of a little nation."

Rogers, in the legal paper, repeated several of the arguments already advanced by administration spokesmen for the raids, and he added some new ones.

NEW

They included the following:

- The argument that a new situation now existed in Indochina since the agreement and therefore new authority must be found for bombing Cambodia lacks merit, because the President has "constitutional authority" to continue bombing in Cambodia until a cease-fire has been achieved and North Vietnamese forces are withdrawn from Cambodia.

- Under Article 20 of the Vietnam cease-fire, the hostilities in Cambodia — and Laos — should stop, but until they do, the U.S. was free to continue bombing to support the Lon Nol government and thereby "to render more likely" a cease-fire. "Thus U.S. air strikes in Cambodia do not represent a commitment by the United States to the defense of Cambodia as such but instead represent a meaningful interim action to bring about compliance with this critical provision in the Vietnam agreement."

- The U.S. informed Hanoi when the Vietnam agreement was reached in January that if the Communist offensive operations in Cambodia we would continue to carry out air strikes in Cambodia as necessary until such time as a cease-fire could be brought into effect." This was needed for Hanoi to realize that continued fighting "would not be in its interest."

- If the bombing were stopped despite the Communist offensive in Cambodia, "the temptation would doubtless be great for North Vietnam to leave its troops and supply lines indefinitely in Laos and Cambodia," the opposite of what was prescribed by Article 20 of the agreement "and would so threaten the viability of the settlement in Vietnam" as to be "totally unacceptable to the United States."

- Because of the previous two points, "it seems clear that the argument that the Constitution requires immediate cessation of the U.S. air strikes in Cambodia because of the Paris agreement, is, in reality, an argument that the Constitution which has permitted the United States to negotiate a peace agreement . . . is a Constitution that contains an automatic self-destruct mechanism designed to destroy what has been so painfully achieved."

- Citing "ambiguities" in the wording of the Constitution, the legal memorandum says that the provisions "are adequate" for the President to carry out his policies.