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THE WHITE HOUSE
WASHINGTON

*Attached material
was superseded!*

*(per C. Finley of
Rundberg office)*



TO THE SENATE OF THE UNITED STATES:

I am returning, without my approval, S. 2662, a bill that would unwisely and improperly obstruct the exercise of the President's constitutional responsibilities 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 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,



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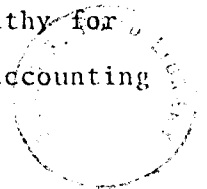
authorize or prohibit such actions as the execution of contracts or the issuance of export licenses; but Congress cannot itself participate in the Executive functions of deciding whether to enter into a lawful contract or issue a lawful license, either directly or through the disapproval procedures contemplated in this bill.

The erosion of the basic distinction between legislative and Executive functions that would result from the enactment of S.2662, and that displays itself in an increasing volume of similar legislation which this Congress has passed or is considering, 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 lawful operational 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.

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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:

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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

May , 1976



To: J. Casper
4-30-76
7:30 p.m.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 30 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2662 - International Security Assistance and Arms Export Control Act
Sponsor - Senator Humphrey (D) Minnesota

Last Day for Action

May 11, 1976 - Tuesday

Purpose

(a) Authorizes appropriations of \$3,958.7 million for security assistance and certain other programs for fiscal year 1976 and the transition quarter and places individual country limitations on the use of certain funds; (b) provides authority to stockpile defense articles for foreign military forces and drawdown Defense stocks to meet emergency requests; (c) terminates the general authority for grant military assistance and military assistance advisory groups after fiscal year 1977; (d) establishes a separate foreign military training program; (e) expands the congressional role in the foreign military sales program; and (f) contains a number of other significant policy revisions as noted below.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto Message attached)
National Security Council	Disapproval (Informally)
Arms Control and Disarmament Agency	Disapproval
Department of Defense	Approval
Agency for International Development	Approval
Department of State	Foresees potentially serious consequences of a veto
Department of Justice	Objects on constitutional grounds but defers to other agencies on foreign policy and other considerations
Department of Commerce	Defers to other agencies
Department of the Treasury	Would not recommend veto



Discussion

Amounts Authorized to be Appropriated

The tables attached to this memorandum summarize the amounts authorized for fiscal year 1976 and the transition quarter. For the transition quarter, the bill provides for "appropriation of one-fourth of any amount authorized for fiscal year 1976 in accordance with the authorization applicable to operation and activities authorized under this act"

Authorizations of appropriations for the 15-month period for all accounts exceed the Administration's request by \$368 million. Foreign military sales (FMS) credit funds are increased by \$203.8 million and security supporting assistance by \$301.3 million primarily for aid to Israel during the transition quarter. For fiscal year 1976, aid for Israel is authorized substantially as requested including an FMS credit program of \$1.5 billion with repayments on one-half of this amount to be forgiven.

The grant military assistance program (MAP) is reduced by \$135.8 million. This reduction is not as severe as it appears because \$63 million of the cut was taken from Greece and Turkey for which separate authorization is to be sought when Congress approves base agreements with these countries. Thus, only Jordan suffers a severe cut from the \$100 million in grant MAP requested to the \$67.5 million authorized under this bill. The bill also contains a number of individual country limitations on the use of grant MAP, FMS credit and security supporting assistance funds.

Special Authorities

The bill contains permanent authority for the President to determine that there is an emergency requirement for military assistance and to order the use of Department of Defense stocks or services of value up to \$67.5 million in any fiscal year to meet such an emergency. Obligations incurred are authorized to be liquidated by future grant MAP appropriations, but the entire authority is



contingent on the inclusion of language in annual appropriation acts making the authority effective in the same amount.

The bill permits reinstatement of the stockpiling program, suspended in December of 1974 by Congress, under which defense articles are held in U.S. inventories as war reserves for foreign nations. Limits of \$75 million and \$18.8 million are set on the value of additions to such stockpiles in 1976 and the transition quarter, respectively.

Termination of Grant MAP and MAAGs

Beginning with fiscal year 1978, the general authority for grant MAP is terminated. Each country program thereafter must be authorized separately. Authority is provided until the end of fiscal 1980 for wind up costs of programs existing before September 30, 1977.

During fiscal year 1977, the number of military assistance advisory groups (MAAGs) and similar military groups is limited to 34, a reduction of 10 from current levels. In fiscal year 1978, no MAAG or similar mission may continue unless specifically authorized by Congress. However, the President would be permitted to assign no more than three military personnel to the chief of a diplomatic mission to perform MAAG functions. Military attachés are specifically prohibited from performing such functions.

International Military Education and Training

As requested by the Administration, the bill establishes the military training program as a program separate from grant MAP. No termination date is established for this program.

Expanded Congressional Role in Foreign Military Sales

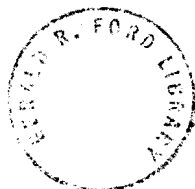
A. Restriction on commercial sales. The bill



requires that all sales of major defense equipment of \$25 million or more must be on a government-to-government (FMS) basis except for sales to NATO countries which can continue through commercial channels. Major defense equipment is defined as any item of significant combat equipment having a non-recurring research and development cost of more than \$50 million or a total estimated production cost of more than \$200 million.

