the conduct of our foreign affairs and his position as Commander in Chief.” Id., at 741.

Justice Blackmun has written that “Article II of the great document vests in the executive branch primary power over the conduct of foreign affairs and places in that branch the responsibility for the Nation’s safety.” Id., at 761.

Also pertinent to this inquiry is the holding by Justice Rehnquist, joined by the Chief Justice and Justice White, that the executive branch is charged “with primary responsibility for the conduct of foreign affairs * * * and possesses “the lead role” in foreign policy. First National City Bank v. Banco Nacional De Cuba, 406 U.S. 759, 768 (1972).

IV. THE LEGAL BASIS OF THE PRESIDENT’S AUTHORITY TO CONTINUE MILITARY OPERATIONS IN CAMBODIA

Applying these principles to the situation in Cambodia and Laos, or even to all of Indochina, I believe the President could properly assert at least three grounds for his authority to continue military operations in that area. He might conclude, as did the Court of Appeals for the Second Circuit, that various legislative measures by Congress served as congressional participation in the Indochina War. Orlando v. Laird, 443 F.2d 1039 (1971), cert. denied, 404 U.S. 869 (1971).

Acting on this participation, which ratified the Executive’s military activities, the President is empowered to continue any aspect of those activities which he finds necessary to successfully achieve the objectives of this Nation. The Vietnam agreement announced by the President in January specifically includes among its major elements the withdrawal of all foreign troops from Laos and Cambodia and a ban on the use of Laotian or Cambodian base areas to encroach on the sovereignty and security of South Vietnam. It also requires as an essential condition respect for the independence and neutrality of Laos and Cambodia. North Vietnam has in my opinion clearly violated these requirements. Therefore, the President, as Commander in Chief, may respond with actions calculated to enforce the agreement.

In the alternative, the President might find, as was suggested by the Court of Appeals for the District of Columbia, that “(e)ven if his predecessors had exceeded their constitutional authority, President Nixon’s duty did not go beyond trying, in good faith and to the best of his ability, to bring the war to an end as promptly as was consistent with the safety of those fighting and with a profound concern for the durable interests of the Nation—its defense, its honor, its morality.” Mitchell v. Laird, —— F.2d —— (No. 71-1310, D.C. Cir. March 20, 1973).

Finding this, the President could reasonably decide that the turn of events in Cambodia, or in Indochina for that matter, do not measure up to the results which he believes are necessary to protect the Nation’s “durable interests.”

Or, the President could rely solely upon his independent powers as Commander in Chief and conductor of the Nation’s foreign policy. So long as he determines that the Cambodian or Vietnamese situation threatens the vital security interests of the United States, he can use force to allay that threat. In an age of rampant dictatorships and a
physically shrunken world of interrelated societies, the principle of an independent authority on the part of the President to wage defensive war in crisis situations is a national life insurance policy in my opinion.

One more little observation, Mr. Chairman, I kind of shudder to think what would have happened had the Congress been charged with the responsibility of negotiating to end the war in South Vietnam. No matter how much we like to feel ourselves above such things, politics of some nature would have crept in and we might still be in a negotiating process. I know that the committee is very concerned about this.

I want to thank the committee on my behalf for bringing this to the attention of the American people because I think it is a subject that the American people do not understand and I would hope that your hearings go on long enough so that a decision might be reached whether or not a constitutional amendment would be in order which in my opinion is the only way we can approach this.

I thank you very much, Mr. Chairman. If you have questions, I would be very happy to try to answer them.

Mr. Nix. Senator Goldwater, I want to again thank you for coming here and testifying today. I want to make this observation. I think your testimony is the most authoritative and the most challenging testimony this subcommittee will ever receive, particularly those whose views are at variance with the Congress, and it is this kind of testimony we very much needed in order to raise issues that are authoritative, that are constitutional, that represent the trend of history in this country. I am deeply grateful for this testimony.

Senator GOLDWATER. Thank you very much.

Mr. THOMSON. Thank you, Mr. Chairman.

Mr. THOMSON, Thank you, Mr. Chairman.

I, too, want to join the chairman in thanking the Senator for a very thoughtful and apparently the most widely researched presentation so far. It is rather refreshing that this committee have something very substantial to base its judgment on, particularly in view of the fact that so many people have already expressed an opinion of their own on the matter. I think it is well that these views have been presented and I want to thank you for taking the time to come over.

Senator GOLDWATER. Thank you, sir.

Mr. NIX. Mr. Ryan.

Mr. RYAN. Mr. Chairman, I would like to say the same thing: I don't share the Senator's viewpoint. But his comments are the first comments that I have heard of the kind of substance that require additional thought and examination and consideration of what the constitutional question really is, and how to resolve it. I appreciate it very much.

Senator GOLDWATER. Thank you.

Mr. NIX. Mr. Bingham.

Mr. BINGHAM. Thank you, Mr. Chairman. I appreciate the opportunity of asking a question or two although I am not a member of this subcommittee.

I, too, would certainly like to compliment Senator Goldwater on a most careful and thoughtful statement and for his taking the time and trouble to come before this subcommittee.
In the early part of your statement, Senator, you refer at several points to the importance of the Congress not trying to interfere with the President in the conduct of war and you refer to some statements that were made, I suppose, during the Civil War.

Do you consider that we are at war today?

Senator Goldwater. Yes, I do. Any time somebody is getting killed from our efforts, that is war.

Mr. Bingham. Would that apply to any of the various types of actions that you have referred to where we went in, let’s say, as we used to do in Central America and helped to put down revolts and so on—would those be war?

Senator Goldwater. Unless we were engaged in actual hostilities, I would not call that “war.” It would be an “act of war.” The recent excursion into the Dominican Republic would be in that nature. In those 200 engagements I refer to, the majority of them did not involve active warlike participation, although 82 did involve actual fighting. Often it was merely the movement of troops and weapons into a crisis area that the President felt they should go to, with combat being a serious possibility but not having occurred.

Mr. Bingham. I would suppose that most of the documents that you cite have to do with Congress interfering with the President in the conduct of a war where there is no question that he has the authority to carry on the war. What we are concerned with here is whether the President has authority to carry on the particular hostilities that are going on in Cambodia. Don’t you think there is a difference in those situations?

Senator Goldwater. I think an answer to that would rest on what we believe the President’s interpretation of national interest is. In my particular case I have long believed that the periphery of the Pacific is the major focal point of our foreign policy and probably has been for over a hundred years and if that is his interpretation then the protection of our historic interest in that area would, I believe, give him a reason to act under his powers to protect American interests. If you don’t agree with that, then of course you would feel that he did not have the power.

Mr. Bingham. Well, at the top of page 8 you say that the President’s power is only defensive and that he cannot conduct a war of aggression.

Senator Goldwater. Yes.

Mr. Bingham. Then you say that he may act wherever and whenever in his judgment a danger exists which compels a response.

Now what if Congress does not share that judgment? What if Congress says, “We don’t agree, we don’t think this does affect the vital security of the United States”? Does Congress then have no authority to speak to that point?

Senator Goldwater. Oh, I think Congress has the authority to speak out, there is no question of that. The Congress has the powers I described earlier in my statement and they can act in any way they care to relative to any of the powers that are held by the President. I myself don’t think it would be an effective way because I believe that the President would probably veto it although I don’t know, but he could treat it as invalid and continue to act as he has always acted under his constitutional powers. Such an act in my humble opinion
might be a wise thing because it could wind up in the courts and the courts so far, as they have in many cases when we have gone to them for an opinion, have refused to give opinions on this because it is in their opinion political. On the other hand, it might create a grave constitutional crisis if the courts don't consider it.

Mr. BINGHAM. Perhaps I misunderstood you, Senator, but I thought you were saying that the Congress did not have the authority or the power to pass the kind of legislation we are considering here today which would compel an end to the hostilities in Indochina. If that is not your contention, I was mistaken.

Senator GOLDWATER. No, I don't think the Constitution gives the Congress that authority to prohibit or bind the President in his war powers, but I personally think the Congress can pass pretty much what it wants to and then the courts have to decide whether or not we have the power to do this. This matter of ending the war in Indochina, as you know, has been on the floor of both Houses for a year, I guess about the last 4 years at least, and has never come to any definitive end, nor have we had an answer on what the feeling of the Congress is about it. I am not speaking out against your acting, I am merely expressing my views that if you act it would not be in the constitutional limits of our power; but if you do act it might be a benefit because we might get this thing settled.

Mr. BINGHAM. Well, Senator, it seems to me that you are taking a position as to the President's constitutional authority that goes somewhat beyond what this administration has asserted. For example, the administration has never challenged the constitutional right of the Congress to declare that no ground troops should be sent into Cambodia, and as you recall we did that by law.

Senator GOLDWATER. Yes.

Mr. BINGHAM. And the President has accepted that as far as it appears without having challenging its constitutionality.

Senator GOLDWATER. Well, we did that but the President never contested it. I think had he wanted to he would then have been within his powers to send troops into Cambodia notwithstanding the desires expressed by the Congress. He was in complete agreement with the Congress on ground troops in that particular instance so it was never challenged. It was in line with his stated intention.

Mr. BINGHAM. Just one final question, Senator. Does it bother you at all that the administration is now giving a very different reason for what is going on in Cambodia than it gave as justification for the original incursion into Cambodia?

Senator GOLDWATER. I have been very disturbed, frankly, by the seemingly inability of our State Department to reach a conclusion backed up with citations and juristic authorities in one of the most important fields they operate in. That someone has not long ago in the State Department done the studies that Mr. Emerson and others and myself have done, I can't find it within my power to believe.

I am not a lawyer, I got into this thing because of personal interests and together with a lifelong study of war and warfare. When I have heard what has gone on over here, that you have tried to get statements out of the State Department and you get a lot of gobbledy-gook and nobody knows where the gobbledy-gook came from, I am disturbed.

I am not here on behalf of the President, I am just here on behalf
of one Senator who has a very keen feeling in this subject and I think a feeling that is really shared by the American people in varying ways. I think out of these hearings, allowing both sides and all sides to be heard, that we can reach some conclusions as to what is the best way to get around this. I think myself that it will ultimately involve a constitutional amendment.

Mr. Bingham. Thank you very much, Senator.

Thank you, Mr. Chairman.

Mr. Nix. I deeply appreciate again your appearance, Senator. I want to say this. The Secretary of State took 3 months after requests had been made on him to define his position. They gave us the benefit of their thinking yesterday. I reminded them that if it took 3 months they must have gone to graduate school in order to draw up that answer, and even after having done that it was most inadequate. So I definitely appreciate the testimony here and the statement submitted to the record because it is of substance and that is what we need.

Senator Goldwater. Thank you.

Mr. Nix. I think the people of this country are entitled to opinions held by certain people as against the opinions of others and those opinions are to be substantially set forth in order that the people have something upon which to arrive at a judgment. So I am deeply appreciative for what you have given us.

Senator Goldwater. Thank you very much, Mr. Chairman and members of the committee. I appreciate it.

Mr. Nix. Thank you.

I call Mr. Bingham, Mr. Warneke, and Mr. Chaves.

I welcome you gentlemen on behalf of the subcommittee. Whatever order you decide to follow is agreeable to the committee. You may proceed.

STATEMENT OF HON. JONATHAN B. BINGHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Bingham. Mr. Chairman, I am honored to be in such distinguished company here. I would like to submit my statement for the record. It is a rather long statement and in the interest of time and to hear these experts, I would like simply to make a few brief comments if that is agreeable, Mr. Chairman.

Mr. Nix. Without objection, the statement of Mr. Bingham will be incorporated at this point in the record.

[The statement follows:]

Prepared Statement of Congressman Jonathan B. Bingham

Mr. Chairman. I appreciate the opportunity to testify before the Subcommittee today on the need for legislation to stop the bombing in Cambodia and to prevent a resumption of bombing or other combat operations in or over Vietnam. The time is overdue for Congressional action to ensure an end to United States military involvement in Indochina. Various proposals have been offered to accomplish this, and I urge that they be given prompt and thorough attention. My proposal, H.J. Res. 514, to end the war in Indochina, I am pleased to note, has your support, Mr. Chairman, as well as that of many others, including members of the Committee. If enacted, it would prohibit further expenditures of Federal funds for any military operations in or over Cambodia, as well as Laos or North or South Vietnam. This is an updated version of my previous resolution, H.R. 3349, reflecting the fact that American prisoners of war have now been
reduced and our troops withdrawn from South Vietnam. It clearly prohibits the continuation of bombing in Cambodia, as well as a resumption of bombing in Laos or Vietnam. At the same time it has the advantage of being simple and brief. I feel that H.J. Res. 514 offers a straightforward expression of the Congress' determination to restore its Constitutional prerogatives and to end a Presidential war that has no Constitutional or statutory basis.

Today I welcome the chance to address the pressing question of the Administration's war in Cambodia. The escalation of United States bombing, undertaken in recent months without the approval of Congress or the American people, has the earmarks of a costly military gamble, which is far from over. Not only have these efforts failed to force a ceasefire in Cambodia and to secure the South Vietnamese border, but we seem to be ever more deeply involved in shoring up the Phnom Penh government in a civil struggle of uncertain duration.

United States B-52s, fighter bombers and gunships have been carrying out greatly stepped up air strikes in Cambodia since mid-February. We have already lost a pilot killed and two other Americans are reported missing in action. The bombing is estimated to cost over four million dollars per day.

Civilian casualties and destruction from our bombing are hard to estimate in precise terms. But we know in general terms what B-52s do to civilians, and we know all too well from Vietnam how bombing can force a deeply rooted peasant society to become a nation of refugees. It is estimated that over one-third of the Cambodian population has been uprooted by the war, in which our air strikes have become a major factor.

Our involvement in Cambodia is of two types. In the past we have tried to interdict supplies being transported through Cambodia from North Vietnam to South Vietnam, and to disrupt sanctuaries in Cambodia from which our troops in Vietnam could be attacked. There is no Cambodian Government control over this area, and nobody seriously suggests that the Phnom Penh government will be able in the foreseeable future to assert such control.

Bombing in this eastern region now accounts for about 20% of our airstrikes in Cambodia, a decrease from approximately 50% in February. Given the escalation of bombing, however, this 20% represents an increase in sorties. The cost/effectiveness of sorties in the eastern region seems questionable, in light of past experience. It seems clear that the North Vietnamese do continue to have relatively unhampered access to South Vietnam through Cambodia.

An estimated 80% of our bombs are now dropped against Cambodian insurgent forces in the western two-thirds of the country, including forces which have advanced to within a few miles of Phnom Penh. Targets for these sorties are chosen by the Phnom Penh government. The observation has been made by those with knowledge of the military situation in Cambodia that continued heavy American bombing is all that is preventing an insurgent takeover of Phnom Penh. Even the most confirmed optimist can cite few reasons to hope that the Lon Nol government can do more than hang on. The rainy season may ease some of the military pressure, and President Lon Nol has appointed a council with whom he will share power. However, the council has not yet met, and its ability to end the corruption and create an effective administration is questionable.

None of the justifications which were given for our involvement in Vietnam apply to Cambodia. The Gulf of Tonkin Resolution, used especially by the Johnson Administration as evidence of Congressional support for the war, has been repealed. The SEATO treaty, which was also used to justify our military assistance to South Vietnam, has no bearing on the situation in Cambodia—a fact recognized by all parties, including the present government in Phnom Penh.

The introduction of United States ground forces into Cambodia in 1970 was then justified by the Administration as being necessary to protect our forces as they were being withdrawn from South Vietnam. President Nixon stated in his Interim Report to the Nation on June 3, 1970, that:

"Communist forces launched a series of attacks against a number of key cities in neutral Cambodia. Their objective was unmistakable—to link together bases they had maintained in Cambodia for 5 years in violation of Cambodian neutrality. The entire 600-mile Cambodia-South Vietnam border would then have become one continuous hostile territory from which to launch assaults upon American and allied forces."

