

**The original documents are located in Box 17, folder “Foreign Assistance Act” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.**

### **Copyright Notice**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

NATIONAL SECURITY COUNCIL

May 5, 1976

Mr. Buchan

I would appreciate your comments on the attached draft I am preparing for Brent to send to the President.

I particularly need a legal opinion on the proposal in subpara (a) on page three. Does this remove the constitutional objections to the bill if such a waiver authority can remove the force of law from the concurrent resolution? Is this a fig leaf that will work?

Thanks.



Les Janka

*Called  
Cathay in his  
office 5/7/76*

THE WHITE HOUSE

WASHINGTON

ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM: BRENT SCOWCROFT

SUBJECT: Security Assistance Legislation --  
Future Options

Your veto of S. 2662 has negated the authorization of appropriations for the following accounts: Security Supporting Assistance, Middle East Special Requirements Fund, Military Assistance Program, International Military Education and Training, Foreign Credit Sales, International Narcotics Control and the Contingency Fund. The authorization for TQ funds was also eliminated. All other foreign aid appropriations have been authorized in legislation other than S. 2662.

There are essentially four options for continuing our foreign aid programs in FY 1976 and 1977:

1. An amended Continuing Resolution for all accounts or, as a variation, an appropriation for all accounts authorized in other legislation and continuance of S. 2662 accounts in an amended Continuing Resolution.

This option is only feasible if the Continuing Resolution is amended to provide special funding levels for key programs such as Security Supporting Assistance and Foreign Military Credit Sales. Such amendments would amount (in essence) to an appropriation bill and appear to be the remedy Congress is most likely to turn to in order to fund these programs. However, it is also likely that Congress will only amend the CRA to provide relief for the Middle East accounts and perhaps only to cover Israel.

2. Use H.R. 12203, the regular appropriation act, to appropriate all programs by waiving authorization requirements for accounts authorized in S. 2662.

Chairman Passman is reportedly considering this approach, but he would have to obtain a special rule permitting amendments to the Conference Report on H.R. 12203. This is an unlikely route given the reluctance of the authorizing committees to forego their bills, and even if it succeeded, your veto threat over the TQ funding contained in this bill would remain.

3. Repass a "clean" FY 76 authorization bill.

It is very unlikely that the two committees would, or could, even report such a bill, given the considerable dismay and even some outrage your veto of the bill has caused on the Hill.

4. A combined FY 76 and FY 77 authorization bill.

Chairman Morgan is already considering the possibility of such a bill with some of the more objectionable features of S. 2662 removed. Such a bill would have the advantage of avoiding similar restrictive amendments in the FY 77 legislation and would defer to a new Congress the debate over these issues.

I believe you are in a good position to extract significant concessions from Congress. Your veto of the bill has caused considerable dismay and even some outrage on the Hill. Members who had supported the bill are, understandably, very disappointed that their efforts in your support have been to no avail. Other members, however, particularly in the House, seem to recognize that they had gone too far in adopting legislative encroachments on your ability to conduct foreign relations. Additional factors enhance the mood for compromise:

-- Congress would like to avoid a prolonged struggle over security assistance in an election year. We understand that Chairman Morgan in particular would support an effort to achieve a compromise bill without the most objectionable provisions.

-- Congress is under intense pressure to provide support for Israel. Israeli military purchases this year have already exceeded, by about \$450 million, the \$300 million FMS authorized under the Continuing Resolution, even though DOD has so far managed to avoid holding up deliveries. In addition to the funding needs for current deliveries, a compromise on your threatened veto of Transition Quarter funds for Israel is also a high priority for Israel's supporters.



CONFIDENTIAL (GDS)

- Pro-Israeli members of both houses are also key supporters of many of the restrictive amendments (e.g., Solarz and Bingham in the House, Humphrey, Case and Javits in the Senate). In many cases, the desire of these individuals to ensure assistance for Israel may outweigh their support for restrictions on your authority.

These circumstances suggest a number of possibilities for a compromise that go beyond resort to an amended CRA or a rapid repassage of a cleaned-up FY 76 authorization bill.

Transition Quarter funding for the Middle East could be a sufficient incentive to allow the leadership to push through a more acceptable two-year authorization bill with broad support and crucial help from Israel's supporters. In exchange for Congressional agreement to expedite passage of a combined FY 76 and FY 77 authorization bill without restrictive amendments, the Administration would need to agree to additional FMS funding for Israel in the Transition Quarter. Because ten dollars of FMS guaranteed credit requires only one dollar of outlay, a \$250 million TQ Israeli FMS program could be supported by the \$25 million requested in your budget for the TQ, but now excess to our requirements.

The question of maintaining balance in the Middle East package could be eased to some extent by simply restoring in the TQ the supporting assistance funds cut from your FY 1976 budget request. This would provide an additional \$55 million for Egypt and Israel, \$5.0 million for Jordan, and \$10 million for Syria -- still not a balanced package but more acceptable to the Arabs -- without any increase in NOA over your original budget levels.

A new two-year authorization bill would be based upon S.2662 to provide some face-saving for the Congress, but the Committees would be asked to report a bill with the following changes:

- \* (a) Addition of a section authorizing you to waive any legislative veto by concurrent resolution. (This would retain procedures for Congressional participation in decisions on major sales, but would leave final decision with you, thus removing the constitutional objections.)
- (b) Elimination of the prohibition against restrictions on trade with Vietnam.

CONFIDENTIAL - GDS

KR 8/3/88

- (c) Retention of anti-discrimination policy provisions consistent with your announcement of November 20, 1975, but with the sanctions removed.
- (d) Elimination of \$9.0 billion annual ceiling on arms sales.

In addition to these essential changes, we could also ask for, but be prepared to compromise more liberally on the following issues, in recognition that the Human Rights provision for example has inordinate symbolic and political significance in both Houses:

- (e) Modification of the human rights provisions to avoid question of legality of assistance and providing waiver provisions.
- (f) Retention of the phaseout for grant military assistance and advisory groups "except as specifically authorized" but with the understanding that there would in fact be specific authorizations for essential country programs.
- (g) Inclusion of funding for FY 1977 programs at the levels you have requested.

A compromise along the foregoing lines would provide the authority and funds necessary to carry out your program while retaining some facesaving features for the supporters of S.2662. In particular, the prompt enactment of authorizing legislation for FY 1976 and FY 1977 would provide us with authority to resume FMS sales to Turkey, which could not be achieved through an amendment to continuing resolution funding for the remainder of this fiscal year. Also, an expedited two-year bill could avoid a renewed

fight over objectionable amendments to the FY 1977 legislation and defer until a new Congress the debate over these issues. Finally, an accommodation on security assistance legislation would help clear the air for subsequent consideration of the Spanish Treaty and the base agreements with Turkey, Greece and the Philippines.

On the other hand, such a compromise has some negative aspects for us. Your strong stand in opposition to assistance to Israel in the TQ has been effective in bringing home to both Israel and the Congress that we cannot go on funding excessive Israeli military procurement or the burgeoning debt which results; providing funds in the TQ will weaken that message while increasing still further Israeli outyear debt. On the other hand, there is evidence that your message has already struck home and that the Israelis now realize that whatever the outcome of the TQ issue they can no longer count on virtually unlimited U.S. assistance to fund their most ambitious military procurement plans.

If you are willing to consider such a compromise, we believe that the Israeli lobby could be persuaded to support you on the Hill by delivering crucial votes and pressuring members to keep the bill free from amendments which could result in a second veto. In addition to the votes of those who have supported you throughout the authorization process, we might be able to add those Republicans who supported restrictive amendments but may now be reluctant to undercut a Republican President in an election year, and those anxious to end the protracted debate on this issue. Therefore, we believe a majority in both Houses in favor of a clean two-year authorization is attainable.

