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GENERAL COUNSEL

May 20, 1975

File

NOTE TO JACK MARSH

Per conversation.

M. Hoffmann

Martin R. Hoffmann





GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

9 May 1975

Honorable Melvin Price
Chairman, House Armed Services Committee
House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

This is to meet the request of Mr. Kim Wincup of your staff with respect to H. R. 1550 and in particular with respect to the issues raised in amending the Arms Control and Disarmament Act that would assign the Director of ACDA to be a member of the National Security Council and that would authorize ACDA pursuant to Section 104 to make impact statements relating to weapons, military facilities and the like.

The position of the Department of Defense with respect to Section 102 is that the Director of ACDA has statutory competence to participate in and act upon arms control and disarmament issues. The National Security Council has far broader concerns primarily involving strategical and tactical matters and extending substantially beyond the statutory competence of ACDA. For this reason the Department of Defense position has been as follows:

"The NSC is principally oriented in terms of strategic and tactical direction, whereas ACDA is an arms control activity by design. The Director of ACDA should continue to attend--by invitation--only those meetings of the NSC dealing with arms control and disarmament issues."

The Department of Defense position is reinforced and supported by the fact that a substantial amount of NSC attention which would be devoted to matters other than arms control and disarmament would entail the Director of ACDA in burdensome, unnecessary and time consuming meetings and effort. On the other hand his attendance by invitation at meetings involving arms control and disarmament will fully reflect his interests and his department's needs.



With respect to the impact statements it is the position of the Department of Defense that these statements will be burdensome in several ways. First, as in the case with the enforcement of the environmental protection laws such statements will afford the basis for private persons and others to establish standing before United States courts enabling them to question, inquire into or oppose sensitive policies of the Department of Defense. To the best of our knowledge all other agencies of the government responding to H. R. 1550 have had the same concern.

Second. The impact statement by its very nature will tend to cast a serious and unnecessary burden on the Department of Defense. The requirement in the proposed Section 104 for an "Impact Statement", i. e. "a detailed statement on the nature, scope, mission and impact on arms control and disarmament policies or negotiations" of the proposed programs of any agency of this Government concerned with "armaments, ammunition, implements of war, or military facilities" is both burdensome and costly. It will create the very cumbersome and time consuming procedures which interagency coordination was designed to prevent. It would tend to jeopardize the primary responsibility vested in the Secretary of Defense in formulating on a timely basis weapons acquisition policy and programs consistent with United States security interests and is therefore an inappropriate measure of control. Moreover, since the programs referred to in this Section proceed by stages, it is conceivable that the burdens imposed will be further aggravated if, as the Section seems to say, an impact statement is required at each stage extending from research then to development and finally through deployment and modernization. Participation by the ACDA Director in the NSC as indicated above affords sufficient and comprehensive guidance and control fully comparable to the control afforded by impact statements, while avoiding the cumbersome elements that make the impact statements undesirable. Therefore the intended reach of the bill is achieved, while the unnecessary burdens imposed on the agencies and in particular the Department of Defense are avoided.

The Department of Defense is separately concerned with Title II to the Bill, Sections 201, 202, and 203. The Department of Defense believes that the proposed Conforming Amendments to other acts (Title II Sections 201, 202, and 203) which would require the ACDA Director's coordination and opinion would impose burdensome administrative procedures and unnecessary delays with respect to foreign military assistance and sales. Furthermore, it would duplicate existing legal requirements. Under Section 3 of Executive Order 11501 a requirement already exists for consultation by the Department of




Defense and the Department of State with ACDA on Foreign Military Sales matters pertaining to its responsibilities. Similar direction also exists under Section 2 of Executive Order 11044 for resolution of interagency differences of opinion concerning arms control and disarmament policy and related matters, thereby negating the need for Section 201 and Section 203 of H. R. 1550.