"This posed an unacceptable threat to our remaining forces in South Vietnam. It would have meant higher casualties. It would have jeopardized our program for troop withdrawals . . . "
In the face of the strong domestic reaction in the United States against the
censuring, Administration officials denied any widening of the war in Indochina
or commitment to the Cambodian Government. In the same report just cited,
President Nixon stated:
"The only remaining American activity in Cambodia after July 1 [1970] will
be air missions to interdict the movement of enemy troops and material
where I find that is necessary to protect the lives and security of our
men in South Vietnam."
The President's Report on the Cambodian Operation on June 30, 1970, down-
played the significance of a takeover of Phnom Penh, saying:
"I concluded that, regardless of the success of Communist assaults on
the Cambodian Government, the destruction of the enemy's sanctuaries would:
remove a grave potential threat to our remaining men in South
Vietnam..."
Secretary of State Rogers in a CBS interview on June 7, 1970, was more
explicit in denying the importance of possible Communist control of all of
Cambodia. Asked if Communist control of all of Cambodia would be "intolera-
able," he replied:
"No, I don't think so. I mean, the reason he (the President) found intolera-
able the sanctuaries is because they were using those sanctuaries to fire
on American troops. Now, that is not true if they moved to the west in
Cambodia..."
The Secretary subsequently, when asked in a news conference on June 25,
1970, about alleged United States air support for Cambodian forces, replied:
"It is obvious, of course, that there will be times when, in the process
of interfering supply lines or communication lines of the enemy, that that
will be of direct benefit to the present government in Cambodia. But I think
the main thrust of our policy is to use our Air Force for the purpose of
interdicting supply lines and communication lines to protect Americans in
South Vietnam..."
What justification can there be for the bombing now?
Senator Goldwater apparently takes the view that the President is entitled
to take whatever military action he feels is in the interest of the country. The
Administration spokesmen have not been so frank, at least on the record, although
something of the same thinking seemed to be reflected in Ambassador Sullivan's
off-the-record comment reported as attributing the reason to be the reselection
of the President, Secretary Richardson, in indicating an intention to continue
bombing no matter what, has come close to confirming this view.
All this emphasis on the necessity of unilateral United States military activity
in Cambodia is in sharp contrast to President Nixon's press conference state-
ments of November 21, 1971, when he cited Cambodia as an example of the
Nixon Doctrine in its purest form. Now, a year and a half later, we have a
situation which little resembles the model in which a country assumes primary
responsibility for its own defense. American pilots and American planes are
now said to be essential to prevent the collapse of a government, which is unable
to defend itself and which has only the most tenuous claim to any base of
popular support. The extent of the corruption of this government become pain-
fullly clear for the American taxpayer with the disclosure that approximately
one-third of the Cambodian army, which we pay for in large part, existed only
on paper. Mr. Nixon's statement of November 1971 is clearly, to use the current
termology, no longer "operative," and he owes us a frank and up-to-date
explanation of what he is up to.
The recently released Presidential Report on United States Foreign Policy
does not shed much light on the subject (p. 73):
"We aim for an independent, neutral and stable country in Cambodia.
We do not insist on any particular political orientation, but we believe any
course should be the free choice of the people themselves, not one imposed
by North Vietnamese arms. Nor should Cambodia be used as a sanctuary or
staging area for Vietnamese Communist assaults on South Vietnam..."
The Cambodians, like the Laos... are carrying the brunt of the battle
for their self-defense, while we supply military and economic assistance and,
when specifically requested, air support."
The secrecy surrounding air operations in Cambodia and the long silence by
the Administration, when asked to justify the bombing, have rightfully raised
our suspicions. Why was the State Department, with all of its legal resources, so
tongue-tied? Did it feel itself to be without much of a legal case, or did the Administration fear the reaction to public disclosure of information concerning the scope and nature of bombing in Cambodia, or both?

Finally, on April 30, more than a month after the release of the last American prisoner, during which time United States bombers carried out some $150-million worth of air strikes in Cambodia, Secretary Rogers provided the Senate Foreign Relations Committee with the Administration's position. This is a most remarkable and disturbing document. Nowhere does it give a clear explanation of the authority for the present bombing. In part, it relies on bootstrap reasoning that, since the President made the cease-fire agreement, he therefore has unilateral authority to enforce it as he sees fit. The statement also makes the specious argument that what is going on now in Cambodia is just a continuation of what we were doing before.

For example, on page 2 of the version provided on April 30, it is stated, in reference to Article 20 of the Vietnam Agreement, that:

"This Article is of central importance as it has long been apparent that the conflicts in Laos and Cambodia are closely related to the conflict in Vietnam and, in fact, are so interrelated as to be considered parts of a single conflict."

Are we to assume that the Administration now equates a Khmer Rouge takeover of Phnom Penh with an NLF victory in Saigon? Is fighting between Cambodians a vital threat to South Vietnam? Are all "parts" of this "single conflict" equal? That this may be the argument is suggested by another reference, also to Article 20, on page 6 of the statement, maintaining that:

"The importance of this article cannot be overestimated, because the continuation of hostilities in Laos and Cambodia and the presence there of North Vietnamese forces threatens the right of self-determination of the South Vietnamese people, which is guaranteed by the Agreement."

How much longer will we be bombing the outskirts of Phnom Penh to protect the "right of self-determination of the South Vietnamese people"?

Page 3 of the statement claims that:

"At the time the Vietnam Agreement was concluded, the United States made clear to the North Vietnamese that the armed forces of the Khmer Government would suspend all offensive operations and that the United States aircraft supporting them would do likewise. We stated that, if the other side reciprocated, a de facto cease-fire would thereby be brought into force in Cambodia. However, we also stated that, if the Communist forces carried out attacks, government forces and United States air forces would have to take necessary counter measures..."

This does not square with Dr. Kissinger's public assertion in explaining the Vietnam Agreement that there were no secret agreements or understandings among the signatories. What was Hanoi's response to this proposal? Did we really expect that North Vietnam would or could stop hostilities in Cambodia?

The President's Report on United States Foreign Policy does not reflect much confidence that there would be an early cessation of hostilities in Cambodia. While Hanoi would obviously support Cambodians who oppose the Phnom Penh government, it does not necessarily follow that the North Vietnamese can stop the Cambodians from fighting. According to a number of observers of the Cambodian scene, including American officials, the Cambodian insurgents are split into several factions. This has been cited as one of the complications in attempting to negotiate a cease-fire.

The statement on pages 3-4 says a key question is the following: "whether the Constitutional authority of the President to continue doing in Cambodia what the United States has lawfully been doing there expires with the withdrawal of U.S. armed forces from Vietnam and the return of American prisoners despite the fact that a cease-fire has not been achieved in Cambodia and North Vietnamese troops remain in Cambodia contrary to clear provisions of the Agreement."

If the prior justification for action—the safe withdrawal of American forces from South Vietnam—no longer exists, it cannot be argued very convincingly that actions now are simply a "continuation." It is also misleading, in a quantitative and qualitative sense, to describe the escalated air war, concentrated against Cambodian forces, as a "continuation" of past actions.

On page 7 we find that the statement proclaims, "Under present circumstances, the United States air support and material assistance are needed to support the
armed forces of the Khmer Republic and thereby to render more likely the early conclusion of a cease-fire and implementation of Article 20 of the Agreement.”

What sort of miracle does the Administration expect which will transform the military, political, and negotiating fortunes of the Lon Nol government? Or will these “present circumstances” continue indefinitely? The Administration has yet to provide any tangible evidence that a cease-fire is anywhere in sight.

The same paragraph of the statement (page 7) continues.

“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.” In the continued absence of a cease-fire, how is such “meaningful interim action” distinguishable from a commitment to the defense of Cambodia? This is especially hard to swallow given reports that all of our air strikes in the western two-thirds of Cambodia are carried out at the initiative of the Phnom Penh government.

From the Constitutional standpoint, does the President have the authority to undertake such military actions as massive bombing, without Congressional authorization, simply because he feels that North Vietnam has violated an understanding or the terms of the Vietnam Agreement? This matter is all the more serious when United States airpower is employed in what appear to be hostilities with strong civil war characteristics.

The return of our troops and prisoners should have ended our direct military involvement in hostilities in Indochina. The latest Harris survey, taken between April 18-23, shows that Americans feel, by an overwhelming margin of 70% to 21%, that our involvement in Vietnam was a mistake. The same poll showed grave public doubts that North and South Vietnam will abide by the cease-fire agreements, and reflected a public expectation that Cambodia “will fall to the Communists.” At the same time, the American people do not want another Southeast Asia involvement, whatever justifications are put forward.

If the Administration wants to fight a war in Cambodia, it should seek explicit Congressional authority for such action. And such authority should not be granted unless it can be shown convincingly that vital United States security interests are at stake, and what the cost and duration of our involvement will be.

The Congress must make clear its opposition to further bombing in Cambodia and to any other unilateral military action by the Administration in Indochina without prior Congressional approval. It is important that we set the record straight. The Administration’s April 30 statement clearly reflects the view that Congressional authorization and appropriation of funds for Indochina hostilities can be interpreted as support for Administration policies. Thus, it is most important that the Administration’s request for $300 million in transfer authority, as contained in the Second Supplemental Appropriation Bill, be denied. However, even if that is done, the Administration has made clear that it intends to continue the bombing anyway. Therefore it will still be essential for the Congress to pass legislation to put a permanent stop to the bombing in Cambodia, and to prevent the resumption of hostilities elsewhere in Indochina.

The Administration has made clear that it is the President’s policy to comply fully with provisions of law referring to Cambodia. In conformity with this policy, it has ostensibly honored legislation prohibiting the use of ground troops in Cambodia, and limiting the number of United States personnel there. In conclusion, therefore, I hope this subcommittee will report out H.J. Res. 514.

Mr. NIX. You may proceed, Mr. Bingham.

Mr. BINGHAM. Thank you, Mr. Chairman.

I certainly would like to commend you, Mr. Chairman, for holding these hearings and I appreciate the opportunity of appearing before the subcommittee on the need for legislation of the stop the bombing in Cambodia and to prevent a resumption of bombing or other combat operations in or over Vietnam.

The time is overdue for congressional action to assure an end to U.S. military involvement in Indochina. Various proposals have been offered to accomplish this and I urge that they be given prompt and thorough attention. My proposal—incorporated in House Joint Reso-
tions 514, 515, and 516—to end the war in Indochina, I am pleased to note has your support, Mr. Chairman, as a cosponsor as well as some 60 other Members of Congress, including a number of members of the Foreign Affairs Committee. If enacted, it would prohibit further expenditures of Federal funds for any military operation in or over Cambodia, as well as Laos and North and South Vietnam.

This is an updated version of my previous bill, H.R. 3349, reflecting the fact that American prisoners of war have now been released and our troops withdrawn from South Vietnam. The resolution clearly prohibits the continuation of bombing in Cambodia as well as a resumption of bombing in Laos or Vietnam. At the same time it has the advantage of being simple and brief. I feel that House Joint Resolution 514 offers a straightforward expression of the Congress' determination to restore its constitutional prerogatives and to end a Presidential war that has no constitutional or statutory basis.

Mr. Chairman, this afternoon we will be voting on an amendment to the supplemental appropriation bill which I hope will be adopted. That amendment will deny the President the authority to transfer an additional $500 million of funds for the purposes which he has indicated are related to the war in Indochina. However, even if that amendment is adopted, I think it is important that we proceed with the consideration of legislation such as is before this committee.

The President and the administration—Secretary Richardson in particular—have indicated that they intend to go ahead with the bombing of Cambodia regardless of what is done this afternoon or by the Congress as a whole on the transfer authority. There seems to be a disposition on the part of the administration to carry on the war regardless of what the Congress does. So I think it is important and I hope that this committee will consider favorably legislation such as House Joint Resolution 514 and report it to the full committee.

I would like to call attention to just a couple of things that are in the statement. It is very interesting to note, in relation to the consistency of this administration, that in 1970 when the U.S. forces were introduced into Cambodia for the first time that was justified as being necessary to protect American forces as they were being withdrawn from South Vietnam. In a statement on June 3, 1970, President Nixon stated:

The only remaining American activity in Cambodia after July 1, 1970, will be air missions to interdict the movement of enemy troops and material where I find that is necessary to protect the lives and security of our men in South Vietnam.

Now, of course, today we are confronted with a totally different situation.

I would also like to call attention to some statements likewise made in 1970 in which the administration indicated that they did not regard the fall of the government in Phnom Penh as a matter of the utmost significance. The President's report of June 30, 1970, downplayed the significance of the takeover of Phnom Penh saying:

I concluded that, regardless of the success of Communist assaults on the Cambodian Government, the destruction of the enemy's sanctuaries would remove a grave potential threat to our remaining men in South Vietnam...
Secretary Rogers in a CBS interview on June 7, 1970, was even more explicit. Asked if Communist control of all Cambodia would be "intolerable," he replied:

No, I don't think so.

I note this on the top of page 4 of my statement. Mr. Chairman, I think it is very significant. Secretary Rogers said in answer to that question:

No, I don't think so. I mean, the reason he (the President) found intolerable the sanctuaries is because they were using those sanctuaries to fire on American troops.

Now that does not appear to be the case today. The emphasis of our activities in Cambodia has moved very distinctly geographically. Originally our attacks were mainly in the east in the areas adjoining South Vietnam; now they are mainly in and around Phnom Penh and are clearly aimed at helping the Phnom Penh government to survive. Now this is a very different type of situation.

Now, Mr. Chairman, just a word or two about the administration's statement of authority which, as you point out, was submitted just the other day following months of effort on the part of the Congress to get the statement. To me it is a remarkably weak statement. The statement never really clearly says what they claim to be the President's authority for bombing in Cambodia. They seem to say that because there is a violation of the cease-fire agreement that the President has the authority to carry on bombing to enforce the cease-fire agreement. Well, that is clearly a bootstrap argument. The President can't claim that because he has made an agreement that he has the right to go to war to enforce the agreement if the Congress has not ratified the agreement as a treaty. Indeed, yesterday the Acting Legal Adviser of the State Department denied that that was the basis for the President's authority.

Then in the statement there is also the argument that because the President had the authority to do certain things in Cambodia earlier he has the right to continue, but that fails when you recognize that the conditions and the reason given for the earlier action has disappeared. I want to stress that not only is that true but the reasons given to justify the President's military operations in Vietnam don't apply in Cambodia. SEATO, which was used as a justification for the war in Vietnam, does not apply in Cambodia and, of course, the Tonkin Gulf resolution, which was also used, has been repealed.

Finally, Mr. Chairman, I just would like to ask the committee to consider how we would feel if there had been no war in Vietnam, but the present situation indicated that the Government in Cambodia was threatened by a civil disturbance. We know that there are many different groups of dissidents there and there does not appear to be any real coordination between them. It just seems to me inconceivable that anyone would argue that a possible threat to a government in a country such as Cambodia would be reason for the United States to conduct military operations in that country because if something unpleasant happened there it might have a consequence in Vietnam and that in turn might have a consequence somewhere else.

In other words, the fact is that the President without the authority of the Congress and with clearly rising sentiment in the American people against the continuation of bombing in Cambodia is proceeding
on a military adventure which has no discernible termination point. They refuse to say how long the bombing may go on. They cannot indicate that there is any evidence—and this was asked yesterday—that the bombing was making the cease-fire in Cambodia any more likely. They admit that the situation there is totally confused with a number of insurgent elements.

It almost seems like something out of "Alice in Wonderland" if it were not so tragic. We are spending close to $5 million a day there; American lives have been lost. It happens that the first American killed in Cambodia was from my district. It is time that the Congress asserted its authority and brought this to a stop.

Thank you, Mr. Chairman.

Mr. Nix. Mr. Bingham, I deeply appreciate your testimony.

I would like to remind everyone that yesterday it was freely admitted that the bombing in Cambodia came after our prisoners of war were returned, after we had terminated the conflict in Vietnam, after it was established that SEATO had nothing to do with it. No justification can be found for that reference and the only reason they could rely upon that war, although they did not mention it, would be the conflict in Cambodia.

Now nothing was established as a justification for it—nothing whatever. The question still so far as I am concerned is the legality of the action of the President of the United States in bombing Cambodia. Now that is why I particularly appreciate the statement submitted by Senator Goldwater. Those who believe as he does establish the grounds upon which their opinion is based. Those who believe the contrary in my view are obligated to establish the grounds on which their opinions, their judgment, is based. That is what I think is most important to the American people.