With ill-feeling among some key members at your veto, a compromise will be difficult to sell. We cannot count on some supporters we would normally look to for backing. We would have to use with skill and toughness the leverage we now have while at the same time be prepared to offer considerable opportunity for conciliation and facesaving. Such a proposal will not receive ready acceptance in all quarters, but on balance, a compromise along the lines discussed would be extremely beneficial if it could be achieved. If you agree, I suggest that you authorize us to explore the possibility with key Congressional leaders and arrange a meeting with them for you to work out such an agreement.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

CONFIDENTIAL - GDS

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

~~CONFIDENTIAL~~ - GDS

INFORMATION

April 20, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN  
BRENT SCOWCROFT

SUBJECT: Follow-up Issues on the Israeli Transition  
Quarter Problems

The attached papers provide follow-up analyses on the five issues you raised at our Friday meeting:

- Tab A. Summary of the troublesome provisions of the Foreign Assistance Authorization Bill emphasizing the encroachments on Presidential prerogatives.
- Tab B. Analysis of the Congressional cuts in the MAP program indicating the impact and outlining the steps necessary to get an increase over the authorization and appropriation level.
- Tab C. Evaluation of the impact of the continuing resolution on foreign aid programs identifying the steps necessary to live with the continuing resolution through the Transition Quarter and the priority of these steps.
- Tab D. Analysis of the impact on the Israeli balance of payments from a continuation of current high levels of military imports suggesting that Israeli orders must be substantially reduced in 1977 and beyond.
- Tab E. Analysis of the quid pro quo on base agreements for Spain, Turkey, and Greece.

Subject to GDS of E.O. 11652  
Automatically Declassified  
December 31, 1982.

~~CONFIDENTIAL~~ - GDS

KR 8/3/88

CONFIDENTIAL - GDS

-2-

The net of these papers is that there are no apparent trade-offs on the Transition Quarter. A veto and going to a CRA brings no immediate relief and creates additional problems. Further the opportunities for restoration of funds for key countries are so limited as to not warrant relenting on the principle of no budget increases in the TQ.

CONFIDENTIAL - GDS

## Tab A

Analysis of Fiscal 1976 and Transition Quarter Authorization BillA. Amounts Authorized to be Appropriated

	(Millions of dollars)			
	1976		Transition Quarter	
	<u>Admin. Request</u>	<u>Conference Report</u>	<u>Admin. Request</u>	<u>Conference Report</u>
Grant Military Assistance (MAP)	394.5	228.7	27.2 <sup>1/</sup>	57.2
Foreign Military Credit Sales (FMS)	1,065.0	1,039.0	30.0	259.8
(Program)	(2,374.7)	(2,374.7)	(55.5)	(593.7)
Security Supporting Assistance (SSA)	1,848.3	1,766.2	28.2	441.6
Middle East Special Requirement Fund	50.0	50.0	10.0	12.5
Other	<u>107.5</u>	<u>83.0</u>	<u>30.0</u>	<u>20.7</u>
Total	3,465.3	3,166.9	125.4	791.8

1/ Excludes amounts requested for Spain which will be authorized separately.

Except for the 1976 grant MAP authorization, the amounts authorized for appropriation do not significantly constrain Administration flexibility. The effects of the reduced MAP authorization are softened by separating provisions for major recipients (Greece, Turkey, the Philippines) in proposed base agreements. (The MAP problem is discussed separately at Tab B.)

## B. Major Policy Problems

Concurrent Resolutions. The conference report retains provisions whereby Congress by concurrent resolution can within 30 calendar days forbid any sale of defense articles over \$25 million or any sale over \$7.0 million of "major defense equipment". This extends the existing Nelson-Bingham authority (which prohibits FMS transactions) to include the commercial transactions and significant sales under \$25 million. The President can exempt a sale from Congressional veto by certifying in the notification that an "emergency" exists that makes such a sale in the national interest. Congress can also use concurrent resolutions to terminate assistance to any country that violates the human rights of its citizens, as discussed below.

Human Rights. The legislation increases Congressional oversight of human rights: it establishes a yearly reporting procedure on the human rights situation in all countries receiving security assistance, and allows Congress to ask for more detailed reports on particular countries. (Language requiring the Secretary of State to ~~app~~<sup>pass</sup> judgment on the human rights practices of these countries has been deleted.) The legislation also creates the position of Coordinator for Human Rights within the Department of State as a Presidential appointment requiring Senate confirmation. The Coordinator is subordinate to the Secretary. Finally, the legislation allows Congress, within 90 days of receiving a Department of State report on human rights in a particular country, to terminate or restrict assistance to that country by concurrent resolution. No waiver authority is provided.

• \$9.0 Billion Arms Sales Ceiling. The Conference Report incorporates a worldwide \$9.0 billion ceiling on arms sales (FMS and commercial) beginning in FY 1977. The ceiling would be computed according to contract price of equipment actually delivered in the fiscal year; thus the full value of long-term contracts signed in FY 1977 will not be counted against the ceiling in that year, but incrementally in out years as deliveries are made. (This eases somewhat the pressure of the ceiling in FY 1977, but increases the problem in subsequent years.) The ceiling is to be automatically recomputed to account for inflation. There is a Presidential waiver which requires only that the President determine a particular sale above the ceiling to be in the national interest. Since arm sales must already fulfill this criterion, the waiver provision is intentionally lenient. While the ceiling as now constructed is largely symbolic and will have no significant effect on our arms sales activity, it does set a precedent and, depending on future Congressional predilections could either wither away or become a means of tight control as loopholes are closed.

Termination of Grant MAP and MAAGs. The Conference Report mandates the termination of the grant military assistance program (MAP) and of military assistance advisory groups (MAAGs) after fiscal year 1977, except as specifically authorized by Congress for each country. In short, if this bill becomes law, the traditionally worldwide MAP will have been converted into a number of small programs, individually justified against a presumption that all such activity should be phased out as soon as possible.

Anti-discrimination. The Conference Report embodies a Case Amendment mandating the cut-off of a particular FMS project if a U.S. citizen is



in defense articles and services to Turkey during the balance of ~~fiscal 1976~~ and the transition quarter, a softening of the present total prohibition on grants or sales.

Other Irregularities

- For Chile, the bill permits only cash sales through September 30, 1976.
- With respect to agent fees, the bill (1) mandates reports to the Congress; (2) instructs the Secretary of State to establish record keeping and reporting requirements for the private sector; and (3) provides for punishment of private individuals not complying with these regulations. These provisions are considered onerous by some corporations but should not affect the President directly.
- The bill suspends the President's authority to restrict trade with Vietnam for 180 days in the hope the Vietnamese will be more forthcoming in accounting for MIAs and returning remains of American war dead.
- The bill requires the President to submit an annual report including an arms control impact statement prepared by the Director of ACDA for each purchasing country which addresses the impact of such sales on our arms control efforts with that country and their impact on the stability of the region in which the country is located. In addition to being bureaucratically some, the statements will probably be political.

used as a vehicle to oppose military assistance to certain countries.

Conclusion

NSC and OMB believe the President should sign the legislation when it is finally passed and append a strong signing statement establishing a record for future efforts to remove the most objectionable provisions. All of the Departments and agencies concerned are expected to concur in this approach.

Possible MAP Add-Back

	(millions of dollars)	
	1976 <u>Budget</u>	1976 <u>Congress</u> <sup>1/</sup>
China (Taiwan)	.9	.9
Indonesia	19.4	14.3
Korea	74.0	60.5
Philippines	19.6	18.7
Thailand	28.3	17.6
Jordan	100.0	55.0
Tunisia	.2	.2
Yemen	1.5	1.5
Greece	50.0	34.1
Turkey	75.0	--
Portugal	.3	.3
Spain	.2	.2
Ethiopia	11.6	6.6
Latin America	4.6	2.9
General Costs	37.1	32.0
Unallocated balance	--	<u>8.5</u> <sup>2/</sup>
Total Program	422.8	253.3
Less Financing	<u>-28.3</u>	<u>-28.3</u>
Budget Authority	394.5	225.0 <sup>2/</sup>

<sup>1/</sup> Illustrative allocation of expected appropriations under country ceiling provisions and other limitations of conference report.

<sup>2/</sup> This amount could not be obligated if the various country limitations in the authorization conference report become law.