A final comment is made on Section 103, amending Section 26 of the Act relating to the General Advisory Committee and the proposal to have four Members of Congress as members of the Committee. If the Advisory Committee is to properly advise the President, Secretary of State, and the Director of ACDA they must be privy to Executive Branch policy matters and debate not normally made available to the Congress until an Executive decision is made. If any restrictions were made on the scope of Advisory Committee subject matter the Committee would not perform a useful function nor meet the intent of its existence. Moreover, it is understood that the provisions on the Advisory Committee in the originally introduced bill were deleted in mark-up by the House Subcommittee on National Security Policy and Scientific Developments.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there would be no objection to the presentation of this report for consideration of the Committee.

Sincerely,


Martin R. Hoffmann



H. R. 1550

JANUARY 16. 1975

A BILL

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Arms Control and Dis-
4 armament Act Amendments of 1975".

7 PURPOSES OF ACT

8 SEC. 101. Section 2 of the Arms Control and Disarma-
9 ment Act (22 U.S.C. 2551) is amended by striking out "It
10 must be able" and inserting in lieu thereof "It shall have the
11 authority, under the direction of the President,".



1 NATIONAL SECURITY COUNCIL

2 SEC. 102. Section 22 of the Arms Control and Disarma-
3 ment Act (22 U.S.C. 2562) is amended by inserting the fol-
4 lowing new sentence after the second sentence thereof: "The
5 Director shall be a member of the National Security
6 Council."

7 GENERAL ADVISORY COMMITTEE

8 SEC. 103. Section 26 of the Arms Control and Dis-
9 armament Act (22 U.S.C. 2566) is amended to read as
10 follows:

11 "SEC. 26. The President, by and with the advice and
12 consent of the Senate, shall appoint a General Advisory Com-
13 mittee of not to exceed fifteen members. Two of such mem-
14 bers shall be Members of the United States Senate (only one
15 of whom shall be from the majority political party), and two
16 of such members shall be Members of the United States
17 House of Representatives (only one of whom shall be from
18 the majority political party). The President shall designate
19 one of the members not appointed from the United States
20 Congress to act as Chairman. The members of the Commit-
21 tee who are not also Members of Congress may receive the
22 compensation and reimbursement for expenses specified for
23 consultants by section 41 (d) of this Act. The Committee
24 shall meet at least twice each year. It shall from time to time
25 advise the President, the Secretary of State, the appropriate



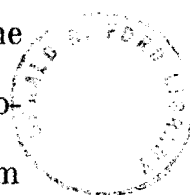
1 committees of the United States Congress, and the Disarma-
2 ment Director respecting matters affecting arms control, dis-
3 armament, and world peace.”.

4 ARMS CONTROL AND DISARMAMENT IMPACT STATEMENT

5 SEC. 104. Title III of the Arms Control and Disarmament
6 Act (22 U.S.C. subchapter III) is amended by adding at
7 the end thereof the following new section:

8 “IMPACT STATEMENT

9 “SEC. 36. (a) Not less than thirty days prior to re-
10 questing an authorization for any program of research, de-
11 velopment, testing, engineering, construction, deployment,
12 or modernization, for which the total program cost is esti-
13 mated to exceed \$250,000,000, or for which the proposed
14 annual appropriation exceeds \$50,000,000, for armaments,
15 ammunition, implements of war, or military facilities, the
16 department or agency of the United States making the rec-
17 ommendation or proposal shall prepare and submit to the
18 Director a detailed statement on the nature, scope, mission
19 and impact on arms control and disarmament policies or
20 negotiations of the proposed program and on the alternatives
21 to the proposed action. Within thirty days after such state-
22 ment is submitted to him, the Director shall submit to the
23 department, or agency making the recommendation or pro-
24 posal a report on his review and appraisal of such program
25 as it might impact on arms control and disarmament policies



1 and negotiations. A copy of such statement and the report of
2 the Director shall be furnished to the National Security
3 Council, to the Office of Management and Budget and to the
4 Congress.