Certainly we all deplore the suffering, we deplore that killing, we deplore all of that sort of thing but it is going to continue unless the issue is clarified, unless it is sharply drawn so that the action that we contemplate in this committee has the kind of backing they ought to have.

Mr. Thomson.

Mr. Bingham. Mr. Chairman, I suggest that these other gentlemen present their testimony.

Mr. Nix. Yes, I think that would be proper.

Do members of the committee have objection?

Mr. Thomson. No objection.

Mr. Nix. Do you have any objection?

Mr. Riddle. No objection.

Mr. Nix. Certainly. I think it was an excellent idea.

Mr. Warnke.

STATEMENT OF HON. PAUL C. WARNKE, FORMER ASSISTANT SECRETARY FOR INTERNATIONAL SECURITY AFFAIRS, DEPARTMENT OF DEFENSE

Mr. Warnke. Thank you.

Mr. Chairman and members of the committee, I have submitted a brief statement which I would like to have put in the record; I will not read it.
Mr. Nix. Without objection, it is so ordered.
Mr. Warnke. Thank you very much.
[The statement follows:]

STATEMENT OF Hon. PAUL C. WARNKE, FORMER ASSISTANT SECRETARY FOR INTERNATIONAL SECURITY AFFAIRS, DEPARTMENT OF DEFENSE

THE ILLEGALITY OF PRESENT U.S. MILITARY ACTIVITY IN CAMBODIA

The Subcommittee has asked that I discuss the question of the President's constitutional authority to bomb today in Cambodia. The answer is very simple. No such constitutional authority exists. The military action that continues in Cambodia by Presidential order usurps the power granted by the Constitution exclusively to Congress.

The absence of any warrant for our present military involvement in Indochina is strikingly confirmed by the State Department memorandum presented to the Senate Foreign Relations Committee in attempted support of the President's legal authority. Some have said that this memorandum would not do credit to a first year law student. As a practicing lawyer, I take a somewhat more charitable view. When your client has no case, then no amount of work or ingenuity can produce a persuasive brief. This is such a time.

The fact is that nothing in the Constitution, nothing in any existing legislative authorization and nothing in any treaty provides authority for the continued waging of war by the United States in Cambodia. The State Department's memorandum, prepared at a time when the Office of Legal Adviser is vacant, relies primarily on the President's desire to see implemented the "Agreement on Ending the War and Restoring Peace in Vietnam" signed on January 27, 1973. But this is not a treaty, made with the advice and consent of the Senate pursuant to Section 2 of Article II of the Constitution. It is, instead, an executive agreement. Whatever may be the somewhat amorphous limits on the scope of executive agreements, they do not provide any color of excuse for overriding the constitutional division of responsibilities under which the Congress is given the sole power to declare war.

Moreover, even if the Paris Peace Agreement were a treaty, there would be no precedent for logic in the apparent contention that the President has the unilateral right to seek to enforce its provisions by the use of our armed forces. For illustration, let's consider a recent treaty of major significance to the security of the United States. Last year, the Senate approved the treaty with the Soviet Union providing for the limitation of strategic nuclear arms. In doing so, I am sure that no Senator conceived that this would authorize the President to respond to even the most serious breaches by bombing the Soviet Union.

As a less far-fetched analogy, we might consider the provisions of the SEATO treaty, upon which, interestingly enough, no reliance is placed by the State Department's memorandum. Under the SEATO treaty's terms, in the event of "aggression by means of armed attack" against any of the parties each signatory agrees that it will "set to meet the common danger in accordance with its constitutional processes." For purposes of this provision of the treaty, Cambodia was designated as a protocol state. Presumably the President and the State Department have not relied upon the SEATO treaty because no effort was made to utilize the proper constitutional processes before the present action was taken. Perhaps too it is of some significance that the Government of Cambodia, at the time of its designation for SEATO protection, was that of Prince Sihanouk. Our present air bombardment, in contrast, is said to be necessary to preserve the Lon Nol Government against the efforts of Sihanouk's supporters and others to replace it.

I know of no treaty which invests the President with discretionary power to make war. Certainly no agreement entered into without Congressional participation can be used in bootstraps fashion to claim such power. In fact, the "Declaration of the International Conference on Vietnam" signed by the 12 interested nations including the United States, explicitly provides the procedure to be followed in the event of a violation of the peace agreement. The method to be employed is consultation among the parties and a reconvening of the International Conference as a prelude to the taking of any remedial measures. Our present unilateral action, far from being justified by the Vietnam peace settlement, thus in fact contravenes its provisions.
No other Congressional action exists that might be deemed to have delegated to the Executive Branch the constitutional authority to make war. The Tonkin Gulf Resolution of 1964 has been expressly repealed. And the Cooper-Church Amendment, signed into law by President Nixon on January 3, 1971, proscribed the use of American air power to support the Government of Cambodia or for any purpose other than the protection of U.S. forces in Indochina.

Thus the legal argument advanced by the Department of State totally misconceives the impact of the Vietnam peace settlement. In its convoluted reasoning, it suggests that those who oppose our bombing in Cambodia argue "that the Constitution requires immediate cessation of United States air strikes in Cambodia because of the Paris agreement." (emphasis added). This is not the argument. The Paris agreement does not affect the provisions of the Constitution of the United States. Under those provisions, removal of our prisoners has ended any authority the President might claim as Commander-in-Chief to continue the conduct of military operations anywhere in that area.

The Administration's laborious brief refers to Article II of the Constitution as basis for Presidential war-making. But in addition to the Commander-In-Chief clause, the memorandum can cite only the general provisions that "The executive power shall be vested in a President," that "he shall take care that the laws shall be satisfactorily executed" and that he has authority to make treaties with the advice and consent of two-thirds of the Senate and to appoint and receive ambassadors. None of these provisions is remotely available to support the claimed power to send American pilots to bomb Cambodians. On the contrary, faithful execution of the laws of the land by the President requires scrupulous adherence to the Cooper-Church Amendment and to subsequent laws which exclude any United States commitment to any Cambodian government.

The previous efforts to conjure up a rationale for our combat role in Cambodia have verged on the frivolous. Secretary Richardson has spoken of the need to clean up a "messy corner" of the Vietnam war. Deputy Assistant Secretary of State Sullivan has said that reason enough can be found in the fact of President Nixon's reelection. But reelection of a President, however wide his margin, does not serve to suspend the Constitution he has sworn to uphold. And the existence of a messy situation in some remote part of the globe does not give that President a mission to keep us involved in that mess.

It seems clear that U.S. bombing in Cambodia derives from no careful analysis of lawful authority but rather from the President's personal preoccupation with the course of events in Indochina. It proceeds from an over-valuation of the details of the Paris settlement and a misconception of the American role in Southeast Asia. It has appeared to many Americans for several years that our efforts to resolve the political differences in that area by our military force have been misguided and futile. We should now and finally put an end to this tragic mistake of American foreign policy. Even Administration analysts concede that the brunt of the battle by Cambodian insurgents is now carried by native Cambodian troops. The support they receive from North Vietnam is dwarfed by American military assistance to the Lon Nol Government. It does not justify our intervention into internal Cambodian affairs to seek to prop-up by American air power a regime that shows no promise of securing internal allegiance and stability.

There are, I recognize, those who differ as to our continuing stake in the political developments of Southeast Asia. Our Constitution gives them the right to urge their views upon or within the Government of the United States. But that Constitution does not permit unilateral executive implementation of foreign policy decisions by use of American military force without the approval of Congress.

As posed by the State Department memorandum:

"The issue, more accurately stated, is whether the constitutional authority of the President to continue doing in Cambodia what the United States has lawfully been doing there expires with the withdrawal of U.S. armed forces from Vietnam and the return of American prisoners despite the fact that a cease-fire has not been achieved in Cambodia and North Vietnamese troops remain in Cambodia to clear provisions of the agreement."

I agree this is the question. It requires, I am firmly convinced, an affirmative answer. Any authority the President might have had to make war in Indochina has now expired. His continued use of American military force in contravention of the Constitution must now cease.
Mr. WARE. I would like to make a few remarks inspired by Senator Goldwater’s presentation.

I was impressed by the obvious effort that has gone into Senator Goldwater’s statement. I certainly agree with the observation that a similar amount of effort is not demonstrated by the memorandum submitted by the State Department. As a consequence, it is more difficult for me to comment today than if I had the advantage of Senator Goldwater’s statement in advance.

I was struck, however, by the singular omission from Senator Goldwater’s statement of a case that I regard to be very much in point and that was the Steel Seizure case of 1952. It appears, Mr. Chairman and members of the committee, that periodically an effort is made to establish some implied or inherent powers of the Presidency that go far beyond anything you can find within the confines of the Constitution. Fortunately, when these efforts reach a certain peak they have been rebuffed by the courts and the Steel Seizure case was such an instance.

As you will recall, that occurred during the Korean war and the President, exercising what was described by the Department of Justice as the implied powers of the Presidency to protect the national interest, seized the steel plants in order to prevent their closure as a result of a labor dispute. The case was taken to the courts and was presented to the Supreme Court of the United States on which at that time there were not only a number of constitutional lawyers but also men who owed a great deal of political allegiance and friendship to President Harry Truman. Despite that, the court held that the President had no such implied powers as had been suggested by the Department of Justice and that he must look instead to the provisions of the Constitution of the United States or to legislation of Congress that would empower him to take such action even in wartime as seizing private property in order to keep the weapons of war under production.

Now I submit that the present situation is an a fortiori proposition that we have here a claim that the President has implied powers not just to seize private property in order to maintain steel production but instead that he can involve the United States in military operations in a foreign country for the purpose of affecting the internal situation there. In my opinion that claim is without precedent and as a consequence I can cite no authority because it has not been made previously.

What I can cite for the committee is the absence of any provision in the Constitution of the United States that gives the President the independent power to wage war. The authority for military operations under the Constitution is divided between the Congress and the President but Congress is given the express authority, the exclusive authority to declare war. It is given the responsibility and the authority to raise and maintain armed forces. The President is entrusted with the commander-in-chief power, which I agree gives him plenary authority over military operations during a lawful constitutional war and efforts by the Congress to interfere with that day-to-day conduct of military activity would not only be unconstitutional, it would be foolhardy.

I believe that those who drafted the Constitution really effectively allocated the responsibilities; they did not leave to the President of the United States any independent authority to define and defend the
national interests. Instead, that power, too, is shared between the Con
gress and the President. There is nothing in the Constitution that
says, in the words used by Senator Goldwater, that the President has
any independent power as the conductor of the Nation’s foreign policy.
Even the foreign policy provisions of the Constitution are very care-
fully allocated as between the legislative and executive branches.

The President is given the authority to make treaties but may do
so only with the consent of two-thirds of the Senate. There is nothing
in the Constitution that says exclusive power over foreign policy of
the United States resides in the executive branch. There appears to be
a myth that some such provision exists—it does not.

So consequently in considering the present problem what we have
to do is first consider whether there is anything in the Constitution.
I submit there is nothing in the Constitution that gives the President
the authority to make war without consent of Congress. We look
then for consent. We look then for the congressional action that would
authorize the continuation of military operations in Indochina. There
is nothing in existing legislation that gives the President any such
authority.

The Tonkin Gulf resolution of 1964 was at one point described by
the then Under Secretary of State Nicholas Katzenbach as the func-
tional equivalent of a declaration of war; certainly its terms were
very broad, but its terms have expired and the Tonkin Gulf resolution
has been repealed. Accordingly, the only legislation that is cur-
rently on the books is legislation enacted by Congress to proscribe
the continuation of military operations in Cambodia. There is nega-
tive legislation, there is no affirmative legislation.

So we are left then with the consideration as to what is the impact
of the peace settlement entered in Paris earlier this year. Does this
somehow give the President an independent grant of authority so
that he may wage war in order to enforce its provisions? Again I
submit that there is no such provision in the agreement and if there
were such a provision it would be unlawful.

The agreement, as the committee knows, is not a treaty; it is an
executive agreement. I know of no treaty that has self-executing pro-
visions that would permit the President to wage war. If you look at
the SEATO treaty, you find that it is quite specific in requiring that
any action taken by any of the signatories, including the United
States, must be pursuant to constitutional processes. It is, I believe,
significant that the Department of State has not relied on the
SEATO treaty to validate the present action in Cambodia. It has not done so.
I suggest, because the constitutional processes required under the
SEATO treaty have never been invoked.

There would also obviously be a distinct question as to whether
Cambodia, a protocol state under the treaty, has been subjected to the
type of external armed attack that would trigger article IV of the
SEATO treaty. I don’t believe that it has. I think even executive
branch analysts have conceded that the present struggle in Cambodia
is primarily one between indigenous forces. It is, therefore, an inter-
nal problem and beyond the scope of article IV of the SEATO treaty.

Now as I have suggested, I know of no treaty that would permit
the President to utilize military force to bring about adherence to
its terms. I think Congress in approving such treaties as the Strategic
Arms Limitation Agreement certainly did so on the basis that any action taken to enforce the provisions of that treaty by the use of military force would be subject to the control of the Congress. So we are left with merely the declaration that the President because of his interest in a particular solution in Indochina somehow has acquired the right to continue to use American military force.

I submit that none of the cases that have been cited by Senator Goldwater, no case that has ever been decided by any court in the United States, in any way vests in the President that degree of peremptory authority over the Armed Forces. The provisions of the Constitution contemplate that Congress will be involved in a declaration of war and that Congress alone can declare war.

There are obviously situations in which the President’s authority as Commander in Chief in addition to giving him operational control over military operations would permit him to utilize Armed Forces in a case of national emergency.

If the physical protection of the United States can only be safeguarded by the use of military force, then certainly I think all of us would agree that the President as Commander in Chief has authority to utilize such military force as is necessary to protect and preserve our independence. But that does not mean that considerations of foreign policy, however firmly held by the executive branch, can be implemented and can be carried through strictly by the President without consultation with Congress and by the use of American military force.

In the State Department’s memorandum they sum up the issue I think quite well. They state that “the issue more accurately stated is whether the constitutional authority of the President to continue doing in Cambodia what the United States has lawfully been doing there expires with the withdrawal of U.S. Armed Forces from Vietnam and the return of American prisoners.”

I agree that is the issue and I think the answer has to be an affirmative answer. Such power as the President had to conduct military operations in Indochina has now expired and Congress should take appropriate action to see to it that the expiration of this power becomes a fact as well as a constitutional proposition.

Thank you, sir.

Mr. NIX. Let me ask one question. Do you see any justification whatever, legal justification, for the action of the President as a result after an examination of the Paris agreement?

Mr. WARNER. I see none whatsoever, Mr. Chairman. As a matter of fact, the agreements that have been reached with regard to a settlement in Indochina I think are at variance with the action that has been taken by the President. I have said that this is not a treaty which confers on the President some specific power to use military force. There is nothing even in this executive agreement that suggests that its provisions can be enforced by the unilateral military action of one of the signatories. The International Conference which was subsequently held in Paris, at which 12 of the interested countries participated, specifically provided that in the event of breach there would be consultation among the parties and agreement on the appropriate course of action to be taken.
Mr. Nix. One other observation. As to breach, do you see any evidence consistent with the terms of that agreement that would establish the fact that there is a breach?

Mr. Warnke. I take it that the chairman's question is directed specifically to Cambodia and the provisions that relate to Cambodia.

Mr. Nix. Right.

Mr. Warnke. I think that is article 20. What that provides is that the foreign forces are to be withdrawn after a cease-fire. Since no cease-fire has gone into effect that provision has not gone into effect; therefore, it cannot be breached. I believe that the State Department has conceded that there is no existing breach of the literal terms of the Paris agreement in this respect but says that there was some sort of an understanding under which the North Vietnamese recognized that the United States might continue military operations in Cambodia if it didn't like the way the situation was developing. I submit that no such understanding can have any constitutional meaning.

Mr. Nix. I specifically referred to the section of the agreement in which they establish an agency to investigate complaints and violations.

Mr. Warnke. That is correct, sir.

Mr. Nix. And because of the unanimity required there is no opinion as to any violation at all and you would take the position that the United States cannot divest itself from the necessity to live up to that contract because they entered into it allegedly in good faith and the terms were agreed to by them, formulated by them, or they participated in the formulation of those terms.