Inasmuch as it will probably not be possible to obligate grant MAP funds for Turkey, the effective cut in the balance of the country programs requested by the Administration is \$103 million in 1976. A reduction of this amount may result in some political disappointment, but it should not have a significant impact on the force goals of recipients since alternative financing should be available.

This 1976 reduction could be partially offset by seeking an additional appropriation of \$30 million in the transition quarter if the conference report provision authorizing one-quarter of the 1976 amount in the transition quarter becomes law. Since the country ceilings would also apply on a one-fourth basis, the Jordan program, for example, could be raised by only \$12.5 million in the transition quarter even if the full additional \$30 millions were appropriated.

Under a CRA, theoretically, none of the conference report ceilings would apply, but the Congress is likely to respond to a veto by incorporating similar ceilings in any CRA. Thus, the situation under a CRA is not likely to differ greatly from that described above under the conference report.

#### Conclusion

Given that the 1976 MAP reductions are not severe except for Turkey, and Turkey will not be eligible for grant MAP because of Section 620 (x) prohibition, efforts to restore either the 1976 levels or obtain a larger transition quarter appropriation are probably not warranted.

Continuing Resolution Problems

If the Foreign Assistance Appropriation Act were not enacted into law, funding for foreign aid programs would be provided by the continuing resolution authority (CRA) which has recently been extended through September 30. In most cases, the CR would provide considerably less funding than had been provided for in the appropriations conference committee (see attachment). The following is a listing of the major problems, by account, which would exist by operating under the CR. The list identifies the major special provisions which would be required if the programs were to continue under continuous resolution in order of priority.

- The amount available for foreign military credit sales would finance a program of \$1,063 million, compared with a request of \$2,550 million. The most immediate impact would be in Israel, which would have to default on payments for military supply deliveries.
- Israel would also be the first victim of a CR level in the Security Supporting Assistance account, where there would be \$824 million available against a request of \$1,865 million. The flow of U.S. financed civilian imports to Israel would be halted resulting in drastically reduced levels of domestic consumption. Program delays would occur in Egypt, Jordan and Syria, though the economic damage to those countries would be less serious than to Israel. Financing for Israel, however, would politically require that funds also be sought

- for Egypt, Jordan, and Syria, but Congress may not be willing to provide additional funding for these countries under CRA.
- The continuing resolution rate would seriously reduce the funds available for disaster relief for Guatemala, Cyprus, and worldwide relief, and would cause the U.S. to renege on funds pledged to assist victims of the recent Guatemala earthquakes.
  - No funds could be given to the International Development Association (IDA) on whose fourth replenishment the U.S. is already two years behind. By the end of this fiscal year, IDA will have committed more than \$1 billion against U.S. pledges, none of which has yet been paid.
  - While the Continuing Resolution technically provides funds for the grant military assistance program (MAP) in excess of the levels requested, in practical terms a limit is imposed by the appropriations conference level of \$253 million in 1976 and \$22 million in the TQ (see Tab B).
  - Funds for bilateral development assistance would be \$266 million below the amounts requested, resulting in a deferral or cancellation of almost one-quarter of the programs planned for this fiscal year.
  - Voluntary contributions to the UN, the OAS and the Indus Basin Development Fund would be reduced by \$80 million from the requested levels, causing serious problems for the UN development Programme, which is already in a financial crisis, and other important multilateral development programs.

- Reacting strongly to a veto -- OMB and NSC believe that Congress is not likely to make special provisions for any of these needs, except Israel. Therefore, a strategy of relying on a continuing resolution through the TQ runs high risks of even greater program disruption.

Foreign Assistance Funds Available for the 1976-TQ Period  
(Program in \$ millions)

	<u>Administration Request</u>	<u>Appropriate Conference</u> <u>(House)</u>	<u>(Senate)</u>	<u>Continuing Resolution</u>
<u>Security Assistance</u>				
Foreign Military Credit Sales	2,550.2	(2,550.2)	(2,805.2)	1,062.9
Security Supporting Assistance	1,864.6	(1,719.0)	(2,111.7)	824.0
Military Assistance Program	470.0	285.5		728.6
Military Training	39.0	28.8		---
Middle East Special Requirements	60.0	60.0		60.0
Total - Security Assistance	<u>4,983.8</u>	<u>(4,643.5)</u>	(5,291.2)	<u>2,675.5</u>
<u>Development Assistance</u>				
Bilateral Assistance (AID)				
Functional Assistance	1,138.6	924.8		871.8
Disaster Relief (Includes Cyprus Relief)	70.0	70.0		51.2
Other	311.5	307.8		297.5
Multilateral Assistance				
IDA	375.0	320.0		---
Asian Development Bank	170.6	145.6		170.6
Inter-American Development Bank	275.0	225.0		225.0
International Organization and Programs	253.5	218.4		174.3
Total - Development Assistance	<u>2,594.2</u>	<u>2,211.4</u>		<u>1,790.4</u>
<u>Other Foreign Assistance</u>	233.0	253.0		224.5
Total - Foreign Assistance	<u>7,811.0</u>	<u>(7,107.9)</u>	(7,755.6)	<u>4,690.4</u>



## Impact on Israeli Balance of Continued Military Imports

For purposes of illustrating the balance of payments impact of continuing military orders at the "current level," we have assumed that the 1976 level of \$2.0 billion in orders of new major items will be repeated in 1977 and 1978. This level of new orders, of course, is well above that considered necessary by the U.S. Government.

Because Israeli estimates of the follow-on and commercial orders of spare parts and other items substantially exceed DOD estimates, two alternative payment deficits are presented. Both assume a \$2.0 billion level on major new orders. The first deficit is based on a lower level of follow-on orders assumed by DOD, while the second shows the higher level assumed by the Israelis. Table II shows the overall balance of payments deficits taking into account civil as well as military imports and all sources of financing.

	Overall Balance of Payments (millions of dollars)		
	<u>CY 1976</u>	<u>CY 1977</u>	<u>CY 1978</u>
Deficit based on Defense estimates <u>1/</u>	-209	- 845	- 872
Deficit based on Israeli estimates <u>2/</u>	-761	-1269	-1415

There are still several areas of uncertainty about the estimates which are being worked out between U.S. and Israeli technicians (e.g., possible double counting of Israeli military imports and economic assumptions).

The table shows that continuation of the current high level of military imports will push Israel into a serious balance of payments deficit position which will be magnified if Israeli FMS purchases of follow-on supply items and commercial military orders are not constrained.

### Conclusion

Israeli military orders must be substantially reduced below the 1976 level if payments requirements are to be brought into line with projected FMS credit levels and large Israeli balance of payments deficits are to be avoided. The problem of excessive Israeli military imports would be exacerbated by additional TQ funding as it would reduce their incentives to restrain purchases.

TABLE II  
ISRAELI BALANCE OF PAYMENTS  
(\$ in Millions)

	<u>1976</u>	<u>1977</u>	<u>1978</u>
A. <u>Financing Requirements</u>			
Civilian Imports .....	-5,850	-6,450	-7,100
Indirect Military Imports ...	-525	-500	-500
Direct Military Imports (from U.S.) .....	-1,895	-2,119	-2,291
Third country and other military imports .....	-300	-300	-300
External debt maturities .....	<u>-660</u>	<u>-800</u>	<u>-900</u>
TOTAL .....	<u>-9,230</u>	<u>-10,169</u>	<u>-11,091</u>
B. <u>Financing Available</u>			
Export earnings .....	+4,455	+5,290	+6,085
Non-U.S. Government transfers	+2,100	+2,200	+2,300
U. S. Economic Aid .....	+755	+834	+834
U. S. Military Aid .....	<u>+1,711</u>	<u>+1,000</u>	<u>+1,000</u>
TOTAL .....	<u>+9,021</u>	<u>+9,324</u>	<u>+10,219</u>
C. Deficit using Department of Defense estimates .....	-209	-845	-872
D. Deficit if GOI military estimates used .....	<u>-761</u>	<u>-1,269</u>	<u>-1,415</u>

Table 1

Direct Military Imports from U.S.  
(\$ Millions)