5 “(b) After informing the Secretary of State, the Direc-
6 tor shall make recommendations to the Congress with respect
7 to any programs which are being undertaken which have
8 been the subject of consideration under subsection (a) of this
9 section.”.

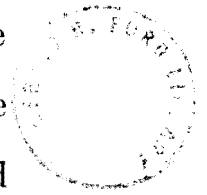
10 SECURITY REQUIREMENTS FOR CERTAIN CONSULTANTS

11 SEC. 105. (a) (1) The second sentence of section
12 45 (a) of the Arms Control and Disarmament Act (22
13 U.S.C. 2585 (a)) is amended by striking out “The Direc-
14 tor” and inserting in lieu thereof “Except as provided in sub-
15 section (c), the Director”.

16 (2) The fifth sentence of section 45 (a) of such Act is
17 amended by striking out “No person” and inserting in lieu
18 thereof “Except as provided in subsection (c), no person”.

19 (b) Section 45 of such Act is amended by adding at the
20 end thereof the following new subsection:

21 “(c) The investigations and determination required
22 under subsection (a) may be waived by the Director in the
23 case of any consultant who will not be permitted to have
24 access to classified information if the Director determines and



1 certifies in writing that such waiver is in the best interests of
2 the United States.”.

3 PUBLIC INFORMATION

4 SEC. 106. Section 49 (d) of the Arms Control and Dis-
5 armament Act (22 U.S.C. 2589 (d)) is amended by striking
6 out “None” and inserting in lieu thereof “Except as may be
7 necessary to carry out the purposes of this Act specified
8 under section 2 (c) , none”.

9 REPORT TO CONGRESS; POSTURE STATEMENT

10 SEC. 107. Section 50 of the Arms Control and Disarma-
11 ment Act (22 U.S.C. 2590) is amended by adding at the
12 end thereof the following new sentence: “Such report shall
13 include a complete and analytical statement of arms control
14 and disarmament goals, negotiations, and activities and an
15 appraisal of the status and prospects of arms control nego-
16 tiations and of arms control measures in effect.”.

17 TITLE II—CONFORMING AMENDMENTS TO
18 OTHER ACTS

19 MUTUAL SECURITY ACT OF 1954

20 SEC. 201. Section 414 of the Mutual Security Act of
21 1954 (22 U.S.C. 1934) is amended by adding at the end
22 thereof the following new section:

23 “(f) Decisions on issuing licenses for the export of ar-
24 ticles on the United States munitions list shall be made in



1 coordination with the Director of the United States Arms
2 Control and Disarmament Agency and shall take into ac-
3 count the Director's opinion as to whether the export of an
4 article will contribute to an arms race, or increase the pos-
5 sibility of outbreak or escalation of conflict, or prejudice the
6 development of bilateral or multilateral arms control arrange-
7 ments."

8 FOREIGN MILITARY SALES ACT

9 SEC. 202. Section 42 (a) of the Foreign Military Sales
10 Act (22 U.S.C. 2791 (a)), is amended by striking out
11 "(3)" and inserting in lieu thereof "(3) in coordination
12 with the Director of the United States Arms Control and
13 Disarmament Agency, the Director's opinion as to".

14 FOREIGN ASSISTANCE ACT OF 1961

15 SEC. 203. Section 511 of the Foreign Assistance Act of
16 1961 (22 U.S.C. 2321 (d)) is amended by striking out the
17 words "take into account" and inserting in lieu thereof "be
18 made in coordination with the Director of the United States
19 Arms Control and Disarmament Agency and shall take into
20 account his opinion as to".



94TH CONGRESS
1ST SESSION

H. R. 1550

A BILL

To amend the Arms Control and Disarmament
Act, and for other purposes.