Now it would seem to me that it would be extremely difficult for them now to say that "We don't abide by what we have done in good faith." Do you see what I am trying to get at?

Mr. Warnke. I do, Mr. Chairman, and I agree with that position.

Mr. Nix. Thank you very much.

Mr. Chayes.

STATEMENT OF ABRAM CHAYES, PROFESSOR OF LAW, HARVARD UNIVERSITY, AND FORMER LEGAL ADVISER, DEPARTMENT OF STATE

Mr. Chayes. Well, I too, have a very brief statement here and some of it has been adequately covered by my colleague, Mr. Warnke, so I won't read it but I ask that it be put in the record.

Mr. Nix. Without objection, it is so ordered.

[The statement follows:]

STATEMENT OF PROF. ABRAM CHAYES, HARVARD LAW SCHOOL

Mr. Chairman and members of the Committee. My name is Abram Chayes. I am a professor of law at the Harvard Law School where I teach Civil Procedure and International Law. From January 1961 to June 1964, I was the Legal Adviser in the Department of State. The matter before this committee today is of urgent importance and I am grateful for this opportunity to testify. As always it is a great pleasure to appear before you.

In the 100 days since January 27, when the Vietnam cease-fire went into effect, United States forces have conducted over 12,000 bombing sorties in Cambodia, dropping over 82,000 tons of bombs at a cost of almost $150 million. In Laos, the figures are 8,900 sorties, 63,000 tons of bombs and nearly $100 million.
In any opinion, these operations constitute “war,” as that term is used in the Constitution. And at present, it is being conducted without any shred of Congressional authorization or endorsement. The war began and is being waged without the unilateral authority of the President. In these circumstances, the activities being carried out by American forces are without basis in the Constitution of the United States.

I have examined with care such legal justifications for the war in Cambodia as the Administration has been able to offer. The principal one is a State Department Legal Memorandum released by Secretary Rogers on April 30. Mr. Anthony Lewis of the New York Times said it would not earn a passing grade for a first-year law student. It hardly mentions the Constitution. It can cite no Congressional resolution endorsing or supporting the action. There have been no appropriation bills or other legislation that can be construed as retroactively ratifying the President’s actions. There can be no claim of emergency. The bombing has been going on for 100 days, allowing plenty of time to bring the matter before Congress for action. Nor can it be said, as the Administration did about the Cambodian invasion in 1970, that the current action helps defend American troops already engaged and helps speed their return. There are no American troops in Indochina since the end of March when the withdrawal and return of prisoners pursuant to the Vietnam cease-fire was completed. And by law, there have been no American troops in Cambodia since June 30, 1970.

Mr. Rogers’ defense of the war now going on in Cambodia, reduces to the claim that the use of force on this scale is necessary to enforce or “preserve” the cease-fire concluded by executive agreement last January 26.

The argument repeated yesterday by Secretary Richardson comes down to this: the conduct of these bombing operations in Cambodia promotes foreign policy objectives that the President deems important. That goes well beyond any claim that has thus far been made for the unilateral power of the President to initiate and carry out military operations. No less sweeping claim can support the present action.

But the idea that the President can commit the United States to war abroad whenever in his view the national interest will be served thereby is the idea of autocracy. It is not the scheme of the Constitution. Recent events make it clear that we do no service either to the President or the Presidency when we acquiesce in such sweeping claims to executive power.

I have maintained that the Cambodian war as it is now being conducted is without constitutional basis. That is true. I think, as of this moment, because it is going forward without any shred of Congressional involvement. The courts, although they have been very wary of entering upon this field, have uniformly held that in the case of large scale foreign military activities, there must be “some mutual participation by Congress in accordance with Article I, § 8.” Berk v. Laird, 429 F. 2d 302 (2d Cir. 1970).

But the situation can change very quickly. In the case I have cited, and a number of others, the courts have been ready to accept ordinary military appropriations, made with knowledge of the military situation, as supplying the Congressional participation that is required under the Constitutional scheme.

I do not say that is a proper interpretation of the Constitution. Moreover, in none of the cases to which I am referring, was appropriations action, standing alone, taken as sufficient to satisfy the need for Congressional involvement.

But I do say this: in acting on the defense appropriations measures now before it, Congress acts at its peril. Unless it attaches some qualification or reservation, the Administration will surely point to the passage of these bills as a Congressional endorsement of the President’s actions. And the courts may well accept it as providing the mutual participation by Congress necessary to vindicate the action under the Constitution.

I must stress, therefore, as strongly as I can, the grave burden of responsibility that each of you bears as he considers his vote on these bills.

It will not be possible to say, as was so often said about the Tonkin Gulf resolution, that Congress did not appreciate the full significance of what it was doing. The facts about the Cambodian war are fully known and have been for weeks.

It cannot be said that the President has presented the Congress with a fait accompli. There is no emergency. There are no American fighting men who must be supported and defended.
The words of Justice Jackson in the *Steel Seizure* case, should weigh heavily on each Member of this House as he or she votes on these measures:

"... I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. A crisis that challenges the President equally, or perhaps primarily, challenges Congress... We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers."

Mr. CHATTY. I would like also, since the chairman seems to be interested in historical citations and footnotes, to call your attention to the memorandum that I submitted to this committee in its 1970 hearings and which appears in the record of the 1970 hearings about the constitutional authority of Congress to enact just the kind of legislation that is embodied in House Joint Resolution 515, so I incorporate that by reference.

I did want to make a few comments on the present situation.

First of all, Mr. Chairman, I believe that as Senator Goldwater said in response to Mr. Bingham’s question the operations in Cambodia are of the extent and of the significance so that they constitute war within the constitutional meaning of that term. They are not a police action like sending a platoon of Marines down to Nicaragua, as we did in the early part of the century to chase bandits or something of that kind.

I think at present this war is being conducted without any shred of congressional authorization or endorsement. Mr. Warnke analyzed the potential sources of congressional authority that there might be: A treaty. There are no treaties. Resolution. We have no resolutions. Appropriations legislation or other legislation covering the conduct of war like the reenactment of the draft bill. None of that has happened since the beginning of these new bombing operations in Cambodia. Nor is there an argument that these operations are necessary to defend or protect the safety of American troops already in place, as was suggested by the President in 1970.

So it is interesting to me that we all agree—Mr. Warnke, myself, Senator Goldwater—that the fundamental basis the President has advanced in this memorandum of Secretary Rogers (and it was reiterated yesterday by Secretary of Defense Richardson) is that the use of force on this scale is necessary to enforce or preserve the cease-fire concluded by executive agreement last January 26.

Well, if you ask what does that boil down to, the answer is this: The conduct of these bombing operations in Cambodia promotes foreign policy objectives that the President deems important. Or, as Senator Goldwater says, when the President decides that it is in the American national interest to do so, he can commit U.S. forces to hostilities abroad.

Now with all respect to Senator Goldwater, I believe the claim phrased that way is far broader than any claim ever made on behalf of the President’s warmaking authority before. I served in the Department of State as its legal adviser from January 1961 to June 1964. That was the period, you will recall, of the Cuban missile crisis, the Bay of Pigs, the first commitment of anything other than the 400 or 600 MAG members, Military Assistance Group members, to Indochina.
At no time did we make the claim that a commitment to continued and sustained hostilities could be made without the participation of Congress, and I submit no President has ever made such a claim.

I would say further that the events of the recent days make it clear that we do no service either to the President or to the Presidency when we acquiesce in such sweeping claims to executive power.

Let me end on a note of warning that I don't think my friends here have sounded sufficiently. I maintain that the Cambodian war as it is now being conducted is without constitutional basis. That is true as of this moment because it is going forward without any shred of congressional involvement. The courts, although they have been very wary of entering upon this field, have uniformly held that in the case of large-scale foreign military activities there must be, and I quote, "some mutual participation by Congress in accordance with article 1, section 8." That is from _Berk v. Laird_, 429 F. 2d 302. That is the Second Circuit Court of Appeals for the Second Circuit. It is the same view as held in the First Circuit and here in the District of Columbia Circuit. So I think you can say that where the courts have gotten into this they have agreed that there must be some mutual participation.

In that case and a number of others the courts have been ready to accept ordinary military appropriations made with knowledge of the military situation as supplying the congressional participation that is required under the constitutional scheme. Now I don't say that is a proper interpretation of the Constitution necessarily.

Moreover, in none of these cases that I am referring to was appropriations action standing alone taken as sufficient to satisfy the need for congressional involvement. But I do say this: In acting on the appropriations measures now before it, I believe Congress acts at its peril, unless it attaches some qualification or reservation. Make no mistake, the administration will surely point to the passage of these bills as a congressional endorsement of the President's actions, and the courts may well accept that as providing the mutual participation by Congress necessary to vindicate action under the Constitution.

I must stress, therefore, as strongly as I can, the grave burden of responsibility that each of you bears as he considers his vote on these bills. It will not be possible to say, as was so often said about the Tonkin Gulf resolution, that Congress did not appreciate the full significance of what it was doing. The facts about the Cambodian war are fully known. They have been for weeks. It cannot be said that the President has presented the Congress with a fait accompli. There is no emergency. There are no American fighting men who must be supported and defended, as there were in earlier years.

The words of Justice Jackson in the _Steel Seizure_ case should weigh heavily on each Member of this House as he or she votes on each of these measures. He said:

> I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. A crisis that challenges the President equally, or perhaps primarily, challenges Congress. . . . We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.
I think that is the situation we are in now, Mr. Chairman. I thank you for the conduct of these hearings and I am grateful for the opportunity to be here.

Mr. NIX. Thank you, Mr. Chayes.

Mr. Thomson, Mr. Chayes, you were in the State Department. Did you draw up the Tonkin resolution?

Mr. CHAYES. No, sir; I was not there at the time of the Gulf of Tonkin resolution. I left the Department in June and the Tonkin resolution was in August.

Mr. THOMSON. Well, what legal basis did the administration then have to send 16,000 American troops into Vietnam—congressional authorization?

Mr. CHAYES. The 16,000 men were sent by President Kennedy under military assistance legislation, and in accordance with military assistance legislation they were not committed to combat and they were not authorized to engage in combat. In fact, they were not even sent in combat formations.

Now it is certainly clear that when the President deploys troops or sends troops of that kind abroad he places them at risk and that may make it that much more difficult in the future. I think President Kennedy's action had that effect. But it was not a commitment of American troops to combat or a use of American troops in hostilities abroad. To the extent that the troops were assigned as advisers and even combat advisers to Vietnamese troops, it was done under the authority of the foreign military assistance legislation.

Mr. THOMSON. Were not American destroyers firing on the North Vietnamese?

Mr. CHAYES. In the Tonkin Gulf incident itself it is apparently true that they were. But it is also alleged at least that the North Vietnamese were firing on the destroyers. In other words—

Mr. THOMSON. Was that an act of war?

Mr. CHAYES. The act of the North Vietnamese in firing on the destroyers? Well, it was an act which permitted, I believe, defensive reaction on the part of those forces, yes. But the important thing about that is that at that point the Congress did act. And, as Mr. Warnke pointed out, Mr. Katzenbach stated I think before this committee that the Tonkin Gulf resolution was, as he said, the functional equivalent of a declaration of war. It is certainly true that in every court case considering the authority of the President to conduct the Vietnamese war the Tonkin Gulf resolution of war has been heavily relied on.

Mr. THOMSON. Well, I think it is fortunate that these fellows got out of the Government before some of these—well, they didn't get in in the case of the Steel case or you would have been defending the Government under Harry Truman. I think you are both fortunate that you got in too late and got out too early so that you did not face these problems.

Mr. CHAYES. I was clerking for Justice Frankfurter when the Steel case came before the Supreme Court.

Mr. WARNKE. And I was representing the United States Steel Co.
Mr. THOMSON. That was fortunate, too. The pay scale is much higher on that side of the fence.

Mr. WARNKE. I found it to be so, sir.

Mr. NIX. We have two additional witnesses and it would be most helpful if our interrogations were limited to 5 minutes.

Mr. RIEGLE.

Mr. RIEGLE. In terms of these confidences, I also was in the Republican Party just before the Watergate scandal blew wide open, so apparently there are others of us that have moved in judicious times.

I basically will restrict my comments to much less than 5 minutes, Mr. Chairman.

I want to thank all three witnesses for the time and the thought in the remarks that they have presented to us. I agree with what has been said here. I would underscore the last concern; namely, that if we should fail today as a Congress to indicate in the appropriations bill that is before the House that we don't want money spent to support what is going on in Cambodia, that if we fail to take action today in terms of a limitation, I think we get caught in a cycle where we are not able to escape. I wish that the entire membership of the House might have heard your warning in that respect because I think it was timely and accurate.

I think I will save further questions at this time, Mr. Chairman.

Mr. NIX. Thank you.

I want to express the appreciation of the subcommittee for the appearance of Mr. Bingham, member of the committee; Mr. Warnke and Mr. Chayes. Thank you for your appearance, gentlemen.

Mr. BINGHAM. Thank you, Mr. Chairman.

Mr. WARNKE. Thank you, sir.

Mr. CHAYES. Thank you.

Mr. NIX. Congresswoman Abzug and Mr. McCloskey.

On behalf of the subcommittee I am very grateful for the appearance of both of you. We have a limited amount of time but perhaps that should not restrain you. I would be very happy to have the gentlewoman from New York proceed.

STATEMENT OF HON. BELLA S. ABZUG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Ms. ABZUG. Thank you, Mr. Chairman, I appreciate it.

Before we proceed with the discussion of Cambodia, I believe we must ask what it is that we as a Nation are really doing and why we are doing it. Stripped of rationalizations, the stark truth is that we are spending millions of dollars each day to bomb a tiny Asian country; we are killing innocent civilians; we are creating thousands of miserable refugees; we are propping up governments admittedly weak and temporary; we are incurring the world's wrath for such continued barbarism; we are violating the Peace Agreement and the Constitution; and we are committing ourselves to years of continuing war.

Let us look first at the financial cost of what we are doing. On April 25 the Air Force estimated its bombing costs at $1.8 million per day. Including many hidden costs, however, the Cornell Air War study estimates the cost of bombing Cambodia at $4.5 million a day.
On May 4, the Washington Post stated that some estimates ran as high as $10 million a day. If the latter figure were correct, the $150 million in supplemental funds requested by the Department of Defense would last just 15 days! Then what? Will the Department come back for yet another bag of money? They have already reprogrammed $492 million above budgeted amounts for fiscal year 1973. They now ask $311 million for “U.S. force support, mainly associated with air activities” in Southeast Asia. About $150 million of this $311 million is for “back debts” so to speak, for operations that took place from January through March; $162 million covers April through June. So confident is the Pentagon of a compliant Congress that they blithely proceed to bomb first and pay later.

We must remember that we are also paying 90 percent of the support of the Thieu government in South Vietnam, and maintaining there what has suddenly become the world’s third largest air force. Over 100 United States corporations help keep Saigon’s armed forces armed, at a cost of over 250 million tax dollars this year alone.

Consider, please, that $200 million was cut from the budget for child nutrition in this country. How do we want to spend our tax dollars?

The cost in human terms in this country is great enough: we can scarcely imagine what it is for the Cambodians. Nearly half the population is listed as refugees or displaced persons, according to Wells Klein of the American Council for Nationalities Service who reported April 16 to a Senate subcommittee: Of a total population of 6.5 million, refugees or displaced persons number 2,957,000. They are homeless, hungry, and terrified. They are on my conscience and, I’m sure, on all of yours. One million dollars of AID money has just been allotted to their care. This does not allay our anguish at having helped to create their misery in the first place.

We are also killing outright an average of 73 Cambodian soldiers each week—and about 700 civilians. Due to primitive communications there are no firm statistics. A firsthand report in the Washington Post last week states that it is “more than likely that losses among the civilian population are running 10 times as high” as among soldiers. The estimate is based on population density in the B-52’s bombing areas, multiplied by the number of sorties per week.

This, then, is what we do. Next we must ask: Why? Why do we continue behaving, in Indochina, as though we had not agreed to get out? All the old excuses are removed: The troops are out of Vietnam and the prisoners are home. Although he claims “the attainment of an honorable settlement in Vietnam,” Mr. Nixon acknowledges that “the peace remains fragile.”