	<u>FY 76</u>	<u>TQ</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 79</u>
Existing Cases	1,897	132	591	100	63
New Major Item Procurement					
FY 76	40	202	892	500	366
FY 77	-	-	242	892	500
FY 78				242	892
FY 79					242
Follow-on Supply Support	<u>-</u>	<u>80</u>	<u>360</u>	<u>450</u>	<u>550</u>
Total Payments Due	1,937	414	2,085	2,184	2,613
Funds Available	<u>2,429</u>	<u>492</u>	<u>1,078</u>	<u>1,000</u>	<u>1,000</u>
Carry Over Deficit	492	78	(1,007)	(1,184)	(1,613)
Additional payments due if use GOI estimates	<u>321</u>	<u>139</u>	<u>368</u>	<u>591</u>	<u>400</u>
Total Payments due	2,258	553	2,453	2,775	3,013
Funds Available	<u>2,429</u>	<u>171</u>	<u>1,000</u>	<u>1,000</u>	<u>1,000</u>
Carry over Deficit	171	(382)	(1,453)	(1,775)	(2,013)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION  
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 01399

REASON FOR WITHDRAWAL . . . . National security restriction

TYPE OF MATERIAL . . . . . Report(s)

TITLE . . . . . Quid Pro Quo for the Mediterranean  
DESCRIPTION . . . . . base agreements for Spain, Turkey and  
Greece.

CREATION DATE . . . . . 04/1976?

VOLUME . . . . . 2 pages

COLLECTION/SERIES/FOLDER ID . 001900208  
COLLECTION TITLE . . . . . Philip W. Buchen Files  
BOX NUMBER . . . . . 17  
FOLDER TITLE . . . . . Foreign Assistance Act

DATE WITHDRAWN . . . . . 08/12/1988  
WITHDRAWING ARCHIVIST . . . . LET



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 23, 1975

MEMORANDUM FOR PHIL AREEDA

Is the Ryan Amendment that was referred to in  
Evans and Novak today clearly constitutional?  
Or is there a question?

] Yes  
P. Areeda

DONALD RUMSFELD

§ 32 of '74 Foreign Aid Bill  
amending § 662

Carry at CIA; Leigh at State.



STATE - A.I.D. - USIA  
ROUTING SLIP

DATE

1/27/75

TO:	Name or Title	Orgen. Symbol	Room No.	Bldg.	Initials	Date
1.	Phillip Areeda	White House				
2.						
3.						
4.						
5.						

Approval	For Your Information	Note and Return
As Requested	Initial for Clearance	Per Conversation
Comment	Investigate	Prepare Reply
File	Justify	See Me
For Correction	Necessary Action	Signature

REMARKS OR ADDITIONAL ROUTING

Per telcon Saturday.

*File with copy  
of my reply to  
Memphis on 1/28/75  
Monroe Leigh*



FROM: (Name and Org. Symbol)	ROOM NO. & BLDG.	PHONE NO.
Monroe Leigh, Legal Adviser, Dept. of State		

*Warner* 143-6111

93D CONGRESS }  
2d Session }

HOUSE OF REPRESENTATIVES

*Mr. Lujan*

{ REPORT  
No. 93-1610 }

CONFERENCE REPORT  
ON  
FOREIGN ASSISTANCE ACT OF 1974

S. 3394

TO AMEND THE FOREIGN ASSISTANCE ACT OF 1961, AND  
FOR OTHER PURPOSES



DECEMBER 17, 1974



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1974

38-006

"(2) to any contract entered into prior to the date of enactment of this section with any person, organization, or agency of the United States Government to provide personnel to conduct, or assist in conducting, any such program.

Notwithstanding clause (2), subsection (a) shall apply to any renewal or extension of any contract referred to in such paragraph entered into on or after such date of enactment."

(b) Section 112 of the Foreign Assistance Act of 1961 is repealed.

#### REIMBURSABLE DEVELOPMENT PROGRAMS

SEC. 32. The Foreign Assistance Act of 1961 is amended by adding at the end of part III the following new section:

"SEC. 661. Reimbursable Development Programs.—The President is authorized to use up to \$1,000,000 of the funds made available for the purposes of this Act in each of the fiscal years 1975 and 1976 to work with friendly countries, especially those in which United States development programs have been concluded or those not receiving assistance under part I of this Act, in (1) facilitating open and fair access to natural resources of interest to the United States and (2) stimulation of reimbursable aid programs consistent with part I of this Act. Any funds used for purposes of this section may be used notwithstanding any other provision of this Act."

#### INTELLIGENCE ACTIVITIES AND EXCHANGES OF MATERIALS

SEC. 32. The Foreign Assistance Act of 1961 is amended by adding at the end of part III the following new sections:

"SEC. 662. Limitation on Intelligence Activities.—(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.

"(b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution.

"SEC. 663. Exchanges of Certain Materials.—(a) Notwithstanding any other provision of law, whenever the President determines it is in the United States national interest, he shall furnish assistance under this Act or shall furnish defense articles or services under the Foreign Military Sales Act pursuant to an agreement with the recipient of such assistance, articles, or services which provides that such recipient may only obtain such assistance, articles, or services in exchange for any necessary or strategic raw material controlled by such recipient. For the purposes of this section, the term 'necessary or strategic raw material' includes petroleum, other fossil fuels, metals,





minerals, or any other natural substance which the President determines is in short supply in the United States.

"(b) The President shall allocate any necessary or strategic raw material transferred to the United States under this section to any appropriate agency of the United States Government for stockpiling, sale, transfer, disposal, or any other purpose authorized by law.

"(c) Funds received from any disposal of materials under subsection (b) shall be deposited as miscellaneous receipts in the United States Treasury."

WAIVER OF PROHIBITION AGAINST ASSISTANCE TO COUNTRIES ENGAGING  
IN CERTAIN TRADE

SEC. 33. Chapter 3 of part III of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

"SEC. 664. Waiver of Prohibition Against Assistance to Countries Engaging in Certain Trade.—Any provision of this Act which prohibits assistance to a country because that country is engaging in trade with a designated country, or because that country permits ships or aircraft under its registry to transport any equipment, materials, or commodities to or from such designated country, may be waived by the President if he determines that such waiver is in the national interest and reports such determination to the Congress."

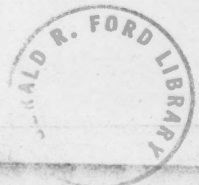
POLICY WITH RESPECT TO INDOCHINA

SEC. 34. (a) The Congress finds that the cease-fire provided for in the Paris Agreement on Ending the War and Restoring Peace in Vietnam has not been observed by any of the Vietnamese parties to the conflict. Military operations of an offensive and defensive nature continue throughout South Vietnam. In Cambodia, the civil war between insurgent forces and the Lon Nol government has intensified, resulting in widespread human suffering and the virtual destruction of the Cambodian economy.

(b) The Congress further finds that continuation of the military struggles in South Vietnam and Cambodia are not in the interest of the parties directly engaged in the conflicts, the people of Indochina or world peace. In order to lessen the human suffering in Indochina and to bring about a genuine peace there, the Congress urges and requests the President and the Secretary of State to undertake the following measures:

(1) to initiate negotiations with representatives of the Soviet Union and the People's Republic of China to arrange a mutually agreed-upon and rapid de-escalation of military assistance on the part of the three principal suppliers of arms and material to all Vietnamese and Cambodian parties engaged in conflict;

(2) to urge by all available means that the Government of the Khmer Republic enter in negotiations with representatives of the Khmer Government of National Union for the purpose of arranging an immediate cease-fire and political settlement of the conflict; and to use all available means to establish contact with the Khmer Government of National Union, and to urge them to participate in such negotiations. The United States should urge all Cambodian parties to use the good offices of the United Nations





# CENTRAL INTELLIGENCE AGENCY

Office of Legislative Counsel

Washington, D. C. 20505

Telephone: 351-6121 (Code 143-6121)

28 January 1975

**TO:** Mr. Philip Areeda  
Legal Counsel Staff  
White House

*Phil*

Per our conversation, attached is an excerpt of the Foreign Assistance Act amendments of 1974 containing the provision on intelligence activities.

