

- (B) Actual or threatened hostilities;
- (C) A threat of war;
- (D) A threat of predatory incursions.

For President Johnson, in particular, the mulling of this checklist is more than a semantic exercise. Each check mark made by the Chief Executive can trigger an extra quantum of the far-flung reserve powers Congress has handed him over the years for crisis use.

From such gunboat-diplomacy relics as the authority to arm private vessels when there's "danger" that "physical force" may be applied against U.S. citizens or property abroad, these standby powers span the gamut to a temporary dictator's mandate to be invoked upon proclaiming that he "anticipates" an attack on the U.S.

So jumbled are the statutory tests for bringing all of them to bear, however, that (short of resorting to the anticipated-attack button) they almost defy coordinated use. More than a dozen finespun declarations, of which those on the checklist are only samples, would be required to trigger the President's arsenal in sequence. While his Office of Emergency Planning has devised, at least on paper, machinery for meeting all sorts of contingencies, even OEP officials are unclear as to which plans can be activated by which triggers. They can't, in fact, even say with certainty which ones are already authorized under President Truman's 1950 proclamation of a "National Emergency," a nuncio all authorities agree has continued in effect, though few are sure it should have—or would have if challenged in the courts.

Nor has Congress, it's quite plain, followed any cohesive design for attuning the triggers to the gravity of the crisis. Thus, an incongruous appendage to the military draft law empowers the President to direct and even seize industrial facilities for defense production upon finding that the "national security" requires it. But to activate tools for dealing with dislocations in the civilian economy, his only statutory recourse would be to forecast an attack on the U.S. in order to impose the sweeping economic controls conferred by the Federal Civil Defense Act. (One exception: Rationing of "critical" materials—but not price controls—could be imposed more easily under yet another law.)

Coming amid the war in Vietnam and the Middle East turbulence, the long-overhanging threat of a nationwide railroad strike starkly points up the entire system's irrationality.

OTHER CARRIERS NO PROBLEM

If the closedown threat were to loom against the maritime industry instead, the President would have authority as clear as any can be in this muddled field to take command of the U.S. merchant fleet as a "national emergency" measure. Should transit service have been imperiled in some city, the Secretary of Defense could have ordered continued service by "motor" carriers for military personnel and defense plant workers, also on the ground of a "national emergency." If military deliveries were about to be held up by a closedown in a plant instead of on the rails, moreover, the President could first order the contractor to keep the plant going and, if unheeded, seize the plant himself. (President Truman's failure to follow the procedural rules is what tilted the Supreme Court against him when it struck down his 1952 order seizing the nation's steel mills.)

By the quirks of the emergency law book, though, the 1916 statute covering railroads authorizes Presidential assumption of control only "in time of war." While President Truman relied on World War II's legal continuation to temporarily seize the railroads in 1946 and again in 1950, it is the Justice Department's view that this legal fiction can no longer be sustained.

Thus, however ringing Defense Secretary McNamara's statement that a rail strike would be "unthinkable" and would "cause critical and irremediable shortages for essential defense production," he and President Johnson say they can only look to Congress to prevent it. As last week's crushing House defeat of the Johnson settlement proposal made clear, though, the lawmakers are too fragmented to be counted upon. Seizure, binding arbitration, bars against industry-wide bargaining—all these were advocated by some faction, but none could command a House majority. Yet the stopgap strike bar finally voted is being resisted by the Senate and, as the two chambers grapple, the threat of a railroad shutdown continues unabated. (It's a matter of pure guesswork how long the rail unions will abide by their promise to forgo a strike while awaiting the verdict of a House-Senate conference.)

Still, haphazardness and sputtering on Congress' part aren't the only contributors to the emergency-preparedness mishmash, as the railroad episode also