By Mr. ZABLOCKI, Mr. BIESTER, Mr. BINGHAM,
Mr. FINDLEY, Mr. FRASER, and Mr. HARRING-
TON

JANUARY 16, 1975

Referred to the Committee on Foreign Affairs

[ACDA]

THE WHITE HOUSE
WASHINGTON

Mr. Marsh --

This is for your 4:00 LIG meeting.

donna

A large, stylized handwritten signature, likely of Donna, written in dark ink. The signature is composed of several loops and a long vertical stroke.

Attendees for LIG Meeting, Wednesday, May 21, 1975, 4:00 p.m.


AID	Denis Neill
CIA	George Cary
DOD	John Maury Dick Fryklund Fred Hitz Don Sanders
State	Amb. Robert McCloskey John Lehman
White House	Jack Marsh Max Friedersdorf Bob Wolthius Bill Kendall Vern Loen
OMB	Donald Ogilvie
NSC	Les Janka Col. Clinton Granger
USIA	Edward Hidalgo

MEMORANDUM

NATIONAL SECURITY COUNCIL

May 21, 1975

MEMORANDUM FOR: JACK MARSH
MAX FRIEDERSDORF

FROM: LES JANKA 

SUBJECT: ACDA Impact Statement

The most explosive issue in this afternoon's LIG is likely to be the interagency controversy over the Administration's position on H. R. 1550. This bill is attached to the ACDA Authorization legislation and attempts to strengthen the role of ACDA within the Executive Branch by placing the Director of ACDA on the NSC and other steps. The most controversial feature is Section 104 which would require DOD and ERDA to submit arms "control impact statements" to ACDA for its review and would also require the transmittal of these statements with a unilateral ACDA report to the Congress for its review. There is unanimous Administration opposition to the provisions of the original bill.

However, State and ACDA believe that there is such strong support on the Hill for strengthening ACDA's role that some form of impact statement provision will be passed. They have been strongly urging that a compromise be worked out with the Committee which would eliminate the formal impact statement and its provision to the Congress and have worked for substitute language which would merely formalize in legislation the satisfactory informal procedures now in force.

The current dispute revolves around the fact that at one point there was complete interagency agreement to attempt such a compromise, and Deputy Secretary Ingersoll testified to the HIRC that the Administration would be willing to work out compromise language which would provide an Administration agreed impact statement within any DOD or ERDA budget request. No unilateral ACDA statement would go to the Congress. Subsequent to Ingersoll's testimony, however, DOD

fell off its willingness to support a compromise when precise language could not be agreed on within the bureaucracy after a series of long, difficult interagency meetings and extended consultations with Senate and House committee staffs.

The issues were finally put to Dr. Kissinger in his NSC role, and he decided to support the position of DOD, firmly opposing further compromise attempts and all forms of any impact statement. State and ACDA are embarrassed by this reversal of the Administration's position and are strongly challenging the wisdom of putting ourselves in a position where our refusal to compromise will result in tougher language which we will then have to veto. Our veto may be overridden or we will at least be faced with an unsatisfactory compromise we cannot veto but will still give us considerable institutional grief.

Nevertheless, in today's LIG meeting Secretary Kissinger's instructions should be strongly communicated to the bureaucracy and the attached statement of the Administration's position may be used to provide marching orders.

Administration Position on H. R. 1550 - ACDA Impact Statement

-- The Administration's strong opposition to Section 104 as originally written was expressed in the Ikle letter to Morgan and Sparkman of April 16, 1975.

-- On May 14, Deputy Secretary Ingersoll testified that the Administration would be willing to "accompany any request for authorization for any program found by the NSC to have a significant impact on arms control or disarmament policy with a statement analyzing that impact."

-- Subsequently, the Administration has been unable to reach agreement on satisfactory language expressing the above compromise offer.

-- The Administration remains opposed to any provisions calling for an impact statement in any form for the following reasons:

- There is no certainty that any language can be found to avoid the possibility of litigation to force compliance with the impact statement provisions and which could lead to court challenges delaying vital security or arms control programs.

- It would disrupt ACDA's effectiveness within the Executive Branch by creating a formal adversary relationship with DOD and ERDA.