*George*

George L. Cary  
Legislative Counsel

*Goes with correspondence with Rumsfeld on Ryan Amendment*



FAA

88 STAT. 1804

Pub. Law 93-559

- 10 -

December 30, 1974

22 USC 2420.

"SEC. 660. Prohibiting Police Training.—(a) On and after July 1, 1975, none of the funds made available to carry out this Act, and none of the local currencies generated under this Act, shall be used to provide training or advice, or provide any financial support, for police, prisons, or other law enforcement forces for any foreign government or any program of internal intelligence or surveillance on behalf of any foreign government within the United States or abroad.

"(b) Subsection (a) of this section shall not apply—

42 USC 3763.

"(1) with respect to assistance rendered under section 515(c) of the Omnibus Crime Control and Safe Streets Act of 1968, with respect to any authority of the Drug Enforcement Administration or the Federal Bureau of Investigation which relates to crimes of the nature which are unlawful under the laws of the United States, or with respect to assistance authorized under section 482 of this Act; or

22 USC 2291a.

"(2) to any contract entered into prior to the date of enactment of this section with any person, organization, or agency of the United States Government to provide personnel to conduct, or assist in conducting, any such program.

Notwithstanding clause (2), subsection (a) shall apply to any renewal or extension of any contract referred to in such paragraph entered into on or after such date of enactment."

Repeal.

22 USC 2151j.

(b) Section 112 of the Foreign Assistance Act of 1961 is repealed.

#### REIMBURSABLE DEVELOPMENT PROGRAMS

22 USC 2421.

SEC. 31. The Foreign Assistance Act of 1961 is amended by adding at the end of part III the following new section:

22 USC 2151.

"SEC. 661. Reimbursable Development Programs.—The President is authorized to use up to \$1,000,000 of the funds made available for the purposes of this Act in each of the fiscal years 1975 and 1976 to work with friendly countries, especially those in which United States development programs have been concluded or those not receiving assistance under part I of this Act, in (1) facilitating open and fair access to natural resources of interest to the United States and (2) stimulation of reimbursable aid programs consistent with part I of this Act. Any funds used for purposes of this section may be used notwithstanding any other provision of this Act."

#### INTELLIGENCE ACTIVITIES AND EXCHANGES OF MATERIALS

22 USC 2422.

SEC. 32. The Foreign Assistance Act of 1961 is amended by adding at the end of part III the following new sections:

Presidential  
report to  
Congress.

"SEC. 662. Limitation on Intelligence Activities.—(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.

50 USC 1541  
note.

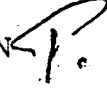
"(b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution.



## THE WHITE HOUSE

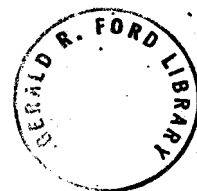
WASHINGTON

MEMORANDUM FOR: THE PRESIDENT

FROM: PHIL BUCHEN 

SUBJECT: List of Principal Questionable Provisions in  
Conference Bill on International Security Assistance  
Arms Export Control Act of 1976

- 1) Congressional power by concurrent resolution:
  - a) To block an FMS sale of over \$25 million (in current act).
  - b) To block commercial sale of defense articles over \$25 million.
  - c) To block an FMS or commercial sale of major defense equipment over \$7.0 million.
  - d) To terminate or restrict military assistance for a country which Congress determines to be in violation of internationally recognized human rights.
  - e) To disapprove transfer to third countries of defense articles provided under this and prior foreign assistance legislation.
  - f) To terminate military assistance for a country which the Congress finds has violated any condition of the assistance.
- 2) Detailed mechanism for annual general reports and for country reports on human rights practices of recipient countries, on the basis of which Congress may terminate or restrict assistance.
- 3) \$9.0 billion arms sales ceiling.
- 4) Restrictions imposed to impact on civil rights practices of foreign governments, including lack of flexibility by reason of too restrictive waiver authority.
- 5) Termination of grant MAP and MAAGs unless specifically authorized by Congress.



principal  
List of questionable provisions in Conference Bill on  
International Security Assistance Arms Export Control Act of 1976  
1) Congressional ~~vote~~ power by concurrent resolution:

- a) <sup>To block</sup> an FMS sale of over \$25 million (in current act)
- b) <sup>To block</sup> a commercial sale of defense articles over \$25 million
- c) <sup>To block</sup> an FMS or commercial <sup>sale</sup> of major defense equipment over \$7 million
- d) To terminate or restrict military assistance for a country which Congress determines to be in violation of internationally recognized human rights.
- e) To disapprove transfer to third countries of defense articles provided under this and prior foreign assistance legislation
- f) To terminate military assistance for a country which the Congress finds has violated <sup>any</sup> condition of the assistance.
- 2) Detailed mechanism for annual general reports and <sup>for</sup> country reports on human rights practices of recipient countries, on the basis of which Congress may terminate or restrict assistance.
- 3) \$9 billion arms sales ceiling.
- 4) Restrictions imposed to impact on civil rights practices of foreign governments, including lack of flexibility by reason of too restrictive waiver authority.
- 5) Termination of grant MAP and MAAGs unless specifically authorized by Congress.





**ASSOCIATE DIRECTOR  
OFFICE OF MANAGEMENT AND BUDGET**

5/4/76

TO: Mr. Buchen ✓  
Mr. Marsh  
Mr. Janka  
Mr. Linder

FROM: Mr. Ogilvie

Proposed final version.

~~Please phone any comments to~~

~~Bob Linder this morning.~~

Attachment



## TO THE SENATE OF THE UNITED STATES

I am returning, without my approval, S. 2662, a bill that would seriously obstruct the exercise of the President's constitutional responsibilities for the conduct of foreign affairs. In addition to raising fundamental constitutional problems, this bill includes a number of unwise restrictions that would seriously inhibit my ability to implement a coherent and consistent foreign policy:

- ° By removing my restrictions on trade with North and South Vietnam, S. 2662 undercuts any incentive the North Vietnamese may have to provide an accounting for our MIAs.
- ° By imposing an arbitrary arms sale ceiling, it limits our ability to respond to the legitimate defense needs of our friends and obstructs U.S. industry from competing fairly with foreign suppliers.
- ° By requiring compliance by recipient countries with visa practices or human rights standards set by our Congress as a condition for continued U.S. assistance, the bill ignores the many other complex factors which should govern our relationships with those countries; and it impairs our ability to deal by more appropriate means with objectionable practices of other nations.
- ° By mandating a termination of grant military assistance and military assistance advisory groups after fiscal year 1977 unless specifically authorized by Congress, the bill vitiates two important tools which enable us to respond to the needs of many countries and maintain vital controls over military sales programs.



The bill also contains several provisions which violate the constitutional separation of executive and legislative powers. By a concurrent resolution passed by a majority of both Houses, programs authorized by the Congress can be later reviewed, further restricted, or even terminated. Such frustration of the ability of the Executive to make operational decisions violates the President's constitutional authority to conduct our relations with other nations.

While I encourage increased Congressional involvement in the formulation of foreign policy, the pattern of unprecedented restrictions contained in this bill requires that I reject such Congressional encroachment on the Executive Branch's constitutional authority to implement that policy.

#### Constitutional Objections

"S. 2662 contains an array of constitutionally objectionable"

[etc. -- no change in attached pages 1A, 2-5]





17A

defense needs of our friends, and at the same time would create obstacles to U.S. industry competing fairly with foreign suppliers.

-- In disregard of the many complex factors of our relationships with other countries, the bill imposes strict provisions for terminating U.S. assistance to countries where discriminatory visa practices or human rights violations do not meet standards desired by Congress. Such provisions not only may disrupt relationships important to our interest, but can actually impair our ability to seek modification of such practices.

-- It mandates a termination of grant military assistance and military assistance advisory groups after fiscal year 1977 unless specifically authorized by Congress, and this eliminates two important tools which enable us to respond to the needs of many countries and at the same time maintain vital controls over military sales programs.

