

# Crimes Of State

By Anthony Lewis

BOSTON, May 30—On 85 successive days now, without any authority in law, American planes have bombed Cambodia. The latest official figures, for April, showed that the average daily tonnage had risen to nearly one and one-half the amount dropped on North Vietnam during the Christmas bombing campaign.

Not surprisingly, the bombs dropped by B-52's and fighter-bombers actually kill people and destroy their village civilization. A New York Times correspondent, Sydney Schanberg, recently filed an impressively meticulous account of what the United States has done to Cambodia in these last months.

"Sometimes the devastation is continuous for several miles," he wrote of a trip along a road from Phnom Penh. "Ashes, broken cooking pots, shattered banana and mango trees, twisted corrugated iron roofing and sometimes the concrete stilts of a house reaching toward nothingness—that is all that is left. A few people wander forlornly through the rubble. . . ."

Cambodia is a small peasant country in a far-away place, and few Americans know or care much about it. But we might care about the reputation the United States is acquiring as the country that over the last decade has killed more innocent people and destroyed more homes and crops than any other. And above all, at this time of heightened constitutional sensibility,

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## ABROAD AT HOME

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we should care about what this lawless warmaking is doing to our own institutions.

Even President Johnson, when he began bombing North Vietnam in 1965, did not do so as an act of naked Presidential fiat. By whatever means he had persuaded Congress to provide it, he did have the authority of the Tonkin Gulf resolution to attack North Vietnam. Indeed, he was so conscious of the problem of authority that he used to keep a copy of the resolution in his pocket and bring it out when he was asked questions about the bombing.

There is no Tonkin Gulf resolution any more; with the agreement of President Nixon, Congress has repealed it. There is no other law that anyone has interpreted to authorize war on Cambodia. The U.S. is not party to any treaty covering that country. It may be reiterating the obvious to say so, but there simply is no basis in law for the current bombing.

The lawyers of the United States Government have made no serious effort to justify the war on Cambodia in terms of our Constitution and laws. The one person I know who has is Prof. Eugene V. Rostow of the Yale Law School, who tried the other day in The New York Times. His argument was an object lesson in self-destruction.

It is an "inappropriate moment" to stop bombing Cambodia, Professor Rostow argued. We cannot "assure the security of South Vietnam" unless we get "hostile forces" out of sanctuaries in neighboring countries. The Cambodian Government, like others, is entitled to call in others for help in collective self-defense.

As a matter of military policy, those arguments would doubtless persuade some people. But, inconveniently, the United States Constitution does not confide such judgments to the President. The power to declare war is committed to Congress.

How sad it is to read such stuff from a man who once understood that the end cannot justify the means in this country, that the Constitution is for bad times and good. Eugene Rostow was eloquent when he fought the internment of Japanese-Americans in World War II. Now he tells us that it would be "constitutionally irresponsible" to stop the President from waging his own war.

Congress is at last moving to stop the unlawful American destruction of Cambodia. But as it does, it must beware of an effort by the President's men to reverse the constitutional burden of proof. They want the Constitution to read: "The President may wage war unless Congress stops him." But it does not say that. It does not put on Congress the burden of overcoming inertia, and possibly overriding a veto; it is up to those who want war to obtain Congressional authorization.

What has gone on these last 85 days is in its way more serious than Watergate, more depressing in its demonstration of how far we have gone in the corruption of our constitutional ideals. For the most eminent men in our Government—not just policemen and political hatchetmen—have carried out acts that they well knew were illegal.

Like Adolph Eichmann, they can argue that they were only following orders. But in this country no superior's order is lawful if it is in fact unauthorized by the Constitution and laws.

Law students learn early-on that killing without lawful authority is murder. The point has escaped the White House assistants and Pentagon and State Department officials who have carried out the President's unconstitutional orders to bomb Cambodia. But some less exalted men have begun to understand. One of the B-52 crew members on Guam, a Sergeant Simerly, said: "We're still killing hundreds of people every day, and for what? When I came into the Air Force, we had a mission: peace. Right now I'm a paid killer."