Was the cease-fire only an election ploy? Even as the agreement was signed, Mr. Nixon stated that he recognized the Thieu government as “the sole legitimate government of South Vietnam”—in direct contradiction of the agreement. We can only conclude that the peace was deliberately made fragile.

President Thieu knows that his government would not last a week without U.S. support. Why do we continue to support him? The rationalizations given by the administration obviously are not the real reasons, and I suggest that we examine both.
It is clear that the Cambodian bombing exists to prop up not only the Lon Nol government, recently rearranged by General Haig, but to continue bolstering the Thieu regime.

In his recent statement before the Senate Foreign Relations Committee, Secretary of State William Rogers justified our continuing bombing of Laos and Cambodia by saying that it is necessary to implement article 20 of the January 27th four-party agreement. Article 20(b) provides as follows:

(b) Foreign countries shall put an end to all military activities in Cambodia and Laos, totally withdraw from and refrain from reintroducing into these two countries troops, military advisors and military personnel, armaments, munitions and war material.

The January 27 agreement includes no enforcement mechanism or procedures with regard to article 20. However, the United States is also a signatory of the March 2 agreement among 12 nations on the subject of the January 27 agreement and protocols. Article 7 of the March 2 agreement provides as follows:

ARTICLE 7

(A) In the event of a violation of the agreement or protocols which threatens the peace, the independence, sovereignty, unity or territorial integrity of Vietnam, or the right of the South Vietnamese people to self-determination, the parties signatory to the agreement and protocols shall, either individually or jointly, consult with the other parties to this act with a view to determining necessary remedial measures.

(B) The international conference on Vietnam shall be reconvened upon a joint request by the Government of the United States of America and of the Government of the Democratic Republic of Vietnam on behalf of the parties signatory to the agreement or upon a request by six or more of the parties to this act.

Read together, these two provisions mean that even if there are North Vietnamese personnel in Laos or Cambodia—and I have yet to see any proof of this—the United States is bound by the March 2 agreement to seek consultation with the other parties thereto and is clearly violating that agreement by its actions in and over Cambodia and Laos.

Thus, Secretary Rogers' claim that the agreements to which the United States is a signatory provide a legal basis for our activity is wholly spurious and without foundation.

The agreement aside—and it is obviously not a "treaty" within the meaning of the Supremacy Clause (art. VI, cl. 2) because it hasn't been submitted to the Senate for ratification—there is absolutely nothing in our Constitution or laws which authorizes Mr. Nixon to bomb Cambodia and Laos. There has been no declaration of war by Congress. The Gulf of Tonkin resolution was repealed effective January 2, 1971. There has been no congressional appropriation of funds for this activity and I firmly hope and expect that the House will decline to make such an appropriation when it considers the issue for the first time later today. The President is to "take care that the laws be faithfully executed," but he is not empowered to make them up.

Mr. Nixon continues to insist that North Vietnamese do most of the fighting in Cambodia, even though United States Embassy personnel there and a Senate Investigating Committee state that it is a civil war in which government troops are reluctant to fight against their relatives.
We may be certain that the other side is violating the agreement; we can be equally certain that they will not stop so long as we continue to violate it.

We must ask whether a corollary purpose of our acts is to prop up the regime of President Nixon, who desperately wants to label war with bombs as “peace with honor.” If this is his purpose, he is once again misreading the American people. Their revulsion to this terrible, useless war was expressed long ago, now there is added revulsion to crime at the highest levels. Mr. Nixon expects renewed bombing to distract attention from the disgrace of Watergate and the disaster of the national economy, he is wrong. This is just one more instance—perhaps the strongest—of his inability to govern.

The Washington Post has suggested that he is “not ready to accept the political risk of having it all slide out from under him in Indochina in a way which would tarnish his overstated and misguided boasts about the nature of the ‘peace’ he has achieved.” The editor asks, “What is wrong, or dishonorable, about finally letting our side go it alone? Or are American B-52’s to be a permanent part of our ‘peace-making’ effort in that corner of the world? . . . [Mr. Nixon] has nothing of value left to prove or win there, only something further to lose.”

Next we must ask whether it is necessary to keep the war going, to maintain jobs for Americans. With our vaunted American know-how, surely we can put people to work on the human needs—housing, medicine, social services—that cry out for attention. The same workers’ skills, in the same plants that now make bombs and other useless hardware, could be turned to the manufacture of useful equipment for consumption and export. Where plants and military bases are closed, training programs should be started immediately. Hundreds of blueprints for such programs have been provided over the past decade; I have seen them and so have you. Surely we do not have to say that our economy can be sustained only through war production.

Then we ask whether our stance in Asia is essential to detente with other big powers; a bargaining chip in negotiations. On the contrary, I believe it is putting great strain on these relationships. Although China is obviously reluctant to intervene, our escalation poses a constant threat of such intervention. It is as though Mexico were being bombed by a foreign power, there is a limit beyond which intervention from another continent cannot be tolerated.

Our acts also put the Soviet Union into an adversary role, having to supply weapons with apparent reluctance to countries they have no business helping or hindering, any more than we have.

We must ask, also, the basic question that should be publicly discussed before any foreign intervention: does it serve the national interest of the United States? It is immediately apparent that Cambodia, like Vietnam, poses no threat to the United States. General John D. Ryan, testifying before a subcommittee this week, stated that the area is not strategic to the defense of the United States. The interests of 99 percent of our people were badly served by the killing of 50,000 young Americans and the spending of billions of tax dollars in Vietnam. They will be further betrayed by a continuing involvement in Indochina.
The question then is: In whose interest do we continue this war? The only beneficiaries are the Pentagon, its contractors, and their stockholders; the same people from whom the Nixon administration has run the country. Profits and dividends are at record highs while, as we all know, the middle income and lower income worker can scarcely survive. Three-fourths of the people have expressed themselves firmly and repeatedly in opposition to the war. Dare we ignore them longer? Dare we pursue with dogged stubbornness a foreign policy which beneficially a very few at terrible cost to the many?

Among the war contractors who profited handsomely from Vietnam are ITT, Philco-Ford, Sperry-Rand, and Lear-Siegler, a California-based electronics firm which recently received a $6.5 million contract to train and support the Vietnamese Air Command. NHA, a lesser-known American company, has received over $45 million in aircraft maintenance contracts for the Department of Defense. ITT has received at least $48 million in DOD contracts. The changeover from military to civilian "advisory" personnel in Vietnam has been widely reported in the press. Less well covered is the continuous recruiting for what is obviously planned as a long involvement.

The CIA's Air America last July sought recruits with a brochure saying, "Although flights mainly serve United States official personnel movement and native officials and civilians, you sometimes engage in the movement of friendly troops, or of enemy captives, or in the transport of cargo more potent than beans. There's a war going on. Use your imagination!" The brochure goes on to state that "* * * it looks as if we'll finish the war (and peace terms favorable to our side); if so, it is expected that a boom among contract operators will result. * * *

So the war is supposedly finished in Vietnam, and the "peace terms favorable for our side" are stretched to include the bombing of Cambodia. We too can use our imaginations about what's next.

There have already been published reports that United States plans to pay for additional bombing of Cambodia by the South Vietnamese Air Force; and to give financial support for an invasion of Cambodia by Thai troops. Mr. Nixon's frequent "warnings to Hanoi" threaten escalation of this kind. Presumably the American people—who would not stand for the use of American troops on the ground—will not cry out against such involvement. But I believe they will.

The dramatic escalation of the bombing causes increased concern: At the end of February, an average of 23 tactical air sorties and 5 B-52 sorties were flown. At the end of March, an average of 184 tactical and gunship sorties, and 58 B-52 sorties. Three planes have now been lost over Laos and Cambodia, nine men have been killed and two are missing. Will we allow the tragic scene to unfold once again?

I certainly don't have all the answers, not even all the questions. It is impossible today even to raise all the questions, because so much information is "classified." But of one thing I am sure: The United States is still in Southeast Asia because this Congress has not acted to end the war. We could have done so years ago; we can do so at any time; we must do so now.
Why do we not act? We cannot say that our constituents do not want us to act; we know that they do. If we do not, their growing disillusionment with government will be intensified and their respect for the legislative branch still more diminished.

Some Members of Congress have hesitated to act because they wanted to support the President, right or wrong. These men and women show commendable loyalty; but recent events have proved how disastrous such blind support can be. A President with the power we have given him can be wrong catastrophically. The very foundations of government are shaking because of the wrongness of this incumbent. We cannot go on, out of respect for the office, supporting the wrong action of an incumbent.

The Republican Party long ago repudiated the philosophy of “bombing them back to the Stone Age.” The Democratic caucus adopted a resolution making it Democratic policy to cut off funds for this war. So why haven’t we done it? Why do we instead contemplate the continued funding we profess to deplore?

The troublesome conclusion is that some Members listen, not to the three-quarters of their constituents who want us out of Asia, but to the little group of tycoons who control the wealth and, unfortunately, the elections. It is time we all look to our own conscience and ask whether we can any longer be part of this vicious, lethal evil.

I would like to commend Congressman Joseph Addabbo for his continued courageous opposition to the transfer authority requested by the Department of Defense in the second supplemental appropriations bill of 1973. In additional views presented to the House Appropriations Committee, Representative Addabbo, along with Representative John J. Flynt, Jr., and Representative Robert N. Giaimo, stated the case clearly:

... this amounts to a Congressional blank check approving combat activities of the Defense Department which have already taken place, and giving Congressional approval to any future combat activities which may be deemed necessary. ... This kind of after-the-fact approval is all too reminiscent of the entire history of U.S. involvement in Vietnam. It reminds us of the Gulf of Tonkin Resolution. It reminds us of the steady and deliberate erosion of Congressional influence in the making of decisions concerning Southeast Asia. It reminds us of the entire experience of the last ten years when Congress in effect gave blind approval and support to the Executive branch to conduct combat operations in Southeast Asia. To approve this request for transfer would be to start the entire sordid chain of events in motion once again.

Now is the time to regain Congressional control of the United States’ destiny. We must refuse to approve this request. ...

But it is insufficient merely to block this request for additional transfer authority. Defense Secretary Richardson has already stated that even if it is denied, the bombing of Cambodia and Laos will probably continue, because the DOD will just find the money somewhere else and cut back some other military programs.

We must act to pass affirmative legislation which will end our military involvement in Southeast Asia once and for all. This subcommittee has the power to take the first step in that direction, by favorably reporting to the full Foreign Affairs Committee a bill which will accomplish that end.
I am privileged to be a sponsor of House Joint Resolution 514, which would cut off all funds for U.S. combat operations in or over Cambodia, Laos, North Vietnam, and South Vietnam without express congressional approval. I would hope to see favorable consideration of that measure as soon as is humanly possible. I have also introduced a bill, H.R. 3578, which would end military operations by U.S. forces, and all U.S. paramilitary operations, such as those carried on under the auspices of the Central Intelligence Agency, the Agency for International Development, and so forth, would cut off all U.S. military aid to "any nation, party, group or person in Indochina," and would extend the cutoff of U.S. activity and military assistance to Thailand as well as the other four nations of the area.

I thank you for your consideration in listening to my remarks.

Mr. Nix. Thank you very much, Congresswoman Abzug. I am very happy that you were able to give us the benefit of your thinking today.

Ms. Abzug. Thank you.

Mr. Nix. Following the precedent we will ask Congressman McCloskey whether or not he wishes to proceed now or to be listed as the first witness of the hearing on Thursday of next week.

STATEMENT OF HON. PAUL N. McCLOSKEY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. McCloskey. Mr. Chairman, for reasons that I will briefly state I would like to file my statement for the record and speak briefly now and assist this subcommittee to reach as rapid a resolution of this matter as possible.

Mr. Nix. Certainly. You may do so and without objection the statement will be made a part of the record at this point.

[The statement follows:]

STATEMENT OF HON. PAUL N. McCLOSKEY, JR.

Mr. Chairman: Appreciating the breadth of information and experience available to this Committee on the overall situation of Cambodia, I would like to limit my testimony to the single constitutional argument that the present bombing campaign in Cambodia is both unauthorized and illegal.

This argument is based on a court decision dating from the earliest days of our nation, a decision which established a principle that has never been challenged.

That principle is simple.

Where Congress has been silent on a given matter, the President's inherent powers as Commander in Chief may entitle him to order American troops into combat to protect American lives and interests.

When, however, Congress has acted on the matter in question, the President's otherwise-inherent powers are limited in whatever manner Congress specifies.

The leading Supreme Court decision on this point was the 1804 decision by Chief Justice Marshall in the case of The Flying Fish, Little v. Barren, 2 Cranch 170.

Congress had passed a law giving the President the power to seize ships bearing contraband en route to French ports.

The Navy seized a ship leaving a French port.

Chief Justice Marshall ruled that this action was illegal, and ordered the ship returned to its owners.

The opinion stated: It is by no means clear that the President of the United States whose high duty it is to take care that the laws be faithfully executed, and who is Commander in Chief of the armies and navies of the United States, might not, without any special authority for that purpose, in the then existing state of
things, have empowered the officers commanding the armed vessels of the United States, to seize vessels which were forfeited by being engaged in this illicit commerce. But when it is observed that (an act of Congress) gives a special authority to the seizure of vessels bound, or sailing to, a French port, the legislature seems to have prescribed that the manner in which this law shall be carried into execution, was to exclude a seizure of any vessel not bound to a French port.

This same principle of law was later confirmed by the U.S. Supreme Court in 1952 when the Court held unconstitutional the seizure of the steel mills by President Truman on the basis that there was no statute which expressly or impliedly authorized such a seizure, and to the contrary, in enacting the Taft-Hartley Act in 1947, Congress had expressly refused to authorize governmental seizures of property as a means of preventing work stoppages and settling labor disputes.

Thus the principle of law is clear.

Where Congress has acted, the President's powers are limited by such action. There are over 130 instances in our history where American military forces were sent into foreign countries without prior Congressional action.

I have been unable to discover a single instance, however, where an American President ordered offensive operations in a foreign country after Congress had specifically acted to deny him such authority.

What have Congress' actions been with respect to Southeast Asia, including Cambodia?

On August 10, 1964, we enacted the Gulf of Tonkin Resolution authorizing then-President Johnson to "take all necessary steps, including the use of armed force . . . to assist any state" (including South Vietnam) in Southeast Asia. That resolution provided its authority would expire under certain conditions determined by the President or created by action of the United Nations, or that it might "be terminated earlier by concurrent resolution of the Congress."

Such a concurrent resolution to terminate the President's authority to use armed force in Southeast Asia was enacted on December 31, 1970, and became law when signed by President Nixon a few days later.

As of January 12, 1971, then, Congress had enacted to end the President's war power in Southeast Asia. There were still over 100,000 American troops in South Vietnam, however, and several hundred American POWs held by the North Vietnamese.

When, on April 30, 1971, the President ordered American military action in Cambodia, and Congress subsequently voted funds for the conduct of that military action there, it was argued that this was justified by the need to protect American lives in Vietnam.

With no further American lives to protect after the return of the troops and the last of the POWs, however, what power resides in the President?

Congress has been explicit. The only statutory authority to make war in Southeast Asia has been expressly repealed.

The last basis for the exercise of any inherent power of the President as Commander-in-Chief . . . the protection of American lives . . . has been removed.

Nevertheless, the President continues to order American combat action.

The bombing campaign has cost over $50 million per month, and averaged over 25,000 tons of bombs per month since the cease-fire agreement with North Vietnam went into effect on January 27, 1973, according to testimony by Secretary Richardson to the Armed Services Committee two days ago.

War has not been declared by Congress. Cambodia is not an ally of the United States. The sole rationale for the bombing is the President's expressed desire to preserve the present administration in Cambodia against an insurgency and thus protect the government of South Vietnam from renewed North Vietnamese use of supply routes across Cambodia. The sole legal basis for the bombing is claimed to lie in the President's inherent power as Commander in Chief to enforce the terms of an executive agreement between the President and North Vietnam.

Can such an agreement be the basis for the President's unilateral decision to bomb one faction in an admitted-civil war on the Asian continent?