While I encourage increased Congressional involvement in the formulation of foreign policy, the pattern of unprecedented restrictions contained in this bill requires that I reject such Congressional encroachment on the Executive Branch's constitutional authority to implement that policy.

#### Constitutional Objections

hi- ( ) S. 2662 contains an array of constitutionally objectionable requirements whereby virtually all significant arms transfer decisions would be subjected on a case-by-case basis to a period of delay for Congressional review and possible disapproval by concurrent resolution of the Congress. These provisions are incompatible with the express provision in the Constitution that a resolution having the force and effect of law must be presented to the President and, if disapproved, repassed by a two-thirds majority in the Senate and the House of Representatives. They extend to the Congress the power to prohibit specific transactions authorized by law without changing the law -- and without following the constitutional process such a change would require. Moreover, they would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers. Congress can, by duly adopted legislation,

authorize or prohibit such actions as the execution of

*contracts or the issuance of export licenses; but Congress*

cannot itself participate in the Executive functions of deciding whether to enter into a lawful contract or issue a lawful license, either directly or through the disapproval procedures contemplated in this bill.

The erosion of the basic distinction between legislative and Executive functions which would result from the enactment of S. 2662, displays itself in an increasing volume of similar legislation which this Congress has passed or is considering. Such legislation would pose a serious threat to our system of government, and would forge impermissible shackles on the President's ability to carry out the laws and conduct the foreign relations of the United States. The President cannot function effectively in domestic matters, and speak for the nation authoritatively in foreign affairs, if his decisions under authority previously conferred can be reversed by a bare majority of the Congress. Also, the attempt of Congress to become a virtual co-administrator in operational decisions would seriously distract it from its proper legislative role. Inefficiency, delay, and uncertainty in the management of our nation's foreign affairs would eventually follow.

Apart from these basic constitutional deficiencies which appear in six sections of the bill, S. 2662 is faulty legislation, containing numerous unwise restrictions.

#### Trade with Vietnam

The bill would suspend for 180 days the President's authority to control certain trade with North and South Vietnam, thereby removing a vital bargaining instrument for the settlement of a number of differences between the United States and these countries. I have the deepest sympathy for the intent of this provision, which is to obtain an accounting for Americans missing in action in Vietnam. However, the enactment of this legislation would not provide any real assurances that the Vietnamese would now fulfill their long-standing obligation to provide such

an accounting. Indeed, the establishment of a direct linkage between trade and accounting for those missing in action might well only perpetuate Vietnamese demands for greater and greater concessions.

This Administration is prepared to be responsive to Vietnamese action on the question of Americans missing in action. Nevertheless, the delicate process of negotiations with the Vietnamese cannot be replaced by a legislative mandate that would open up trade for a specified number of days and then terminate that trade as a way to achieve our diplomatic objectives. This mandate represents an unacceptable attempt by Congress to manage the diplomatic relations of the United States.

#### Annual Ceiling on Arms Sales

A further objectionable feature of S. 2662 is an annual ceiling of \$9.0 billion on the total of government sales and commercial exports of military equipment and services. In our search to negotiate mutual restraints in the proliferation of conventional weapons, this self-imposed ceiling would be an impediment to our efforts to obtain the cooperation of other arms-supplying nations. Such an arbitrary ceiling would also require individual transactions to be evaluated, not on their own merits, but on the basis of their relationship to the volume of other, unrelated transactions. This provision would establish an arbitrary, overall limitation as a substitute for case-by-case analyses and decisions based on foreign policy priorities and the legitimate security needs of our allies and friends.

#### Discrimination and Human Rights

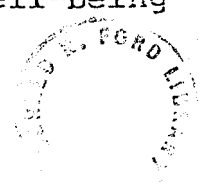
This bill also contains well-intended but misguided provisions to require the termination of military cooperation with countries which engage in practices that discriminate against United States citizens or practices constituting a consistent pattern of gross human rights



violations. This Administration is fully committed to a policy of actively opposing and seeking the elimination of discrimination by foreign governments against United States citizens on the basis of their race, religion, national origin or sex, just as the Administration is fully supportive of internationally recognized human rights as a standard for all nations to respect. The use of the proposed sanctions against sovereign nations is, however, an awkward and ineffective device for the promotion of those policies. These provisions of the bill represent further attempts to ignore important and complex policy considerations by requiring simple legalistic tests to measure the conduct of sovereign foreign governments. If Congress finds such conduct deficient, specific actions by the United States to terminate or limit our cooperation with the government concerned would be mandated. By making any single factor the effective determinant of relationships which must take into account other considerations, such provisions would add a new element of uncertainty to our security assistance programs and would cast doubt upon the reliability of the United States in its dealings with other countries. Moreover, such restrictions would most likely be counterproductive as a means for eliminating discriminatory practices and promoting human rights. The likely result would be a selective disassociation of the United States from governments unpopular with the Congress, thereby diminishing our ability to advance the cause of human rights through diplomatic means.

Termination of Grant Military Assistance and  
Advisory Groups

The legislation would terminate grant military assistance and military assistance advisory groups after fiscal year 1977 except where specifically authorized by Congress, thus creating a presumption against such programs and missions. Such a step would have a severe impact on our relations with other nations whose security and well-being



are important to our own national interests. In the case of grant assistance, it would limit our flexibility to assist countries whose national security is important to us but which are not themselves able to bear the full cost of their own defense. In the case of advisory groups, termination of missions by legislative fiat would impair close and long-standing military relationships with important allies. Moreover, such termination is inconsistent with increasing Congressional demands for the kind of information about and control over arms sales which these groups now provide. Such provisions would insert Congress deeply into the details of specific country programs, a role which Congress has neither the information nor the organizational structure to play.

\* \* \* \* \*

I particularly regret that, notwithstanding the spirit of genuine cooperation between the Legislative and Executive Branches that has characterized the deliberations on this legislation, we have been unable to overcome the major policy differences that exist.

In disapproving this bill, I act as any President would, and must, to retain the ability to function as the foreign policy leader and spokesman of the Nation. In world affairs today, America can have only one foreign policy. Moreover, that foreign policy must be certain, clear and consistent. Foreign governments must know that they can treat with the President on foreign policy matters, and that when he speaks within his authority, they can rely upon his words.

Accordingly, I must veto the bill.

THE WHITE HOUSE,

*Military assistance*

Tuesday 5/4/76

11:25 Norman Kravitz is in town from Grand Rapids for a conference of the American Israel Public Affairs Committee. They have been discussing two bills which the President is supposed to be acting on today or tomorrow --

1. Foreign aid authorization bill
2. Appropriations bill for transition funding on foreign aid

His only purpose is to express a certain concern with regard to what the President may or may not do.

If they are vetoed (which the President has already threatened to do), they will have a big effect on the state of Israel , which is what he's concerned about.

Didn't know where to call but called here because he is from Grand Rapids.

*Talked to  
Russ Rourke about  
this*



*Mr. B copy*  
*has*  
To the Senate

*Military Assistance*

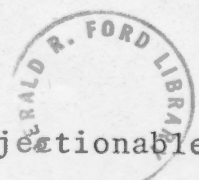
I am returning, without my approval, S. 2662, a bill that would make unacceptable encroachments upon the constitutional responsibilities of the President for the conduct of foreign affairs and do serious harm to the long-term foreign policy interests of the United States.

This legislation authorizes appropriations for security assistance programs for fiscal year 1976. These programs are of great importance to our efforts to promote a more stable and secure world in which constructive international cooperation can flourish. However, the numerous restrictions and cumbersome procedures contained in the bill would seriously impair the ability of the Executive Branch to perform its proper functions.

#### Constitutional Objections

S. 2662 contains an array of constitutionally objectionable requirements whereby virtually all significant arms transfer decisions would be subjected on a case-by-case basis to a period of delay for Congressional review and possible disapproval by concurrent resolution of the Congress.

