

In The Nation: Curbing the Man, Not the Office

By TOM WICKER

WASHINGTON, May 13—As the Senate moves toward a vote on limiting military operations in Southeast Asia, a clear distinction needs to be made between the powers of the Presidency, on the one hand, and the particular policy of a particular President, on the other. About the first, Congress can do nothing by statute; about the second, it can do much, if it will.

The powers of the Presidency are stated and implied in the Constitution. That document states that the President is, among other things, the Commander in Chief of the Army and the Navy; and that statement implies a whole range of actions that a Commander in Chief must or may take.

Lincoln, for instance, construed his powers so broadly that, in Wilfred Binkley's description, in the emergency of secession he "proclaimed the slaves of those in rebellion emancipated. He devised and put into execution his own peculiar plan of reconstruction. In disregard of law he increased the Army and Navy beyond the limits set by statute. The privilege of the writ of habeas corpus was suspended wholesale and martial law declared. Public money in the sum of millions was deliberately spent without

Congressional appropriation."

Lincoln was able to do this largely because, as his Senate spokesman, Browning of Illinois, brilliantly stated: "When the Constitution made the President Commander in Chief of the Army and Navy of the United States it clothed him with the incidental powers necessary to a full, faithful and forceful performance of the duties of that high office; and to decide what are military necessities and to devise and to execute the requisite measures to meet them, is one of these incidents."

Particular Policy at Issue

Thus understood, the powers of the Presidency should not be at issue in the controversy over the so-called Church-Cooper amendment to the military sales bill. That amendment would only prohibit the use of appropriated funds for a particular Presidential policy—that is, for retaining American forces in Cambodia, for supplying military advisers or mercenaries to the Cambodian Government or for any combat air support of Cambodian forces.

Congress clearly has the right to limit a President's policy in such a fashion—just as, for instance, it has the right to say that foreign aid shall be given in loans rather than

in grants, or that most-favored-nation trade treatment shall not be given to certain nations. Last winter, President Nixon agreed to Congressional limitations on the use of ground troops in Laos and Thailand. And no one would suggest that when a President asks Congress to endorse his policy—as in the Tonkin Gulf resolution or the Mideast resolution requested by President Eisenhower—Congress would not have the right to reject it instead.

Passage of the Church-Cooper amendment in the Senate alone would be a strong psychological limitation on Presidential policy; if the House adopted it also, it would be a legislative mandate. President Nixon could veto it, but that would seem to belie his own pledges to withdraw from Cambodia; besides, if the amendment can be passed in the House in an election year, a Presidential veto would probably fly dangerously in the face of public opinion.

Nevertheless, this would not be a restriction on the powers of the Presidency, and that is the essential point. Senator Hugh Scott pointed out the other day that the President's "power to defend the country" as Commander in Chief is indisputable; so is his duty to defend the lives and safety of

American troops, and—in Browning's phrase—"to decide what are military necessities" and devise means to meet them. Nothing in the Church-Cooper amendment changes or can change that.

Commander in Chief's Right

For that reason, it would be superfluous to add to the amendment the exemption that the President could act in Cambodia when "required to protect the armed forces of the United States." That is always the Commander in Chief's duty and right and was, in fact, the justification invoked by Mr. Nixon for the Cambodian invasion. If he did not need the specific authority of such language two weeks ago, he would not need it in the future.

Similarly, what Mr. Nixon did in Cambodia then, he still could do—if as Commander in Chief he judged military emergency required it—were the Church-Cooper amendment to become law. That amendment would not make it impossible for the Commander in Chief to take extraordinary action when necessary or to give a "full, faithful and forceful performance" of his duties; rather it would place a limitation on Presidential policy that Congress is fully entitled to order.