

shows. If the Administration were better braced internally, it might be able to make some use of contingency plans that President Kennedy ordered drawn five years ago for "centralized control of all modes of transportation in an emergency for the movement of passenger and freight traffic of all types."

"HOPELESS"

It would probably take a nuclear holocaust to justify full implementation of such plan. If they existed, though, the President might be able to draw on them now in a limited way by invoking an obscure section of the Interstate Commerce Act that permits him to direct all carriers to give priority to troops and military goods in time of "threatened war." The railroad unions say they're ready to keep military cargoes moving during any strike. Despite the Kennedy directive to prepare for such emergency movements, however, Mr. McNamara has told Congress the task is "hopeless."

It's still likely, to be sure, that Congress will ultimately provide the Administration some new tool for preventing a walkout. And however clumsy the legislative workings in this instance, there's still much to be said in theory for tailoring emergency measures to fit the emergency, as against writing broader powers into the lawbooks for use in unforeseeable future circumstances. While an ever-cautious Lyndon Johnson may spurn the use of emergency powers, moreover, some successor might be inclined to use them excessively. It's hardly likely, for example, that the Congressman who wrote provisions for "emergency" regulation of the currency into 1917's Trading With the Enemy Act foresaw Franklin Roosevelt's 1939 use of this authority to justify imposition of consumer credit controls.

Both diplomatic and domestic political reasons have deterred the Johnson Administration from invoking powers that require fresh proclamations of crisis. The President forewent a call-up of military reserves in 1965 at least in part because it would have entailed making an unsettling new declaration of "national emergency."

But should a nuclear showdown ever come, the President would clearly assume authority, on paper, to do most anything, and all the perplexities of the lesser statutory triggers would be rendered moot. Under the 1950 Civil Defense Act, the President is authorized to raise and spend funds about as he sees fit, to seize any property and to "sell, lease, lend, transfer or deliver materials or perform services for civil defense purposes on such terms and conditions as he may prescribe and without regard to limitations of existing law."

Even if Congress hadn't provided such a sweeping mandate, moreover, many legal scholars contend the President could assert all the powers anyway, relying on his Constitutional prerogatives as Commander in Chief. "Short of an invasion or attack on the U.S., the act's provisions are blatantly unconstitutional, but under the conditions they envision I suspect that the President's authority would expand just as far without them," says Benet D. Gellman, author of a Virginia Law Review article on emergency planning.

LESSER POWERS CAN BE HANDY

All the same, many of the lesser power grants would appear to fill gaps that might prove vexing in a pinch. One of these directs suppliers to give priority to the Government's communications, power, materials and transport needs; others suspend civil service hiring regulations, agricultural marketing quotas, requirements for bidding on defense contracts and for publication of newly issued patents.

While the President could probably assert implicit powers as Commander in Chief in a lesser crisis also, there's probably utility in the provisions that spell out his emergency authority to lift Congressional lids on military manpower and to lower bars against realigning the military services' respective combat functions.

Mr. Johnson is already drawing on a number of these prerogatives when they can be invoked unobtrusively by the Truman declaration of 1950. Defense "set-asides" of copper, direct negotiation of defense contracts and extension of Navy enlistment terms are all based on the Truman "emergency."

Some of the authority is itself vague (one provision would appear to sanction a Government shutdown or takeover of all broadcast stations and even the telephone system whenever there's a "threat of war"). But it's the vagaries