These provisions are incompatible with the express provision in the Constitution that a resolution having the force and effect of law must be presented to the President



and, if disapproved, repassed by a two-thirds majority in the Senate and the House of Representatives. They extend to the Congress the power to change the law to prohibit specific transactions through a process not permitted under the Constitution for amending the law. Moreover, they would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers. Congress can, by duly adopted legislation, authorize or prohibit such actions as the execution of contracts or the issuance of export licenses; but Congress cannot itself participate in the Executive functions of entering into a contract or issuing a license, either directly or through the disapproval procedures contemplated in this bill.

The erosion of the basic distinction between legislative and Executive functions that would result from the enactment of S. 2662 would pose a serious threat to our system of government, and would forge impermissible shackles on the President's ability to carry out the laws and conduct the foreign relations of the United States. The President cannot speak for the nation under circumstances where his operational





decisions can be frustrated by Congress. Also, the attempt of Congress to become a virtual co-administrator in operational decisions would seriously distract it from its proper legislative role. Inefficiency, delay, and uncertainty in the management of our nation's foreign affairs would eventually follow.

Apart from these basic constitutional objections to this bill, S. 2662 is faulty legislation, containing numerous unwise restrictions.

#### Trade with Vietnam

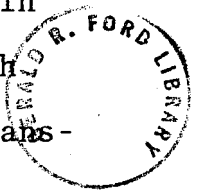
The bill would suspend for 180 days the President's authority to control certain trade with North and South Vietnam, thereby removing a vital bargaining instrument for the settlement of a number of differences between the United States and these countries. I have the deepest sympathy for the intent of this provision, which is to obtain an accounting for Americans missing in action in Vietnam. However, the enactment of this legislation would not provide any real assurances that the Vietnamese would now fulfill their long standing obligation to provide such an accounting. Indeed, the establishment of a direct linkage between trade and missing in action might well only perpetuate Vietnamese demands for greater and greater concessions.



This Administration is prepared to be responsive to Vietnamese action on the question of Americans missing in action. Nevertheless, the delicate process of negotiations with the Vietnamese cannot be replaced by a legislative mandate that would open up trade for a specified number of days and then terminate that trade as a way to achieve our diplomatic objectives. This mandate represents an unacceptable attempt by Congress to manage the diplomatic relations of the United States.

#### Annual Ceiling on Arms Sales

A further objectionable feature of S. 2662 is an annual ceiling of \$9.0 billion on the total of government sales and commercial exports of military equipment and services. In our search to negotiate mutual restraints in the proliferation of conventional weapons this self-imposed ceiling would be an impediment to our efforts to obtain the cooperation of other arms-supplying nations. Such an arbitrary ceiling would also require individual transactions to be evaluated, not on their own merits, but on the basis of their relationship to the volume of other, unrelated transactions. This provision would establish an arbitrary, overall limitation as a substitute for



case by case analyses and decisions based on foreign policy priorities.

### Discrimination and Human Rights

This bill also contains well intended but misguided provisions to require the termination of military cooperation with countries which engage in practices that discriminate against United States citizens or practices constituting a consistent pattern of gross human rights violations. This Administration is fully committed to a policy of actively opposing and seeking the elimination of discrimination by foreign governments against United States citizens on the basis of their race, religion, national origin or sex, just as the Administration is fully supportive of internationally recognized human rights as a standard for all nations to respect. The use of automatic sanctions against sovereign States is, however, an awkward and ineffective device for the promotion of those policies. These provisions of the bill represent further attempts to ignore important and complex policy considerations by requiring simple legalistic tests to measure the conduct of sovereign foreign governments. If Congress finds such conduct deficient, specific actions by the United States to terminate or



limit our cooperation with the government concerned would be mandated. By making any single factor the effective determinant of relationships which must take into account other considerations, such provisions would add a new element of uncertainty to our security assistance programs and would cast doubt upon the reliability of the United States in its dealings with other countries. Moreover, such restrictions would most likely be counterproductive as a means for eliminating discriminatory practices and promoting human rights. The likely result of such actions will be a selective disassociation of the U.S. with governments unpopular with the Congress, thereby diminishing the ability of the U.S. to advance the cause of human rights through diplomatic means.

Termination of Grant Military Assistance and  
Advisory Groups

The legislation would terminate grant military assistance and military assistance advisory groups after fiscal year 1977 except where specifically authorized by Congress, thus creating<sup>a</sup> a presumption against such programs and missions. In the case of grant assistance, this would limit our flexibility to assist countries whose national security is important to us

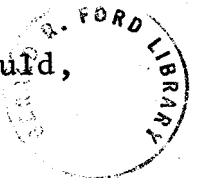


but which are not themselves able to bear the full cost of their own defense. In the case of advisory groups, termination of missions by legislative fiat would undo close and long standing military relationships with important allies. Moreover, such termination is inconsistent with increasing Congresssional demands for the kind of information about and control over arms sales which these groups now provide. Such provisions would insert Congress deeply into the details of specific country programs, a role which Congress has neither the information nor the organizational structure to play.

\* \* \* \* \*

I particularly regret that, notwithstanding the spirit of genuine cooperation between the Legislative and Executive Branches that has characterized the deliberations on this legislation, we have been unable to overcome the major policy differences that exist.

In disapproving this bill, I act as any President would, and must, to retain the ability to function as the foreign policy leader and spokesman of the Nation. In world affairs today, America can have only one foreign



policy. Moreover, that foreign policy must be certain, clear and consistent. Foreign governments must know that they can treat with the President on foreign policy matters, and that when he speaks within his authority, they can rely upon his words.

Accordingly, I must veto the bill.

The White House

April , 1976



MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

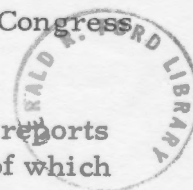
*Military  
assistance*  
*4/27/76*

MEMORANDUM FOR: THE PRESIDENT

FROM: PHIL BUCHEN

SUBJECT: List of Principal Questionable Provisions in  
Conference Bill on International Security Assistance  
Arms Export Control Act of 1976

- 1) Congressional power by concurrent resolution:
  - a) To block an FMS sale of over \$25 million (in current act).
  - b) To block commercial sale of defense articles over \$25 million.
  - c) To block an FMS or commercial sale of major defense equipment over \$7.0 million.
  - d) To terminate or restrict military assistance for a country which Congress determines to be in violation of internationally recognized human rights.
  - e) To disapprove transfer to third countries of defense articles provided under this and prior foreign assistance legislation.
  - f) To terminate military assistance for a country which the Congress finds has violated any condition of the assistance.
- 2) Detailed mechanism for annual general reports and for country reports on human rights practices of recipient countries, on the basis of which Congress may terminate or restrict assistance.
- 3) \$9.0 billion arms sales ceiling.
- 4) Restrictions imposed to impact on civil rights practices of foreign governments, including lack of flexibility by reason of too restrictive waiver authority.
- 5) Termination of grant MAP and MAAGs unless specifically authorized by Congress.



MAY 7, 1976

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

---

THE WHITE HOUSE

REMARKS OF THE PRESIDENT  
UPON VETOING  
S. 2662

THE CABINET ROOM

11:24 A.M. EDT

I am returning herewith without my approval S. 2662, which authorizes foreign aid for the fiscal year because the bill would seriously obstruct the exercise of the President's constitutional responsibilities for the conduct of foreign affairs.

In addition to raising fundamental constitutional problems, this bill includes a number of unwise restrictions that would seriously inhibit my ability to implement a coherent and consistent foreign policy. While I encourage increased Congressional involvement in the formulation of foreign policy, the pattern of unprecedented restrictions contained in this bill requires that I reject such Congressional encroachment on the Executive Branch's constitutional authority to implement that policy.

Thank you very much.

