

Executive Omnipotence

By TOM WICKER

WASHINGTON, July 28—President Nixon's approach to Peking, no matter how welcome it may be, was planned in secrecy, decided by Presidential fiat, carried out clandestinely and finally announced only as accomplished fact. Thus, whatever else it was, this grand diplomatic undertaking was another exercise in executive omnipotence. Though aimed at peace, the operation so far has not been much different from the hidden processes that carried the nation into the war in Vietnam, and its consequences could be even more far-reaching.

Faced with this kind of unchecked power, the Senate is pondering a resolution by Senator Cooper that would require the C.I.A. to keep germane Congressional committees as fully informed as the executive; and Senator Ervin's subcommittee is considering how the rules of "executive privilege" can be tightened. Trying for some leverage on the Paris talks, Senator Hartke has offered a resolution for Senate confirmation of Ambassador Bruce's successor as chief negotiator.

Senator Fulbright's Foreign Relations Committee, meanwhile, has been trying to find effective means to limit the most dangerous form of executive omnipotence—the waging of undeclared war. Congress has ample constitutional authority to do so, but a major problem is to avoid inhibiting or frustrating the President's ability to act in a crisis. Another question is whether Congress itself is prepared to accept greater responsibility in questions of war and peace.

William D. Rogers, a former State Department official, told the committee rather bluntly that if Congress intended to exercise an effective role in such matters, it would have to improve itself. "Your staffing is woefully inadequate. Your organization is wrong. Your ways of doing business are outmoded. And your conventional habits and practices are in need of fundamental reform."

He was, however, fundamentally in favor of Congressional action to redeem the situation created by what Prof. Alexander Bickel of Yale called the "unprecedented extension of Presidential power" that launched the Vietnam war in 1965. The decisions of that year, he said, "amounted to an all but explicit transfer of the power to declare war from Congress, where the Constitution lodged it, to the President, on whom the framers refused to confer it."

Constitutional scholars generally concede that the Constitution gives the President the power to repel or prevent

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sudden attack and to protect the lives of American citizens at home or abroad. But most agree with John Bassett Moore, the authority on international law, who said:

"There can hardly be any room for doubt that the framers of the Constitution, when they vested in Congress the power to declare war, never imagined they were leaving it to the executive to use the military and naval forces of the United States all over the world for the purpose of actually coercing other nations, occupying their territory, and killing their soldiers and citizens, all according to his own notions of the fitness of things, so long as he refrained from calling his action war or persisted in calling it peace."

The Foreign Relations Committee, therefore, is really considering what Mr. Rogers called "rules of practice" in exercising the war powers and not a "redistribution of power." The most practical proposals before it are a requirement for advance Congressional authorization before troop deployments that raise a "reasonable possibility" of combat (for instance, the stationing of troops in Europe in 1950, or President Kennedy's dispatch of thousands of "advisers" to Vietnam in 1961); and another requirement that a President who took emergency action to repel attack or protect American lives would have to obtain Congressional sanction within thirty days.

The latter provision probably would not have hindered President Truman from intervening in the Korean war in 1950, since Congress no doubt would have supported the repelling of invasion. It might have given Mr. Nixon trouble after the Cambodian invasion of 1970 and would certainly have forced him to greater consideration of Congressional and public opinion. And while President Johnson might have been able on his own to launch air raids in reply to the supposed Tonkin Gulf attack in 1964, he could hardly have launched the round-the-clock bombing of North Vietnam or sent a half-million troops to Asia without such authorization.

But there's the rub. Even if effective "rules of practice" are devised, the greatest responsibility to make them work will lie on Congress itself. It will need to know more and act more efficiently, and it will have to be resolute. When a President has sent troops into combat under the flags of peace, freedom and patriotism—no matter how fraudulently—it will take a bold and confident Congress to refuse him sanction.