- The result of requiring such statements would be counterproductive to the Congressional intent of getting more timely and complete information on the DOD budget and arms control issues because it would formalize the flow of information and thus create internal executive branch barriers limiting ACDA's access to only that information specified in the legislation.

- It would impose a heavy and unnecessary bureaucratic burden on DOD, ERDA, ACDA and the NSC. The broad language of even the compromise legislation would require so many statements to be analyzed that ACDA's limited resources would be spread too thin and diverted from the really key arms control issues.

- The existence of any form of impact statement might tend to focus Congressional attention on the adequacy and form of the statement itself rather than on the substantive arms control issues now discussed in substantive Congressional hearings by the Director of ACDA.

Congressional Strategy on Diego Garcia

Background

On May 12 the President signed and sent to Congress a Determination which, by law, must lie in Congress for sixty days before funds under the Military Construction Act can be obligated for certain new facilities on Diego Garcia. During this period, either House can disapprove the Determination by simple majority. Senator Mansfield has introduced such a resolution, and Senators Kennedy, Javits and Pell have introduced an amending resolution, which would delay obligation of funds until the U. S. has initiated talks with the Soviets on Indian Ocean arms limitations.

Strategy

The Administration approach to Congress should have several elements.

First, the attached justification which the President approved when he signed the May 12 Determination will be sent to the President Pro Tempore and the Speaker. This should be utilized as the basis for discussions with Congress.

Second, we should continue to emphasize the importance of expanding facilities on Diego Garcia for contingency purposes. With the opening of the Suez Canal on June 5, high tensions and the possibility of an oil embargo in the Middle East, the striking evidence of the major Soviet facility at Berbera, and the loss or prospective loss of important and secure facilities in Southeast Asia, adequate facilities on Diego Garcia are needed to protect legitimate and vital U. S. interests. If we do not move rapidly we might not have these facilities when we need them.

Third, we must stress the independence of possible arms control measures in the Indian Ocean and our security needs for facilities on Diego Garcia. If asked about possibilities for arms control in the Indian Ocean, we should emphasize that there are great technical difficulties in developing workable measures for arms control in the Indian Ocean.

Fourth, if directly asked about negotiations with the Soviet Union, we should say that we would consider exploring this subject with the Soviets, but only after Diego Garcia construction is underway and after we come

up with a technically feasible arms control approach. The U.S. cannot be placed in a position where Soviet dilatory negotiating procedures could deprive us of badly needed facilities on Diego Garcia at a time when our vital and legitimate interests could soon be jeopardized, and while the Soviets are rapidly expanding their own facilities at Berbera. Even if we were to assume the Soviets would act in good faith, the very difficult and technical negotiations would be apt to be very protracted. Therefore, we must have approval for Diego Garcia first.

Finally, we should make it clear that the President cannot accept any legislation requiring either a link between Diego Garcia and arms control, or a requirement that we proceed to talk to the Soviet Union on this question.

THE WHITE HOUSE

WASHINGTON

Justification for the Presidential Determination on the Construction of Limited Support Facilities on Diego Garcia

In 1966, the United States signed an agreement with the British Government providing that the islands of the British Indian Ocean Territory would be available for 50 years to meet the defense purposes of both governments. In this context, we concluded in 1972 an Administrative Agreement providing for the establishment of a limited communications station on the small atoll of Diego Garcia in the central Indian Ocean. In February 1974, an agreement was negotiated ad referendum to replace the 1972 agreement and to provide for the construction and operation of a proposed support facility. The British Government announced in December 1974 its agreement with our proposal to expand the facility.

The United States has an important interest in the stability of the Indian Ocean area. In particular, the oil shipped from the Persian Gulf area is essential to the economic well-being of modern industrial societies. It is essential that the United States maintain and periodically demonstrate a capability to operate military forces in the Indian Ocean. Such exercise of our right to navigate freely on the high seas communicates to others the importance we attach to the stability of the region and to continued free access by all nations.

