

FROM: THE OFFICE OF UNITED STATES SENATOR BOB DOLE
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JUNE 9, 1970 --- U.S. Senator Bob Dole (R-Kans.) in a speech on the Senate floor today, discussed the scope of the President's power to conduct military operations such as those now underway in Southeast Asia and reviewed Supreme Court Decisions which ruled on the power of the President as Commander-in-Chief.

EXCERPTS FROM THE SPEECH FOLLOW

The limits of the President's power as Commander-in-Chief are nowhere defined in the Constitution, except by way of negative implication from the fact that the power to declare war is committed to Congress.

Since August 10, 1964, when Congress passed the Gulf of Tonkin resolution, Congress has repeatedly adopted legislation recognizing the situation in Southeast Asia, providing the funds to carry out United States commitments there, and providing special benefits for troops stationed there. By virtue of these acts, and by virtue of the provision in the Gulf of Tonkin resolution as to the manner in which it may be terminated, there is long-standing congressional recognition of a continuing United States commitment in Southeast Asia.

President Nixon has continued to maintain United States troops in the field in South Vietnam, in pursuance of his policy to seek a negotiated peace which will protect the right of the South Vietnamese people to self-determination,

A requirement that congressional approval of Executive action in this field can come only through a declaration of war is not only contrary to historic constitutional usage, but as a practical matter could not help but curtail effective congressional participation in the exercise of the shared war power. If Congress may sanction armed engagement of United States forces only by declaring war, the possibility of its retaining a larger degree of control through a more limited approval is foreclosed. While in terms of men and material the Vietnam conflict is one of large scale, the objectives for which the conflict may be carried on, as set forth in the Gulf of Tonkin resolution, are by no means as extensive or all-inclusive as would have resulted from a declaration of war by Congress. Conversely,

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however, there cannot be the slightest doubt from an examination of the language of the Gulf of Tonkin resolution that Congress expressly authorized extensive military involvement by the United States, on no less a scale than that now existing, by virtue of its adoption of this resolution. To reason that if the caption "Declaration of War" had appeared at the top of the resolution, this involvement would be permissible, but that the identical language without such a caption does not give effective congressional sanction to it at all, would be to treat this most nebulous and ill defined of all areas of the law as if it were a problem in common law pleading.

The President's determination to authorize incursion into the Cambodian border area by United States forces in order to destroy sanctuaries utilized by the enemy is the sort of tactical decision traditionally confided to the Commander-in-Chief in the conduct of armed conflict. From the time of the drafting of the Constitution it has been clear that the Commander-in-Chief has authority to take prompt action to protect American lives in situations involving hostilities. Faced with a substantial troop commitment to such hostilities made by the previous Chief Executive, and approved by successive Congresses, President Nixon has an obligation as Commander-in-Chief of the country's armed forces to take what steps he deems necessary to assure their safety in the field. A decision to cross the Cambodian border, with at least the tacit consent of the Cambodian government, in order to destroy sanctuaries being utilized by North Vietnamese in violation of Cambodia's neutrality, is wholly consistent with that obligation. It is a decision made during the course of an armed conflict as to how that conflict shall be conducted, rather than a determination that some new and previously unauthorized military venture shall be undertaken.

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By crossing the Cambodian border to attack sanctuaries used by the enemy, the United States has in no sense gone to "war" with Cambodia. United States forces are fighting with or in support of Cambodian troops, and not against them. Whatever protest may have been uttered by the Cambodian government was obviously the most perfunctory, formal sort of declaration. The Cambodian incursion has not resulted in a previously uncommitted nation joining the ranks of our enemies, but instead has enabled us to more effectively deter enemy aggression heretofore conducted from the Cambodian sanctuaries.

Only if the constitutional designation of the President as Commander-in-Chief conferred no substantive authority whatever, could it be said that prior congressional authorization for such a tactical decision was required. Since even those authorities least inclined to a broad construction of the Executive power concede that the Commander-in-Chief provision does confer substantive authority ^{over} the manner in which hostilities are conducted, the President's decision to invade and destroy the border sanctuaries in Cambodia was authorized under even a narrow reading of his power as Commander-in-Chief.