B. Congressional review and veto by concurrent resolution. Under current law, all proposed government-to-government (FMS) sales of defense articles and services valued over \$25 million must be submitted to the Congress and the Congress may forbid such sales by passage of a concurrent resolution within 20 days. There is no similar existing provision affecting export licenses for commercial sales. This bill extends the existing reporting requirement and Congressional veto to cover all proposed sales of "major defense equipment" of \$7 million or more, whether FMS or commercial, and also extends the waiting period for Congressional action to 30 calendar days. The President can exempt a sale from Congressional veto by certifying to Congress that an "emergency exists which requires such sale in the national security interests of the United States."

C. \$9.0 billion arms sales ceiling. The bill incorporates a worldwide \$9 billion (in 1975 constant dollars) annual ceiling on all arms sales (FMS and commercial) beginning in fiscal year 1977. The ceiling would be computed according to contract price of equipment actually delivered in any fiscal year. Thus, the full value of long-term contracts signed in fiscal year 1977 will not be counted against the ceiling in that year, but incrementally as deliveries are made. The President may waive the ceiling if he determines a particular sale to be in the national security interest and so certifies to Congress.



D. Reporting. The bill requires the President to submit an annual report to Congress which includes an arms control impact statement prepared by the Director of the Arms Control and Disarmament Agency for each purchasing country. This statement is required to address the impact of sales on our arms control efforts with that country and on the stability of the region in which the country is located.

E. Arms sales policy. The bill requires the President to conduct a comprehensive study of arms sales policy "in order to determine whether such policies and practices should be changed." A report to Congress is due in one year.

F. Sales affecting U.S. combat readiness. The President is required to report to the Congress any sale if in his judgment such sale "could have a significant adverse effect on combat readiness of the Armed Forces of the United States." The report would have to contain a "certification that such sale is important to the security of the United States."

G. Repayment period. The maximum repayment period for foreign military credit sales is extended from 10 years to 12 years except in the case of Israel where a repayment period of "not less than twenty years following a grace period of ten years on repayment of principal" is mandated for fiscal year 1976.

H. Deferred payment on cash sales from stock. Current law permits the President to defer payment on cash sales from Department of Defense stocks by up to 120 days after delivery without interest charge. This bill requires that interest be charged on any net amount due on such sales not paid within 60 days of delivery unless the President determines that "the emergency requirements of the purchaser exceed the ready availability to the



purchaser of funds," in which case he may defer payment for a total of 120 days.

I. Agent Fees. The bill mandates reports to the Congress by the Secretary of State on political contributions, gifts, commissions, and fees in connection with foreign military sales or commercial sales licensed or approved under the Act. It also requires the Secretary of State to establish recordkeeping and reporting requirements for such fees, authorizes the President to establish regulations prohibiting or limiting fees, and provides criminal penalties for private individuals not complying with these regulations.

Other Policy Provisions

A. Congressional power to terminate military assistance. The bill establishes the right of Congress to terminate assistance and deliveries of assistance (grants or credits) whenever it finds by concurrent resolution that a recipient country is in substantial violation of the eligibility criteria for foreign assistance or the international agreements under which assistance is provided. Assistance would remain terminated until the President determined that the violation had ceased and the country had given assurances that the violation would not recur.

B. Congressional power to prevent third-country transfers. The bill prevents the President from giving his consent to the transfer of defense articles and services from aid recipients to third countries without first certifying certain information to Congress concerning the intended transfer. Congress may prevent the proposed transfer by concurrent resolution within 30 calendar days unless the President certifies that an emergency exists which requires such transfer in the national security interest.

C. Human rights. The bill 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. It also creates the position of Coordinator for Human Rights within the Department of State as a Presidential appointment requiring Senate confirmation. The legislation allows Congress, within 90 days of receiving a report on a particular country from the Coordinator for Human Rights, to terminate or restrict assistance to that country by concurrent resolution. No waiver authority is provided.

D. Prohibition against discrimination. The bill mandates the cut-off of any FMS project if a U.S. citizen is prevented by a foreign government from participating in that project by reason of race, religion, sex, or national origin. However, it does provide prior opportunity for the President to make private efforts to reverse an instance of discrimination before any action to terminate must be taken. The President can waive the cut-off if he determines it would have "a significant adverse impact on the security of the United States."

E. Angola. The bill contains a provision expressing the concern of the Congress with respect to Soviet and Cuban intervention in Angola.

F. Chile. All security assistance is prohibited; thus, only cash sales of defense articles and services are possible after enactment.

G. Military forces in the Indian Ocean. The bill expresses the sense of Congress that the President should initiate negotiations with the Soviet Union regarding control of military forces in the Indian Ocean and report to the Congress not later than December 1, 1976.