The credibility of any US military presence ultimately depends on the ability of our forces to function efficiently and effectively in a wide range of circumstances. Currently, the US logistics facility closest to the western Indian Ocean is in the Philippines, 4,000 miles away. At a time when access to regional fuel supplies and other support is subject to the uncertainties of political developments, the establishment of modest support facilities on Diego Garcia is essential to insure the proper flexibility and responsiveness of US forces to national requirements in a variety of possible contingencies. The alternative would be an inefficient and costly increase in naval tankers and other mobile logistics forces.

Objections have been raised to this proposal on the grounds that it will prompt an increase in the Soviet presence in the Indian Ocean and give rise to an arms race in the region. Clearly, both we and the Soviets are aware of the military presence of other nations, but it would be incorrect to assume that Soviet actions are determined exclusively by the level or nature of our

force presence. The growth of Soviet naval presence in the Indian Ocean from 1968 to the present can most convincingly be ascribed to the pursuit of their own national interests -- including the continuing expansion of the Soviet Navy in a global "blue water" role -- rather than to US force presence as such.

A distinction must also be drawn between facilities and force presence. The proposed construction on Diego Garcia would enhance our capability to provide support to US forces operating in the Indian Ocean. However, there is no intent to permanently station operational units there, and the installation would not imply an increase in the level of US forces deployed to that region. We have, on several occasions, expressed our willingness to consider constructive proposals for arms restraint in the Indian Ocean, but we do not believe that construction on Diego Garcia should be contingent upon the outcome of discussions on such proposals. In our view, these are two separate issues.

The Diego Garcia proposal has been criticized by a number of regional states which favor the concept of a special legal regime limiting the presence of the great powers in the Indian Ocean, as expressed in the several Indian Ocean Zone of Peace resolutions adopted in the United Nations General Assembly. United States policy has consistently been to oppose measures that would constitute an unacceptable departure from customary international law concerning freedom of navigation on the high seas.

We are aware of the concern expressed by some states of the region, but we do not share their conviction that the construction of support facilities on Diego Garcia will result in an arms race or that these facilities will somehow represent a threat to their interests. On the contrary, it is our belief that such facilities will contribute to the maintenance of healthy balance essential to the preservation of regional security and stability. It is our considered judgment that the legitimate differences in perspective between ourselves and certain other nations with respect to Diego Garcia are susceptible to reasoned discussion within a framework of mutual respect and need not inhibit the development of satisfactory relations with the states of the region.

THE PRIVACY ACT OF 1974

(As it Relates to Congressional Liaison)

1. SUBJECT MATTER

- The Act applies to any item, collection, or grouping of information about an individual that is maintained by an Agency of the Federal Government.

2. RELATIONSHIP TO THE FREEDOM OF INFORMATION ACT

- The Freedom of Information Act deals with the right of all members of the public to Government information.
- The Privacy Act is concerned with the rights of each individual and the records of his personal data held by the Government.

3. CONDITIONS IMPOSED ON AGENCIES IN ACQUIRING AND MAINTAINING PERSONAL DATA

- A - Only information relevant and necessary to the functions of the Agency may be collected
- B - The Agency must establish rules for
 - Notifying an individual in response to an inquiry as to whether a record is maintained concerning him
 - Disclosing to him the contents of such record
 - Amending such record in response to a request by the individual
- C - The Agency must publish in the Federal Register by August 27 and annually thereafter
 - A full and complete description of each system of records subject to the Act (i. e., records containing personal data which are retrievable by name or other individual identifier)

- A description of procedures through which the individual can exercise his rights of access.
- D - The Agency must provide timely advance notice to the Congress and to OMB concerning the privacy impact of any proposed new system of records containing personal data.