END (AT 11:25 A.M. EDT)





MAY 7, 1976

Office of the White House Press Secretary

*Military  
Assist J. S. G.*

---

THE WHITE HOUSE

TO THE SENATE OF THE UNITED STATES:

I am returning, without my approval, S. 2662, a bill that would seriously obstruct the exercise of the President's constitutional responsibilities for the conduct of foreign affairs. In addition to raising fundamental constitutional problems, this bill includes a number of unwise restrictions that would seriously inhibit my ability to implement a coherent and consistent foreign policy:

- ° By imposing an arbitrary arms sale ceiling, it limits our ability to respond to the legitimate defense needs of our friends and obstructs U.S. industry from competing fairly with foreign suppliers.
- ° By requiring compliance by recipient countries with visa practices or human rights standards set by our Congress as a condition for continued U.S. assistance, the bill ignores the many other complex factors which should govern our relationships with those countries; and it impairs our ability to deal by more appropriate means with objectionable practices of other nations.
- ° By removing my restrictions on trade with North and South Vietnam, S. 2662 undercuts any incentive the North Vietnamese may have to provide an accounting for our MIAs.
- ° By mandating a termination of grant military assistance and military assistance advisory groups after fiscal year 1977 unless specifically authorized by Congress, the bill vitiates two important tools which enable us to respond to the needs of many countries and maintain vital controls over military sales programs.

The bill also contains several provisions which violate the constitutional separation of executive and legislative powers. By a concurrent resolution passed by a majority of both Houses, programs authorized by the Congress can be later reviewed, further restricted, or even terminated. Such frustration of the ability of the Executive to make operational decisions violates the President's constitutional authority to conduct our relations with other nations.

While I encourage increased Congressional involvement in the formulation of foreign policy, the pattern of unprecedented restrictions contained in this bill requires that I reject such Congressional encroachment on the Executive Branch's constitutional authority to implement that policy.

more



### Constitutional Objections

With regard to the Constitutional issues posed by S.2662, this bill contains an array of objectionable requirements whereby virtually all significant arms transfer decisions would be subjected on a case-by-case basis to a period of delay for Congressional review and possible disapproval by concurrent resolution of the Congress. These provisions are incompatible with the express provision in the Constitution that a resolution having the force and effect of law must be presented to the President and, if disapproved, repassed by a two-thirds majority in the Senate and the House of Representatives. They extend to the Congress the power to prohibit specific transactions authorized by law without changing the law -- and without following the constitutional process such a change would require. Moreover, they would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers. Congress can, by duly adopted legislation, authorize or prohibit such actions as the execution of contracts or the issuance of export licenses, but Congress cannot itself participate in the Executive functions of deciding whether to enter into a lawful contract or issue a lawful license, either directly or through the disapproval procedures contemplated in this bill.

The erosion of the basic distinction between legislative and Executive functions which would result from the enactment of S. 2662, displays itself in an increasing volume of similar legislation which this Congress has passed or is considering. Such legislation would pose a serious threat to our system of government, and would forge impermissible shackles on the President's ability to carry out the laws and conduct the foreign relations of the United States. The President cannot function effectively in domestic matters, and speak for the nation authoritatively in foreign affairs, if his decisions under authority previously conferred can be reversed by a bare majority of the Congress. Also, the attempt of Congress to become a virtual co-administrator in operational decisions would seriously distract it from its proper legislative role. Inefficiency, delay, and uncertainty in the management of our nation's foreign affairs would eventually follow.

Apart from these basic constitutional deficiencies which appear in six sections of the bill, S. 2662 is faulty legislation, containing numerous unwise restrictions.

### Annual Ceiling on Arms Sales

A further objectionable feature of S. 2662 is an annual ceiling of \$9.0 billion on the total of government sales and commercial exports of military equipment and services. In our search to negotiate mutual restraints in the proliferation of conventional weapons, this self-imposed ceiling would be an impediment to our efforts to obtain the cooperation of other arms-supplying nations. Such an arbitrary ceiling would also require individual transactions to be evaluated, not on their own merits, but on the basis of their relationship to the volume of other, unrelated transactions. This provision would establish an arbitrary, overall limitation as a substitute for case-by-case analyses and decisions based on foreign policy priorities and the legitimate security needs of our allies and friends.

more

### Discrimination and Human Rights

This bill also contains well-intended but misguided provisions to require the termination of military cooperation with countries which engage in practices that discriminate against United States citizens or practices constituting a consistent pattern of gross human rights violations. This Administration is fully committed to a policy of not only actively opposing but also seeking the elimination of discrimination by foreign governments against United States citizens on the basis of their race, religion, national origin or sex, just as the Administration is fully supportive of internationally recognized human rights as a standard for all nations to respect. The use of the proposed sanctions against sovereign nations is, however, an awkward and ineffective device for the promotion of those policies. These provisions of the bill represent further attempts to ignore important and complex policy considerations by requiring simple legalistic tests to measure the conduct of sovereign foreign governments. If Congress finds such conduct deficient, specific actions by the United States to terminate or limit our cooperation with the government concerned would be mandated. By making any single factor the effective determinant of relationships which must take into account other considerations, such provisions would add a new element of uncertainty to our security assistance programs and would cast doubt upon the reliability of the United States in its dealings with other countries. Moreover, such restrictions would most likely be counterproductive as a means for eliminating discriminatory practices and promoting human rights. The likely result would be a selective disassociation of the United States from governments unpopular with the Congress, thereby diminishing our ability to advance the cause of human rights through diplomatic means.

### Trade with Vietnam

The bill would suspend for 180 days the President's authority to control certain trade with North and South Vietnam, thereby removing a vital bargaining instrument for the settlement of a number of differences between the United States and these countries. I have the deepest sympathy for the intent of this provision, which is to obtain an accounting for Americans missing in action in Vietnam. However, the enactment of this legislation would not provide any real assurances that the Vietnamese would now fulfill their long-standing obligation to provide such an accounting. Indeed, the establishment of a direct linkage between trade and accounting for those missing in action might well only perpetuate Vietnamese demands for greater and greater concessions.

This Administration is prepared to be responsive to Vietnamese action on the question of Americans missing in action. Nevertheless, the delicate process of negotiations with the Vietnamese cannot be replaced by a legislative mandate that would open up trade for a specified number of days and then terminate that trade as a way to achieve our diplomatic objectives. This mandate represents an unacceptable attempt by Congress to manage the diplomatic relations of the United States.

more





Termination of Grant Military Assistance and  
Advisory Groups

The legislation would terminate grant military assistance and military assistance advisory groups after fiscal year 1977 except where specifically authorized by Congress, thus creating a presumption against such programs and missions. Such a step would have a severe impact on our relations with other nations whose security and well-being are important to our own national interests. In the case of grant assistance, it would limit our flexibility to assist countries whose national security is important to us but which are not themselves able to bear the full cost of their own defense. In the case of advisory groups, termination of missions by legislative fiat would impair close and long-standing military relationships with important allies. Moreover, such termination is inconsistent with increasing Congressional demands for the kind of information about and control over arms sales which these groups now provide. Such provisions would insert Congress deeply into the details of specific country programs, a role which Congress has neither the information nor the organizational structure to play.

\* \* \* \* \*

I particularly regret that, notwithstanding the spirit of genuine cooperation between the Legislative and Executive Branches that has characterized the deliberations on this legislation, we have been unable to overcome the major policy differences that exist.

In disapproving this bill, I act as any President would, and must, to retain the ability to function as the foreign policy leader and spokesman of the Nation. In world affairs today, America can have only one foreign policy. Moreover, that foreign policy must be certain, clear and consistent. Foreign governments must know that they can treat with the President on foreign policy matters, and that when he speaks within his authority, they can rely upon his words.

Accordingly, I must veto the bill.

GERALD R. FORD

THE WHITE HOUSE,

May 7, 1976.

# # # # #

THE WHITE HOUSE

WASHINGTON

May 14, 1976

MEMORANDUM FOR:

LES JANKA

FROM:

MAX FRIEDERSDORF *M.F.*

SUBJECT:

Security Assistance Bill

We are in a position of strength at this time because of the T. Q. for Israel.

I believe it would be better to send up our objections to the new House and Senate bills with indication that no discussion of the T. Q. can occur, and certainly no agreement reached until we have an acceptable authorization.

Rather than contact Morgan and Humphrey, I think we should first consult the minority.

Also, no T. Q. discussion should be initiated without honoring the commitment to discuss any proposed compromise with Passman.

cc: Jack Marsh

Phil Buchen ✓

James Lynn