If so, then presumably any other Presidential agreement, publicly known or not, Congressionally-approved or not, can be the subject of a Presidential commitment of American troops to combat abroad. There are numerous situations around the world where President Nixon might feel such combat commitment might be justified. In a recent announcement, he threatened military action of an undescribed nature against the North Vietnamese.
Under these circumstances, it seems to me that Congress has a clear duty to enact legislation which will require Congressional approval before any further military action in Southeast Asia is undertaken. H.J. Res. 514 provides for such approval, and I respectfully urge the committee to give it careful and speedy consideration.

The issue is not one of whether the bombing of Cambodia, Laos, or Vietnam is right or wrong, but rather that it is illegal unless first approved by Congress. If we are to restore the constitutional check and balance system of government with respect to the war power in Southeast Asia, early affirmative action by the House is required. Otherwise our acquiescence can be presumed and Congressional power is further eroded.

I have attached full copies of the Gulf of Tonkin Resolution and its repeal (PL 91-672) for your ready reference.

Public Law 88-408
88th Congress, H. J. Res. 1145
August 10, 1964
JOINT RESOLUTION

To promote the maintenance of international peace and security in southeast Asia.

Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

SEC. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Approved August 10, 1964.
To the extent that legislation enacted after the making of an appropriation for foreign assistance (including foreign military sales) authorizes the obligation or expenditure thereof, the limitation contained in subsection (a) shall have no effect.

The provisions of this section shall not be superseded except by a provision of law enacted after the date of enactment of this section which specifically repeals or modifies the provisions of this section.

For purposes of sections 8 and 9:

1. “defense article” and “excess defense articles” have the same meanings as given them in section 644(d) and (g), respectively, of the Foreign Assistance Act of 1961; and

2. “foreign country” includes any department, agency, or independent establishment of the foreign country.

The joint resolution entitled “Joint resolution to promote the maintenance of international peace and security in Southeast Asia”, approved August 10, 1964 (78 Stat. 384; Public Law 88-408), is terminated effective upon the day that the second session of the Ninety-first Congress is last adjourned.

No funds authorized or appropriated pursuant to this or any other law may be used to transport chemical munitions from the Island of Okinawa to the United States. Such funds as are necessary for the detoxification or destruction of the above described chemical munitions are hereby authorized and shall be used for the detoxification or destruction of chemical munitions only outside the United States. For purposes of this section, the term “United States” means the several States and the District of Columbia.

Approved January 12, 1971.

Mr. McCloskey. The whole purpose of this statement, Mr. Chairman, is to add one constitutional argument to the arguments that have been well stated and will be stated by other witnesses. It is particularly called to this subcommittee’s attention, perhaps with the hope that it will be included in the record, that the subcommittee consider a principle of constitutional law that has not really been argued.

The principle is simple this: That where the President may have inherent powers to commit American troops abroad and has so acted on over 130 occasions in this Nation’s history without congressional action, when Congress has acted the nature of Congress action limits the Presidential powers.

I have stated on the first page of this statement the famous case of The Flying Fish, Little v. Barrenee, and I think the citation that is shown on the bottom of that page is precisely in point. I might say this decision was handed down in 1804 at the same time that the Supreme Court was laying down the rule of Marbury v. Madison that the Court could review the congressional actions for constitutionality.

The Court held in 1804 that it had the power to hold a Presidential act unconstitutional in precisely the same circumstances as Cambodia because here we were engaged in an undeclared naval war with France. The President was given power by an act of Congress to seize ships that were bearing contraband going to French ports. The Navy, acting under the President’s direction, seized a ship coming
out of a French port, the owners sued for recovery of the ship, and the Court ruled that the ship had to be returned to the owners. It said when the President acted without congressional action he may have had the inherent power to do almost anything extending to committing troops abroad. But once Congress had proscribed that and expressly limited seizure to ships going into the port, the mere statement of that power, without more, removed from the President the power to make war on ships coming out of French ports.

I think we have the precise situation here. If you look at the Gulf of Tonkin resolution in 1964, it is not limited to Vietnam. It specifically states that whereby in assisting the peoples of Southeast Asia, we regarded as vital the maintenance of international peace and security in Southeast Asia, we authorized the President to take all necessary steps, including the use of Armed Forces.

Clearly he had the power to use Armed Forces in Cambodia, and then we repealed that authority. Therefore it is not a question, as Senator Goldwater's statement or others point out, of the President exercising authority in an area where Congress has not acted. We have acted.

The second question which arises is that after we repealed the Gulf of Tonkin authority under the circumstances of over 100,000 troops and several hundred POW's then in Vietnam, Congress did acquiesce in the making of war with Cambodia. However, as of March 29 of this year, the last troops were out of South Vietnam and the last POW's were returned. Therefore, as of March 29, I would contend that the constitutional rule of this case, *Little v. Barreme* and the fact that Congress had acted and then specifically withdrawn that authority, that no longer can the President contend any constitutional power to make war in Southeast Asia.

I want to congratulate this subcommittee for setting these hearings at an early date because as of March 29 when the last POW was returned House Joint Resolution 490 was introduced by myself and Mr. Bingham on April 5, House Joint Resolution 514 on April 18. We then went into recess for 10 days and this subcommittee has set these hearings May 9 and 10 and thereafter so that there have been now some 6 weeks between the time that the last authority for making war in Cambodia expired and congressional action.

It seems to me rather than allow the inactivity of Congress to create the possibility that we acquiesce in the making of war with Cambodia that the willingness of this subcommittee to act rapidly and quickly, and that by the speed of our action, we dispel any notion that we acquiesce in this warmaking power.

As the gentlewoman from New York has said, it is really on our conscience now every day that $412 million are spent in dropping the tonnage of bombs on Cambodia. Now it is clearly congressional responsibility to clear up this area of uncertainty in which the President has acted.

I wish to congratulate the chairman for the speed with which this committee has acted and express the hope that the speed will continue. As I say, I would rather defer a lengthy argument at this time in favor of that speed that the chairman has mentioned.

Mr. Nix. Thank you very much, Congressman. I think the point you make is extremely important because I think it is of paramount im-
portance that legislation be enacted, and that is the objective of this subcommittee. Thank you very much. There is a vote on the floor of the electrification action.

Mr. Bingham. Mr. Chairman, could I take 1 minute. First of all I would just like to commend these two witnesses not only on the statements that they have made here today but on their leadership over the years.

Mr. Ridgle. I join in that.

Mr. Bingham. I ask to put in the record a letter addressed to me, the signers of which were Mr. Joseph H. Crown and Mr. William M. Standard of New York. I ask that this letter be incorporated in the record of these hearings.

Mr. Nix. Without objection, the letter will be entered in the record.

[The letter follows:]

LAWYERS COMMITTEE ON AMERICAN POLICY TOWARD VIETNAM.

HON. JONATHA B. BINGHAM,
House of Representatives,
Washington, D.C.

MY DEAR CONGRESSMAN BINGHAM: We wish to record our unequivocal endorsement and support for H.J. Res. 514, Joint Resolution to End the War in Indochina, introduced by you and co-sponsored by 24 other members of the House.

This Resolution, upon adoption should serve notice on the President that the Congress is unalterably opposed to his policy of bombing Cambodia. It is crystal clear that the President lacks even a vestige of constitutional authority in continuing to wage war in and over Cambodia.

The memorandum submitted by Secretary of State Rogers to the Senate Foreign Relations Committee to justify American bombing in Cambodia is spurious and specious. A freshman in law school would be flunked out for such a frivolous document.

Secretary Rogers's memorandum ignores the fact that the Gulf of Tonkin Resolution has been repealed—a repealer signed by President Nixon himself. It ignores the Mansfield Amendment to the Military Procurement Act of 1971—signed by President Nixon—declaring the termination of American military operations in Indochina to be "the policy of the United States" once the POWs were released.

American troops having all been withdrawn, Mr. Nixon can no longer invoke his claimed right as Commander-in-Chief to protect their lives. And since the United States has concluded a cease-fire accord and is a signatory to the Act of the International Conference on Vietnam, he is literally no longer war-time Commander-in-Chief against whose war-time decisions some members of Congress may have thought it unpatriotic or impolitic to vote.

In the accompanying letter which was published in The New York Times on May 7th, we point out that the President is violating the cease-fire accord and the multi-national agreement in unilaterally resorting to military hostilities against Cambodia.

The lawlessness of the President's actions in Indochina are matched by the lawlessness in domestic affairs, climaxd by the Watergate scandal.

The time has come for Congress to reassert its constitutional responsibilities. In calling a halt to Presidential war-making in Indochina, H.J. Res. 514 does just that and therefore has the hearty endorsement of our Committee.

We respectfully request that this statement together with the accompanying letter, be inserted in the record of the hearings on H.J. Res. 514.

Faithfully yours.

WILLIAM M. STANDARD, Co-Chairman.
JOSEPH H. CROWN, Co-Chairman.

Mr. Nix. The subcommittee will be adjourned, subject to the call of the Chair.

[Whereupon, at 12:15 p.m., the subcommittee adjourned.]
[The following letter was subsequently submitted for inclusion in the record:]

U.S. SENATE,

Hon. Robert N. C. Nix,
Chairman, Asian and Pacific Affairs Subcommittee, House Foreign Affairs Committee, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN NIX: It has come to my attention that following my testimony certain cases were raised before your Committee as purported authority in support of Congressional restrictions on the exercise of the President's military actions. If it is agreeable with you, I would like to respond briefly and ask if you would read or otherwise include in the record this reply.

It has been suggested that the "Steel Seizure" case which arose out of President Truman's attempted takeover of the major steel mills may be relied on for war powers controls. But this case turned solely on the question of the President's powers over a domestic matter, labor management relations, and did not at all involve the issue of the President's authority to commit troops outside the country for the protection of American interests. Justice Jackson plainly drew the distinction in his concurring opinion:

"We should not use this occasion to circumscribe, much less the contract, the powers of the President as Commander-In-Chief. I should indulge the widest latitude of interpretation to sustain his exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society." 348 U.S. 645 (1952).

It has also been suggested that some cases arising out of the capture of ships during the French naval war support Congressional war powers controls. These cases, however, treated the express power of Congress under Article I, section 8, "to make rules concerning captures on land and water." All that these cases stand for is the proposition that a Congressional Act concerning rules of capture was accepted by the Court over a contrary Presidential interpretation of that Act. Moreover, these cases were each decided after actual hostilities had ended and did not present any issue of the power of Congress to curb Presidential military measures during an ongoing hostility.

In conclusion, I believe it is safe to say that none of the above cases are on point with the question of Congress' power to limit the President's right to use the military forces abroad for the nation's safety.

It has also been brought to my attention that, during the hearings, a Member of the Subcommittee has asked whether there might be any earlier examples of the President's exercise of a power both to make and enforce international agreements without the specific consent of the Congress. Two such precedents come to mind and I thought the Committee might be interested in them.

First, there is the Protocol concluded September 7, 1901, between China and the United States and the numerous instances following when United States troops went ashore in China to protect American rights acquired in that agreement.

This situation resembles current Indochina events in many ways. In 1900, on his own authority, President McKinley sent 5,000 troops to help put down rebellions in China which had resulted in outrages committed against foreign citizens located there. Again, without any approval by the Senate or Congress, McKinley subsequently reached an agreement, signed on the part of the United States, which permitted occupation of certain strategic points and required numerous undertakings on the part of China. Acting pursuant to this Executive Agreement, United States forces made landings to protect American interests in various places in China during the next 30 years or so. In 1927, for instance, we had 6,000 troops ashore in China and 44 naval vessels in its waters.

Another precedent is the time Teddy Roosevelt negotiated an agreement providing that the United States should guarantee the integrity of the Dominican Republic. For two years thereafter, that island was occupied and administered by American troops under the sole authority of this Executive Agreement, until in 1907 the Senate finally agreed to a treaty.

Again, I extend my warm appreciation to the Committee for allowing me to participate in your study of this very important question.

With warm personal regards,

BARRY GOLDBATER.
U.S. POLICY AND PROGRAMS IN CAMBODIA

WEDNESDAY, JUNE 6, 1973

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON ASIAN AND PACIFIC AFFAIRS,
Washington, D.C.

The subcommittee met at 2:04 p.m. in room 2200, Rayburn House Office Building, Hon. Robert N. C. Nix (chairman) presiding.

Mr. Nix. The subcommittee will be in order.

Within the half of Cambodia that the Lon Nol Government controls 600,000 refugees are registered with the Government. At least another 200,000 refugees are unregistered according to the New York Times. The entire population is 7 million and the Lon Nol Government controls half to 60 percent of that population. At least 70,000 of the registered refugees are refugees because of our bombing which started in late January.

Since the bombing began the retreat of Lon Nol's troops has accelerated and Phnom Penh is still under siege.

The effect on the enemy of B-52 raids and other air strikes is unknown. Such troops are on the move under jungle cover or they are dug in where their chances for survival are high.

In contrast the effect on the civilian population is severe judging by the number of refugees. Turning the Cambodian countryside into a moonscape would not be helpful in winning the hearts and minds of the people.

One positive result of bombing has been the carpet bombing of the Mekong River banks in order that supply ships get through. Unless the Cambodian army can open supply channels and break the siege of Phnom Penh, we will be mired down in Cambodian air support indefinitely. Why should the Cambodian army fight if they can rely on our air support for their defense?

The cost of bombing may very well exceed the cost of all annual foreign aid to that country. The damage done by the bombing may commit us to a large reconstruction program in addition as the result of negotiations.

The outcome of negotiations in all probability will involve the establishment of a coalition government with heavy Communist representation. Such coalition governments have only delayed the inevitable. The difference between such a government and a Communist government is more cosmetic than anything else. We may be treated to the spectacle of the first Communist monarchy. Therefore, the cost resulting from
the bombing to us and to the Cambodian people does not seem to be worth the effort.

I think that two steps forward and one step backward is a good rule in foreign policy as it is in boxing. The penalty for trying to influence everyone everywhere may result in great defeats and the loss of the confidence of the American people in our foreign policy.

Mr. Doolin will not be able to appear today. His statement will be submitted for the record, if there is no objection.

[The statement follows:]

STATEMENT BY DEPUTY ASSISTANT SECRETARY OF DEFENSE (INTERNATIONAL SECURITY AFFAIRS), EAST ASIA AND PACIFIC AFFAIRS, DENNIS J. DOOLIN, BEFORE THE SUBCOMMITTEE ON ASIAN AND PACIFIC AFFAIRS, COMMITTEE ON FOREIGN AFFAIRS, WEDNESDAY, JUNE 6, 1973

Mr. Chairman: On January 27th of this year, the cease-fire in Vietnam which we had sought for so many tragic and painful years, finally went into effect. The Agreement on Ending the War and Restoring Peace in Vietnam, more commonly known as the Paris Agreement, embodied a realistic and workable plan for ending this conflict that had taken so many lives and so much treasure. In addition to the cease-fire itself, the Agreement provided for the return of all prisoners of war and the withdrawal of United States and allied armed forces from South Vietnam within 60 days. Article 7 of the Agreement stipulated that the two South Vietnamese parties could “not accept the introduction of troops, military equipment, armaments, munitions, and war material into South Vietnam.” Article 20 stated that the parties would strictly respect the 1954 Geneva Agreements on Cambodia which, among other things, affirms the neutrality and right to self-determination of Cambodia. The provisions of the Paris Agreement very clearly prohibit the use of Cambodia for infiltration purposes or as a staging area for military operations against South Vietnam. All foreign troops were to be withdrawn from Cambodia, and it was clearly understood that North Vietnamese and Viet Cong troops were foreign with respect to Cambodia.

Regardless of the words used to specify the provisions of the Agreement, all the parties knew that its ultimate effectiveness rested upon the principle of reciprocity and a sincere desire to see the Agreement work. As this Committee is well aware, the United States wanted nothing more than to see this agreement bring a lasting and honorable peace to this small part of the globe that had witnessed such tremendous suffering. Accordingly, the United States scrupulously adhered to the provisions of the Agreement. U.S. and allied forces withdrew from South Vietnam within the allotted time frame and all military aid ceased except that which was legally permitted by the Agreement. I am sorry to say that our respect for the Agreement has not been matched by the other side. On the contrary, there has been a continuous and even intensified effort by North Vietnam to use the restrictions imposed by the Agreement as an opportunity to reinforce its combat troops and gain tactical advantage over the armed forces of South Vietnam, Laos and Cambodia. North Vietnamese troops, ammunition, and armor have continued to move down the Ho Chi Minh Trail into Laos, Cambodia, and South Vietnam. Blatant disregard for the provisions of the Agreement that the other side formally and publicly agreed to is evidenced by such actions as the establishment of a surface-to-air missile complex at Khe Sanh, the indefensible downing of an unarmed and clearly indentifiable U.S. helicopter resulting in the loss of several innocent lives, and, most recently, an armored assault against the South Vietnamese defense line at Hue.