4. SECURITY AND ACCURACY OF RECORDS

- All Agencies must
 - Insure accuracy, relevance, timeliness, and completeness of all records
 - Must provide training and rules of conduct to insure that all personnel dealing in records of personal data perform their duties in conformity with the Act.
 - Establish appropriate safeguards for all record systems containing personal data to prevent any willful or inadvertent misuse

5. RESTRICTIONS ON DISCLOSURE TO OTHER THAN THE RECORD SUBJECT

- A - An Agency may disclose files only to
 - Persons having a need-to-know in the performance of their duties
 - For a routine use, i. e., compatible with the purpose for which it was originally collected, provided that notice of such routine use has been published in the Federal Register
- B - Disclosure is also authorized as required by the Freedom of Information Act.

6. ACCESS BY THE RECORD SUBJECT

- A - The individual must be given access to his record and to have a copy made of all or part thereof
- B - The individual may request amendment of a record

- If an amendment of the record is requested, the Agency must within 10 days
 - Make the requested correction, or
 - Inform the individual of the refusal, provide the reason and inform him of his right to request a review

7. CIVIL REMEDIES

- A - An individual may within 2 years bring a cause of action against an Agency in the U. S. District Court (in the District of a residence or the District of Columbia) for:
 - Refusal to comply with a request of an individual for access to his record
 - Making a final determination not to amend a record as requested
- B - If the Court determines that the Agency intentionally or willfully failed to comply with the Act to the detriment of the plaintiff, the damages shall not be less than \$1,000 and the Government shall be assessed attorney fees and other litigation costs

8. CRIMINAL PENALTIES

- A fine of not more than \$5,000 may be assessed against any officer or employee of an Agency who
 - Willfully maintains a system of records without giving the required public notice

9. THE PRIVACY PROTECTION STUDY COMMISSION

- Members
 - The Commission consists of 3 members appointed by the President, 2 by the President of the Senate, and 3 by the Speaker of the House

- **Functions**

- The Commission is directed to make a study of data banks, information systems of Government and private organizations
 - To determine the standards and procedures in force for the protection of personal information
 - To make recommendations to the President of the Congress for legislative, administrative or voluntary adoption of the principles of the Privacy Act
 - To make recommendations for other legislation as appropriate

- **Duration**

- The Commission shall perform its work within two years

10. **EFFECTIVE DATE**

- All principal provisions except those relating to the Privacy Commission and mailing lists take effect on September 27, 1975

Cong relate

August 30, 1975

MEMORANDUM FOR: MAX FRIEDERSDORF
FROM: JACK MARSH

The ACDA bill pending in the Senate -- S. 1517 -- is a very hot potato.

This is one that you will want your Senate people to do some work on the very first thing when the Congress reconvenes. They should also touch base with Bob McCloskey as well as Les Janka.

JOM/dl



THE WHITE HOUSE
WASHINGTON

Max -

You might wish
for Bob W to
Bird - dog this
Jack



SEP 9 1975

MEMORANDUM

NATIONAL SECURITY COUNCIL

September 9, 1975

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: LES JANKA *les*

SUBJECT: ACDA Impact Statement Provisions
in S. 1517

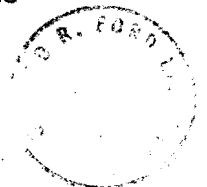
I understand that Jack Maury has called you seeking your help with Senators Sparkman and Scott to obtain the deletion of the ACDA impact statement provisions now contained in S. 1517, the Consolidated Foreign Affairs Authorization Act for 1976.

As you know Secretary Schlesinger, Secretary Kissinger and OMB are all prepared to recommend that the President veto any bill containing such impact statement provisions. Secretary Kissinger is sending to the President a memo seeking his approval to transmit a veto signal to the Senate.

Neither State nor ACDA are taking a very active role in opposing these provisions because they feel that they can live with them and because both Director Ikle and Deputy Secretary Ingersoll testified to the Foreign Relations Subcommittee that they could accept the modifications which the bill now contains. Since their testimony, however, Secretary Schlesinger and Secretary Kissinger have determined that even the compromise is unacceptable. It would, therefore, be helpful if the White House could approach Senators Sparkman and Scott to explore any possible avenues for deleting these provisions from the bill despite the existing strong support in the Senate. Should you call Sparkman and Scott, the following talking points will be of help to you.

The Administration remains opposed to any provisions calling for an impact statement in any form for the following reasons:

-- It would disrupt ACDA's effectiveness within the Executive Branch by creating a formal adversary relationship with DOD and ERDA and by placing ACDA in a potential adversary relationship to the President and his national defense program.



-- The result of requiring such statements would be counter-productive to the Congressional intent of getting more timely and complete information on the DOD budget and arms control issues because it would formalize the flow of information and thus create internal executive branch barriers limiting ACDA's access to only that information specified in the legislation.

-- It would impose a heavy and unnecessary bureaucratic burden on DOD, ERDA, ACDA and the NSC. The broad language of even the compromise legislation would require so many statements to be analyzed that ACDA's limited resources would be spread too thin and diverted from the really key arms control issues.

-- The existence of any form of impact statement might tend to focus Congressional attention on the adequacy and form of the statement itself rather than on the substantive arms control issues now discussed in substantive Congressional hearings by the Director of ACDA.

-- There is no certainty that any language can be found to avoid the possibility of litigation to force compliance with the impact statement provisions and which could lead to court challenges delaying vital security or arms control programs.

cc: Jack Marsh



MEMORANDUM

NATIONAL SECURITY COUNCIL

M

September 11, 1975

MEMORANDUM FOR: BILL KENDALL
PAT O'DONNELL

FROM: LES JANKA *les*

SUBJECT: S. 1517 -- ACDA Impact Statement
Provisions

The Senate will consider today S. 1517, the consolidated Foreign Affairs Authorization Act for FY 76. This bill contains House-passed amendments to the ACDA authorization which would require DOD and other agencies to submit statements analyzing the arms control impact within the budget request for any weapons system of \$50 million or more.

The Administration strongly opposes these provisions; Secretary Schlesinger, Secretary Kissinger and OMB are all recommending that the President veto any bill containing these impact statement provisions.

There is little chance that we can defeat or strike these provisions on the floor. But we would like to build a strong record against them to support a veto. There is also a possibility that, in conference, the ACDA authorization can be split from S. 1517 into a separate bill as the House passed it. (Hays has promised to do this.) It would be much easier to veto a separate bill than it would the consolidated S. 1517.

Could you get to Hugh Scott, John Sparkman, John Tower and any others who might help to get them to speak against these provisions. (Sparkman ought to insist that such far-reaching provisions require full SFRC hearings.)

The attached talking points may be of help to you.

cc: Jack Marsh ✓
Bob Wolthuis



The Administration remains opposed to the provisions of S. 1517 calling for an arms control impact statement in any form for the following reasons:

-- It would disrupt ACDA's effectiveness within the Executive Branch by creating a formal adversary relationship with DOD and ERDA and by placing ACDA in a potential adversary relationship to the President and his national defense program.

-- The result of requiring such statements would be counter-productive to the Congressional intent of getting more timely and complete information on the DOD budget and arms control issues because it would formalize the flow of information and thus create internal executive branch barriers limiting ACDA's access to only that information specified in the legislation.

-- It would impose a heavy and unnecessary bureaucratic burden on DOD, ERDA, ACDA and the NSC. The broad language of even the compromise legislation would require so many statements to be analyzed that ACDA's limited resources would be spread too thin and diverted from the really key arms control issues.

-- The existence of any form of impact statement might tend to focus Congressional attention on the adequacy and form of the statement itself rather than on the substantive arms control issues now discussed in substantive Congressional hearings by the Director of ACDA.

-- There is no certainty that any language can be found to avoid the possibility of litigation to force compliance with the impact statement provisions and which could lead to court challenges delaying vital security or arms control programs.