I mention these unfortunate developments only to provide some perspective for what is now taking place in Cambodia. Many years ago, the battle for control of South Vietnam had spread to Cambodia. Cambodian territory was used by North Vietnam for essential lines of communication and as a sanctuary for troops engaged in offensive operations across the border in South Vietnam. Cambodia became an integral part of the battlefield in the continuing conflict for South Vietnam. It remains so today. Should the North Vietnamese be permitted to gain control of Cambodia, it would permit them to establish a staging area from which to renew large-scale attacks, the objective of which would be...
the military takeover of South Vietnam that was denied them prior to the signing of the Agreement.

At the time the Paris Agreement was concluded, the United States made clear to the North Vietnamese that the armed forces of the Khmer Republic would unilaterally suspend all offensive operations and that the United States aircraft providing air support would stand down. We stated that, if the other side continued to carry out offensive actions, Khmer Republic forces and United States air forces would take necessary countermeasures, including a resumption of air strikes, until such time as a cease-fire could be brought into effect. Despite the fact that the Khmer Republic did, in compliance with Article 20 of the Paris Agreement unilaterally declare a cease-fire the enemy forces continued the conflict. As a matter of fact they increased the tempo and scope of their offensive. Consequently U.S. air strikes were resumed.

At the present time in Cambodia there are approximately thirty to thirty-five thousand Khmer Communists/Khmer Insurgents (KC/KI) and approximately eight thousand Viet Cong/North Vietnamese Army (VC/NVA) troops engaged in active combat operations. These forces are supported, trained, equipped, and advised by an additional thirty-two thousand rear service administration VC/NVA troops—the preponderance of this support coming from the North Vietnamese. At the request of the Khmer Republic, the United States is providing combat air support that is designed to accomplish two general objectives. First, we are providing direct close air support to the Cambodian armed forces and population. Secondly, we are attempting to interdict the massive flow of men and materiel from North Vietnam destined for ultimate employment against friendly forces in Cambodia and South Vietnam. While quantitative evaluation of the effectiveness of our bombing is difficult because of the nature of the terrain and disposition of friendly forces, it is abundantly clear that U.S. air support has been indispensable to the survival of the Khmer Republic, particularly during the past three months. It is essential that this air support be continued not only because of its importance for the Khmer Republic, but also because of its importance in achieving a true peace in Indochina. The cessation of U.S. bombing in Cambodia without the removal of North Vietnamese forces from that country would almost certainly result in the fall of the Khmer Republic and would guarantee the eventual resumption of Communist large-scale combat activity in South Vietnam. U.S. bombing in Cambodia represents an interim action designed to aid in the defense of Cambodia while at the same time bring about compliance with Article 20 of the Agreement—specifically, the removal of North Vietnamese forces from Cambodia. While it is impossible for us to accurately assess the contribution of the North Vietnamese to the overall enemy effort in Cambodia, there is no doubt that if these North Vietnamese forces departed the battlefield the Khmer armed forces would be capable of handling the indigenous insurgent threat that remained.

I would conclude this statement by restating a point that time did not allow me to elaborate upon when I appeared before this Committee on May 9th. U.S. air strikes in Cambodia are conducted in accordance with the strictest rules of engagement ever employed by U.S. forces in combat. Every possible effort is made to minimize civilian damage. In fact, U.S. pilots make strenuous efforts to minimize civilian damage and expose themselves to additional risks in order to prevent civilian casualties. Before a target is struck, it must be validated at several levels of command as a genuine enemy facility or position that is being used for military advantage. Many lucrative targets are not struck because of the risk to innocent civilians. As a matter of fact, almost 40% of the targets nominated for strike by the Khmer General Staff are turned down by U.S. reviewers for this very reason. Finally, we do not conduct now, nor have we ever conducted, indiscriminate carpet bombing in Indochina. Life is sacred whether it be that belonging to a person of yellow, black, white, or brown skin. A mother's grief over the death of her child is just as deep and wrenching no matter what her color. The suggestion has been made before this Committee that somehow our procedures for avoiding civilian casualties might vary according to the color of the skin of those on the ground. This insinuation is simply not true. I am sure no one on this Committee believes this type of charge and I bring it up only in order to set the record straight.
Mr. Nix. Senator Goldwater has written a letter to the subcommittee rebutting testimony offered after his appearance during our last hearings. If there is no objection, this letter will be included in the record at the conclusion of that day's hearing. (See p. 82.)

Also we have received correspondence from scholars and outstanding Americans which without objection I will enter into the record as an appendix to the record. These include letters and statements from the Hon. Eugene V. Rostow, Prof. Alfred P. Rubin, Prof. Charles B. Nutter, Hon. Dean Rusk, Hon. Clark Clifford, William W. Van Alstyne and Prof. Richard B. Lillich, and an article by Alexander M. Bickel.

Mr. Nix. A week from today we will have a markup session on joint resolutions before the subcommittee which would end spending from appropriated funds for bombing in Cambodia and require congressional authorization for the resumption of bombing in Cambodia and Laos and South Vietnam.

Tomorrow Mr. Alfred D. White, Deputy Assistant Administrator, Bureau for Asia, Agency for International Development, will appear to discuss American AID policy in Taiwan and South Korea as we begin new hearings on the subject of our relations with our older allies.

The first witness today is Hon. Charles Bennett, Member of Congress from the State of Florida.

We welcome you, Mr. Bennett. It is a pleasure to have you here.

STATEMENT OF HON. CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Bennett. Thank you very much, Mr. Chairman.

I have introduced H.R. 7251, a bill to provide that it shall be unlawful for any U.S. military or Government civilian personnel to do any act of belligerence or order any to be done in Southeast Asia unless such action is done in self-defense. The purpose of this legislation is to bring to an end U.S. belligerent involvement in Southeast Asia.

Cutting off Federal funds for war in Southeast Asia will not, in the opinion of the Department of Defense attorneys, remove the authorization to the President to conduct a war there if funds can be found by borrowing or a grant from South Vietnam or other source. They reason that under the Constitution the President can act there because of the violation of the cease-fire agreement in the absence of a law to the contrary. Whether these attorneys are on sound legal ground on this or not, they admit that if belligerent acts by U.S. Forces in Southeast Asia are declared by law to be illegal, the President will be without power to continue the war. They say cutting off funds will not do it.

Therefore, I recommend the passage of H.R. 7251 which I introduced on April 19, 1973; but in the event that this is not the vehicle you would like to use, then I suggest that its terms be added by your committee as an amendment to House Joint Resolution 536. In that event, I recommend that the effective date be changed from 90 days after passage; and that it conform with House Joint Resolution 536 by making the prohibition take effect upon passage of the resolution. Perhaps the words in my bill "in case of attack" should be followed
by the words "on U.S. troops" and I recommend that change for additional clarity although I don't think it is really necessary.

I am deeply concerned that our country continues war activity in Southeast Asia when there is no congressional foundation for that activity. This in my opinion is not only an erosion upon the constitutional provisions which give Congress the sole authority to declare war but it also involves America in a situation very dangerous to itself without having the debate and congressional action which should always precede any war activity on the part of America except in some emergency endangering our country. There is no such emergency involved in Southeast Asia.

I congratulate you on holding hearings on this legislation and I hope it receives prompt action in the very near future.

Mr. Nix. Thank you very much, Congressman Bennett. I want to say that the views expressed by you reinforce the concerns of every single member of this committee and in my view of the vast majority of the House of Representatives, and in addition to that I believe that the American people share the views expressed by you and the thoughts in the minds of the members of the committee. This is a must so far as I am concerned and I believe so far as America is concerned.

Mr. Bennett. Thank you, Mr. Chairman.

Mr. Nix. Mr. Broomfield.

Mr. Broomfield. I have no questions.

Mr. Nix. Again thank you very much.

Mr. Bennett. Thank you.

Mr. Nix. Our next witness is Mr. Samuel Adams, former employee of the Central Intelligence Agency and experienced analyst in Southeast Asian affairs.

Mr. Adams, you may proceed at your pleasure.

STATEMENT OF SAMUEL A. ADAMS, FORMER EMPLOYEE OF THE CENTRAL INTELLIGENCE AGENCY AND EXPERIENCED ANALYST IN SOUTHEAST ASIAN AFFAIRS

Mr. Adams. Mr. Chairman, perhaps I can ask you whether you want me to read this statement or just have it inserted in the record.

Mr. Nix. Whichever you wish. Perhaps it would be preferable to read it; therefore it would be in the record in the event that the bells ring.

Mr. Adams. Thank you very much.

My name is Samuel A. Adams. I was employed at Central Intelligence Agency until June 1, 1973 when my resignation became effective. I resigned because of my dissatisfaction at the way U.S. intelligence has conducted research on the struggle in Indochina. The latest shortcoming of American intelligence research, in my opinion, concerns its appreciation of the present conflict in Cambodia.

I was employed at the CIA for 10 years, about 7 of which were devoted to research on our adversaries in Indochina. I have written, among other things, an extensive study on the Communist movement in Cambodia. I have also spent considerable time in estimating the
Communist strength there and have written a number of studies on the subject.

I wish to submit the following statement to your subcommittee.

In my opinion, the U.S. Government fundamentally misreads the nature of the conflict in Cambodia. Contrary to Washington's assertions, the Cambodian struggle is now a large scale civil war, controlled and fought by ethnic Khmers with only a small measure of assistance from Hanoi.

The Cambodian Communists were not always independent of the Vietnamese. The Khmer Communist (KC) movement began under the tutelage of the Viet Minh and Ho Chi Minh in the late forties. The KC's subservience to Hanoi continued through the fifties as thousands trained in North Vietnamese schools. The official Communist Party of Cambodia did not come into being until the early sixties.

When Lon Nol toppled Prince Sihanouk's government on March 18, 1970, the KC were still a relatively small band of insurgents conducting a minor rebellion in the Cambodian countryside. After the Prince's fall, however, the Vietcong invaded Cambodia in force and in short order came to control a large part of the country. The Vietnamese thereupon began a big advisory effort geared to creating a large native army and political apparatus as quickly as possible. As they built up the KC structure, the Vietcong transferred political control to the KC Party.

The process was virtually complete by the spring of 1972, by which time all but a few Vietnamese Communist advisers had departed Cambodia. The KC Army has been doing almost all of the fighting in Cambodia for over a year. The KC's principal organ of control is the Cambodian Communist Party's Central Committee which is located about 100 miles outside of Phnom Penh. The Central Committee is made up of Cambodians and is organizationally independent of Hanoi.

I believe that U.S. intelligence seriously understates the size of the KC Army. It asserts the number of KC soldiers is 50,000—about a fourth as many as the 200,000 Lon Nol claims he has under arms. In point of fact, the KC military organization may be as large as the government's.

The reason for the understatement of the Khmer Communist Army is twofold. First, U.S. intelligence deliberately excludes from its estimate certain types of KC soldiers—namely, service troops (ordnance specialists, quartermasters, etc.), and guerrillas (local militia men used to defend the villages). Both types are considered by the Communists as part of their army. Second, U.S. intelligence uses extremely "conservative" methods in estimating the number of soldiers in the KC units it purports to count. It is probable, for example, that some KC units carried by the United States as battalions are actually regiments.

By contrast, the number of Vietnamese Communist soldiers serving in Cambodia as combatants is probably less than 2,000. The 30,000-odd other soldiers Hanoi has in Cambodia are almost all service troops, mostly involved in logistics.

The Cambodian Communists are now virtually free of Hanoi's control. The KC administrative structure in Cambodia is Cambodian-run, and the KC Army is unaccompanied by Vietnamese advisers. The main service the Vietnamese provide the Cambodian Communists
is the supply of munitions. The tonnages involved are quite small, however, and probably do not exceed a few hundred tons a month. The KC supplement these supplies with arms and munitions captured from the government.

Although in the early days of the rebellion factions existed among the insurgents, these for the most part have disappeared. The rebel structure is now monolithic, with control vested in the Communist Party of Cambodia.

Sihanouk himself acknowledges the situation and said recently that the KC Party runs the insurgency. He also compared himself to Queen Elizabeth II. If Phnom Penh falls, Cambodia may become the first Communist monarchy.

The weight of the evidence suggests U.S. bombing, particularly by B-52's, is ineffective, except as a means to buy time. The reports suggest that KC casualties from air attack are rather small.

A prime reason for the ineffectiveness is the ease with which KC intelligence can find out about prospective targets. The Cambodian Government seldom bothers to encode messages asking for air strikes, and there is nothing to stop the KC from eavesdropping. Of course, when the KC discover where the bombs are about to fall, they move accordingly.

It is my belief that if the U.S. bombing ends, Phnom Penh will fall to the Communists a short time later. However, I also think that the Cambodian Government will collapse even if the bombing continues—that is, unless there is an intervention by large numbers of foreign troops on the side of Phnom Penh. Meanwhile, I believe the evidence strongly supports an assertion that the strength of the Khmer Communists, both in number and quality, continues to increase while the Cambodian Government's position continues to weaken.

Mr. Nix. Now you say you feel that the Cambodian Government would collapse even if the bombing continues?

Mr. Adams. Yes, sir.

Mr. Nix. What leads you to that conclusion?

Mr. Adams. Primarily it had to do with the balance of forces within Cambodia. I believe that the size of the Cambodian Communist army is more like 200,000 rather than the 50,000 that U.S. intelligence puts it at. This makes it equal in size to the government army which is supposed to be 200,000. I think the Cambodian Communist army is increasing in size and quality while the government's army is decreasing in size and is getting increasingly disheartened. It has a very high desertion rate. These would be perhaps the principal reasons that I hold that opinion.

Mr. Nix. Mr. Broomfield.

Mr. Broomfield. Mr. Chairman.

I would like to ask you a question regarding your role in the CIA and your background in making this kind of a statement. I think it is quite interesting in view of information that we have received from Dr. Kissinger.

Mr. Adams. My role in the CIA, as I said in my statement, was as a researcher on Indochinese Communists. I did so for 7 consecutive years. I believe this is a longer consecutive time than anybody else in the U.S. Government up until now. I have written what I believe is the
only comprehensive study in existence concerning the Communist
movement in Cambodia: its origins and how it grew. I kept up on the
evidence about Cambodia from early 1970 up until the time of my
resignation. My resignation became effective, practically, about 2 weeks
ago, even though the official effective date was June 1.

Mr. Kissinger, I think, has made a number of misstatements about
Cambodia. Perhaps they are not so much misstatements as misleading
statements. First, he says that the Communist movement there is con­
trolled by Hanoi. He gives as reasons for this the large numbers of
Vietnamese Communist soldiers supporting the rebels in Cambodia and
encadreing the Khmer Communist units.

The assertion that the Vietcong encadre the Khmer Communist
movement, I think, is contrary to the evidence. From what I have found
in the last year or so there are virtually no Vietcong
adjudicators—I say “virtually” because you may find a couple—in the Cambodian Com­
munist apparatus.

Kissinger also has said or implied that the Vietnamese Communists
do a good deal of the fighting in Cambodia. This is not the case. They
have not been in any serious fighting in Cambodia since late 1971. That
is a year and a half ago. He seems to imply that Hanoi is able to exert
pressure on the Cambodian Communist Central Committee, which is
the organization that runs the rebellion in Cambodia. I believe that this
is not the case, except insofar as any ally can influence the action of
another ally.

As I said in my statement, the principal leverage that Hanoi has on
the Cambodian Communists is in the matter of munitions. They supply
the Cambodian Communists with, I would say, 300 tons a month. That
is a guess, an order of magnitude.

Mr. Broomfield. I guess what I am trying to establish here is, is the
information you have given us now pretty well accepted by the CIA, or
is this your own personal observation and not really information that
is agreed upon by the CIA people?

Mr. Adams. It would depend on the CIA people you are talking
about.

Mr. Broomfield. I think this is an important point. You have made
some rather startling revelations here and it looks like what you are
saying is in direct confrontation with information that we are getting
from other parts of the executive branch. I just want to ascertain if the
information you are giving us is the same information that the CIA is
giving other members in the executive branch because this is not the
information we get at all.

Mr. Adams. There are only a limited number of researchers within
the Agency that work on Cambodia.

Mr. Broomfield. Well, are they in agreement with what you are
saying?

Mr. Adams. It would depend on the individual analyst, and on the
subject. I think that you would find that there is virtually 100-percent
agreement on the fact that almost no North Vietnamese or Vietnamese
of any type are involved in combat in Cambodia. Now I don’t know
whether this is contrary to what the administration says or not, but I
would think you would find general agreement within the CIA that
the Vietcong or North Vietnamese are not involved in fighting.
As to control, I think there is an increasing realization that Hanoi has only limited leverage over the Cambodian Communists. Now the extent to which this picture comes through to you from administrative sources or administration witnesses, I don't know.

Mr. Broomfield. Well, where did you rank in the CIA in doing this research work? Were you among the top people?

Mr. Adams. No; I was strictly an Indian. But as an Indian, of course, I was extremely close to the evidence. The evidence is the basis on which one ought to determine the answers to questions, like these, I believe.

Mr. Broomfield. You make no mention of the negotiations that are presently going on and what effect they have on the entire situation. I am quite surprised. In other words, your whole trust is that, by golly, we ought to stop the bombing right now and let the Communists take over because it is going to happen. That is quite a conclusion to draw.

Mr. Adams. Sir, I don't believe I make the conclusion I think we ought to stop the bombing.

Mr. Broomfield. Well, I drew that from your statement here. I am trying to locate it precisely.

What you said about the effect, I thought, was that we might as well stop now because it is inevitable that they are going to take over.

Mr. Adams. Of course, that is your conclusion from what I say here; I don't say that. I say that I think the Communists are going to take over anyway, and if you thereupon draw the conclusion from that statement that we ought to stop the bombing now——

Mr. Broomfield. Well, I am trying to clarify it. I am trying to get your thoughts straight. That is the purpose.

Mr. Adams. I didn't put it down that way.

Mr. Broomfield. I just want to get clarified.

Mr. Adams. I am not necessarily an advocate of stopping the bombing. I think an argument can be made to continue the bombing. I would be happy to lay it out if you were interested. However, I think whether or not there is bombing, the end is coming anyway. If you stop the bombing the end will come quickly; if you don't stop the bombing, I think the end will come some time later.

Mr. Broomfield. Let's get back to this other point because I think it is a very important part of your testimony as to where you rank in the CIA and what benefit your statement had in the CIA. It is certainly not the information that I have received from some reliable and responsible people.

Mr. Adams. I would certainly say that among analysts, the Indians, so to speak, that some would agree wholeheartedly with some statements I might make and would not agree on others. As I indicated, I think they would agree that the North Vietnamese are doing almost none of the fighting in Cambodia. That is the general consensus. I think they would agree increasingly that it is the Cambodian Communists who run things in Cambodia and not the North Vietnamese. However, disagreements exist at the analytical levels.

I think you would get a fair amount of agreement over the assertion that the end is coming in Cambodia that the Phnom Penh government is going to collapse. I think the principal argument you would get here would be on the matter of timing. If you were to say,
for example, that the end is coming within 5 years, you would get near unanimous agreement among the analysts. However, if you were to say 4 years, 3 years, 1 year, 6 months, you would get fewer differing opinions. That is to say, most people think the end is coming “eventually,” 5 years being eventually. There is some disagreement as to how much sooner than that.

Mr. Broomfield. You still have not given me the answer I want as far as your position in the CIA. You are just one of the Indians over there?

Mr. Adams. Yes, sir; right.

Mr. Broomfield. How many more Indians do they have before they get up to the chiefs?

Mr. Adams. Well, let me see. I would say that in the research racket I suppose you could count as many as a dozen Indians who work Cambodia.

Mr. Broomfield. And all of you had your own observations, and I assume that you submitted them to your superiors, and so forth. What did they do with those opinions of yours?

Mr. Adams. My opinions?

Mr. Broomfield. Yes.

Mr. Adams. Well, one of the reasons I resigned the Agency was that I thought that some of my opinions were not paid as close attention to as I thought they ought to be. For example, in June—may I go back and explain a point concerning the size of the Cambodian Communist army? This is one of the points of the reason I resigned.

In May 1970 the size of the Cambodian Communist forces was estimated at 5,000 to 10,000 by U.S. intelligence. The reason it was estimated 5,000 to 10,000 is that we had picked that number up from Cambodian Government intelligence. Then for a period of something over a year U.S. intelligence did not look at that number at all. The official estimate stayed at 5,000 to 10,000 until June 1971 without ever having been looked at by U.S. intelligence. In other words, there were no U.S. analysts trying to discover whether this number was still valid.

In June 1971 I took a very close look at the evidence and came to the conclusion that the number of Khmer Communist soldiers was not 5,000 to 10,000, as put forward officially, but that the number was between 100,000 and 150,000. That would be a mistake of between 1,000 and 3,000 percent. I put forward this paper and almost at once the paper was killed.

The contract, so to speak, or the charter for working on the number of Cambodian Communists was taken away from me and assigned to somebody else. This person was given a number to come up with. The number was a range of from 10,000 to 30,000, he was assigned this number very shortly after he got the contract to look at the size at the Cambodian Communist military structure. In November 1971 he came up with a range just like that; 15,000 to 30,000 is what he came up with. The current estimate is derivative of the one he came up with in November 1971. The current estimate is approximately 50,000. It is my belief that the real number in the Cambodian Communist military organization is not 50,000 but 200,000.

Mr. Broomfield. But that is not supported by the CIA?
Mr. Adams. No sir; it is not supported by the CIA and for this reason: that after I came up with the 100,000 to 150,000 estimate, the CIA changed the definitions as to who belonged in the KC army, the object of the CIA's changes was to make the KC army seem smaller.

Now in all Asian Communist armies there are three types of soldiers—main forces, local forces, and guerrilla-militia. The main force is made up of regulars, the local force is like the National Guard, and the guerrilla-militia are like minutemen, such as those who fought at Lexington and Concord.

Now, in the old estimate the one that existed between May 1970 and June 1971 included the guerrilla-militia. In the new post—June 1971 estimate the guerrilla-militia were excluded. They still are. So the current estimate of 50,000 Khmer Communist soldiers contains no guerrilla-militia men. Now I think there are perhaps as many as 100,000 guerrilla-militiamen who ought to be in the estimate.

Furthermore, the CIA's estimate does not include service troops, of whom there are large numbers. It also excludes many regular combatants. This is where my estimate and the CIA estimates differ.

However, I think logic is on my side. Since the Cambodian Government is supposed to have 200,000 troops, and U.S. intelligence says the number of Cambodian Communists is 50,000, it would seem the Government outnumbers the Cambodian Communists by 4 to 1. Yet, the Cambodian Communists have Phnom Penh surrounded and have half a dozen or more provincial capitals surrounded. I just find it hard to believe that you can surround 200,000 men with 50,000 men. I think if you count everybody, the Government and rebel forces are more or less equal.

Mr. Broomfield. Thank you, Mr. Chairman.

Mr. Nix. Mr. Adams, it cannot be denied that your position as an agent of the CIA placed you in a position in that country where you were competent to observe and to make judgments; is that correct?

Mr. Adams. Yes, sir. I have been in the United States working on Cambodia.

Mr. Nix. So that your opinions then are based on information that you received from others in the CIA?

Mr. Adams. Others, yes; but also on such things as captured documents, prisoner-of-war interrogations, and defector reports which came from Cambodia itself.

Mr. Nix. During what period of time?

Mr. Adams. I have worked on Cambodia off and on from the time of the coup, which was March 1970, up until the time of my resignation.

Mr. Nix. Have you documents in your possession pertaining to Cambodia and the struggle there that were compiled since the bombing began?

Mr. Adams. Do you mean since—

Mr. Nix. Since the American bombing of Cambodia began.

Mr. Adams. I have not written anything since the bombing began. I have made a careful review of the evidence.

Mr. Nix. See, the point I am making is simply this. We are talking about the bombing in Cambodia.

Mr. Adams. Right.
Mr. Nix. We are concerned that it ends.
Mr. Adams. Yes, sir.
Mr. Nix. You say that the people fighting there are Cambodians.
Mr. Adams. Yes, sir.
Mr. Nix. Fighting a civil war.
Mr. Adams. That is right, sir.
Mr. Nix. They are not North Vietnamese soldiers fighting there.
Mr. Adams. That is right.
Mr. Nix. All right. Now do you have any documents to authenticate the conclusion that you have stated?
Mr. Adams. No, sir, I do not, other than the statement I prepared for the subcommittee and some articles I am writing for newspapers. Most of the documents I wrote at the CIA were classified in nature; that is, they are confidential or above. They were therefore of a type that I couldn't take away from the Agency when I left. So I am sort of stuck without my evidence.

Mr. Nix. Mr. Wolff.
Mr. Wolff. Mr. Chairman, we are on a call. Is the witness going to stay here or——
Mr. Nix. Is it agreeable to you to permit us to go over and cast this vote?
Mr. Adams. Fine.
Mr. Nix. Excellent.

The subcommittee will be in recess subject to the call of the Chair.

[Whereupon, the subcommittee recessed.]

[Whereupon, at 3:40 p.m., the subcommittee adjourned, to reconvene at 2 p.m., Thursday, June 7, 1973.]
U.S. POLICY AND PROGRAMS IN CAMBODIA

THURSDAY, JUNE 7, 1973

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON ASIAN AND PACIFIC AFFAIRS,
Washington, D.C.

The subcommittee met at 2:05 p.m. in room 2200, Rayburn House Office Building, Hon. Robert N. C. Nix (chairman of the subcommittee) presiding.

Mr. Nix. The subcommittee will be in order.

When we ended the hearings yesterday Mr. Adams was in the chair. Will you please take the chair, Mr. Adams.

STATEMENT OF SAMUEL A. ADAMS, FORMER EMPLOYEE OF THE CENTRAL INTELLIGENCE AGENCY AND EXPERIENCED ANALYST IN SOUTHEAST ASIAN AFFAIRS

Mr. Nix. Congressman Wolff, do you wish to resume your examination.

Mr. Wolff. Thank you, Mr. Chairman.

I am sorry that we had to ask you to have to come back but as you know legislation on the floor dictated our presence there.

Mr. Adams, you were with the Agency for some 10 years, is that correct?

Mr. Adams. That is correct, sir.

Mr. Wolff. During the 10-year period that you were with the Agency you for the most part agreed with the procedures of the Agency?

Mr. Adams. It would depend on the procedure.

Mr. Wolff. Well, let me broaden it. You agreed with the Agency for 10 years?

Mr. Adams. In the matter of Indochina by and large I tended to be a lot gloomier than most people in the Agency. Of course, the Agency was more gloomy than most Government agencies, so I was perhaps gloomiest of all concerning events in Indochina.

Mr. Wolff. You spent how long in Vietnam?

Mr. Adams. I was there on four temporary duties totaling something less than a year mostly on research projects, sir.

Mr. Wolff. What type of research projects?

Mr. Adams. I did one project concerning the Vietcong police system, and another concerning Vietcong motivation and morale. I also worked extensively on Vietcong order of battle, that is, how many Vietnamese Communists there were in South Vietnam.
Mr. Wolff. You disagree with the Intelligence findings so far as the number of North Vietnamese who are in Cambodia today. Did you find any differences before this in any of your estimates?

Mr. Adams. Yes, sir. The principal time I had a sizable disagreement with the Agency and with the Intelligence community in general was during the period between August 1966 and very early 1968; that is, the Tet offensive. In August 1966 I discovered that the official order of battle for the number of Vietcong in South Vietnam stood at some 275,000. I also discovered that the order of battle was divided into four parts. And I found that three of these four parts had not been looked at for some time. Depending on the part, the time varied between 1 and 4 years.

Mr. Wolff. Had not been looked at by whom?

Mr. Adams. By U.S. Intelligence. We had not looked at three out of four parts of the battle of the enemy and this was while we were at war.

Mr. Wolff. Yesterday you said that you were one of the Indians. How would you be able to determine that it had not been looked at?

Mr. Adams. Because the components had not changed for a period of years. For example, one of the components was the Vietcong guerrilla-militia. On August 19, 1966, it was listed at 103,573. Now I remember that number because it had been the same for a period of 2 years. Likewise, the number of service troops was listed at 18,553. That number had been held constant for a period of at least 2 years. A third component was the political order of battle—how many political cadres there were. This was listed as 39,175, and it had been that on the official books for about a year and a half.

In looking at these three additional components I saw all of them should be at least doubled. I came to the conclusion in August 1966 that the official order of battle, 275,000, should actually have been something in the neighborhood of 600,000.

Mr. Wolff. What did you do with the information then? What did you do with those differences you had with the information that was generally available? What procedures did you take to change this?

Mr. Adams. I wrote a series of memorandums between August 1966 and December 1966 and sent them forward through my chain of command. One said that the guerrilla-militia component, then listed at 103,573, ought to be 300,000; three times bigger. Some memos were returned to me without comment. But at least one was sent to the Military Assistance Command in Vietnam in Saigon. It persuaded MACV to start up independent research to see how big the neglected components were.

There developed over the next year and a half a fight between me and the Agency heads. I thought the Vietcong numbers ought to be a lot higher. At the same time there was a fight between the Agency and the Military Assistance Command. The Agency pushed for numbers higher than those put out by the Military Assistance Command.

Mr. Wolff. Did CIA at that time have any input at all?

Mr. Adams. Very little input at that time, sir. During those months, CIA accepted generally without reservation what the Saigon command put forward.
Mr. Wolff. Are you suggesting that the same situation remains today as you found in those days with regard to Cambodia?

Mr. Adams. Yes, sir; I believe that it does and I believe we may be in for some of the same results. When the Tet offensive occurred, large numbers of soldiers who had never been in the order of battle popped up in the middle of Saigon and other cities. After Tet the Agency accepted the numbers I had suggested before the offensive took place. I am having the same problem now with the Cambodian order of battle.

Mr. Wolff. Of course, you were in Vietnam though, at that time, and you were assessing the Cambodian situation from here?

Mr. Adams. That is correct, sir.

Mr. Wolff. How are you able to assess that situation today based upon your removal from the scene? Are there better sources that the Agency itself has on the scene?

The other day I questioned Admiral Moorer and he indicated a widely different number of North Vietnamese troops being involved, and upon later questioning there was a reversal of even his figures. Upon questioning him he said, "Because of the limitations that are placed upon us we do not have on-the-scene observers to be able to authenticate the figures."

My question to you is, How does an intelligence agency function without having people on the scene? Did you just throw wild estimates around?

Mr. Adams. Well, we throw around wild estimates after collection efforts in the field. Let me first give the example of Vietnam and then the example of Cambodia.

In Vietnam in 1967 we had large numbers of people out in the provinces. We also captured large numbers of documents, took many prisoners, and were the recipient of large numbers of defector reports. It was through these, sent back to Washington or analyzed in Saigon, that the various estimates were made. Basically, I worked in Washington with exactly the same material that the Military Assistance Command worked with in Saigon.

Now in Cambodia we don't have the 500,000 troops that we had in Vietnam in 1968. But we do have a fair number of sources, mostly captured documents and POW reports. We get them from the Cambodian Government. These arrive back in Washington. We use them to generate our estimates of enemy strength.

Mr. Wolff. One final question. Would you say that our intelligence gathering effort is an efficient one?

Mr. Adams. Intelligence gathering is, in my opinion, not all that bad. My problems with the Agency have always been the problems of analysis. The amount of raw material that we get is enormous. My problems have always been that we have not properly used the material that we have been provided with.

Mr. Wolff. While you were working on these various reports did anyone recommend certain predetermined results to you prior to the information being distilled and interpreted by you? In other words, were there results set forth that you had to back up with supporting information?