H. Turkey. The bill authorizes \$31 million in grant MAP for Turkey (as compared with the budget request of \$75 million), but continues the



prohibitions of existing law with respect to such assistance. Thus, grant assistance cannot be provided unless the President certifies as to substantial progress toward a Cyprus agreement and Turkish compliance with U.S. law and implementing agreements. On the other hand, the legislation permits the sale of \$125 million in defense articles and services to Turkey during the balance of fiscal year 1976 and the transition quarter, a softening of the present total prohibition on grants or sales.

I. Trade with Vietnam. The bill suspends certain restrictions on trade with Vietnam for 180 days. The suspension would automatically expire unless the President certifies to the Congress that the Vietnamese have been forthcoming in accounting for MIAs.

J. International narcotics control. The bill prohibits U.S. personnel from engaging or participating in direct police arrest actions in any foreign country in connection with narcotics control efforts.

K. Report on Korea. The bill requires the President to report 90 days after enactment and annually for the next 5 years on (1) progress made by the Republic of Korea in modernizing its armed forces so as to achieve military self-sufficiency, (2) the role of the United States in mutual security efforts in Korea, and (3) prospects for phased reduction of United States armed forces assigned to Korea, in coordination with the timetable of the Republic of Korea for military self-sufficiency.

L. U.S. citizens imprisoned in Mexico. The bill declares the intent of Congress "that efforts to secure stringent international law enforcement measures with respect to dangerous drugs shall be combined with efforts to secure fair and humane treatment for citizens of foreign

countries who are imprisoned." The provision requests the President to communicate directly to the President of Mexico the continuing concern of the United States over the treatment of United States citizens arrested in Mexico. The Secretary of State is required to submit quarterly reports to Congress on progress achieved toward full respect of the human and legal rights of all United States citizens detained in Mexico.

M. Strife in Lebanon. The bill expresses the sense of the Congress that the situation in Lebanon poses a serious danger to Middle East peace, and that the Congress views with grave concern outside efforts to exploit the current strife for the purpose of transforming Lebanon into a radical state in confrontation with Israel. This provision also contains a request that the President use his good offices to bring about peace.

N. Portugal. There is a sense of Congress statement that the President should take action to alleviate food shortages in Portugal using existing statutes.

O. Middle East policy. The bill declares the sense of Congress that the United States will continue to determine Middle East policy as circumstances may require. It further declares the authority contained in the joint resolution approving the early warning system in Sinai and the authorizations contained in this bill shall not be construed "to constitute congressional approval, acceptance, or endorsement (1) of any oral or written commitment, understanding, assurance, promise, or agreement, whether expressed or implied, or any other expression, oral or written (other than the 'United States Proposal for the Early Warning System in Sinai'), made by any official of the United States which Israel, Egypt, or any other nation or organization might construe or interpret as a basis on which it could rely or act, or (2) of any characterization of any such



commitment, understanding, assurance, promise, or agreement, or other expression, as constituting a 'codification' of existing, congressionally approved United States policy."

P. International terrorism. The bill requires the President to terminate all assistance to any government which aids or abets international terrorism by granting sanctuary to terrorists. A Presidential waiver on national security grounds is possible, but Congress within 30 days of such action could adopt a concurrent resolution reversing the waiver action.

The Department of Justice informally advises that the bill is objectionable on constitutional grounds due to the inclusion of the several provisions for congressional override of Presidential actions by concurrent resolution. Justice defers to the views of other agencies, however, as to whether foreign policy and other considerations outweigh these constitutional objections.

In its enrolled bill letter, Defense states:

"Apart from the concurrent resolution veto aspect of S. 2662, the Department of Defense is of the view that its provisions can be implemented without significant detriment to the foreign policy and national security of the United States. In general, the Department of Defense believes that the final text of these other provisions represents a genuine effort by the Congress to accommodate objections raised by the Executive Branch during markup by the International Relations and Foreign Relations Committees and by the Conference Committee. For example, adequate provision has been made for a waiver of limitations by the President. Accordingly, the Department of Defense does not believe that a veto of S. 2662 is warranted because of those provisions."

Defense also believes that a veto of the enrolled bill based on the concurrent resolution override provisions it contains also would be inappropriate because the fiscal year 1975 foreign aid authorization bill and numerous other bills presented to the President over the past 30 years containing similar provisions have been approved. The Department recommends approval and a strong signing statement citing the constitutional objections to the bill and welcoming a speedy and decisive judicial test of the concurrent resolution provisions. Its enrolled bill letter includes language that could be used in such a signing statement. Alternatively, Defense recommends that, should you decide to signify your dissatisfaction with the bill in a stronger fashion, you announce your intention to permit the bill to become law without your signature and issue a statement similar to that recommended above.

State advises us informally that, while it understands you intend to disapprove S. 2662, it foresees some potentially serious consequences arising from a veto, if sustained. Principally, the Department is concerned about the ability to carry out security supporting assistance and foreign military sales, credit and guarantee programs during the remainder of fiscal year 1976 and the transition quarter and believes it could be difficult to obtain an amendment to the existing continuing resolution that would provide adequate funds for these programs. Furthermore, State believes a veto, if sustained, could impair efforts to obtain congressional approval of agreements with Turkey, Spain, Greece and the Philippines.

In addition to the Arms Control and Disarmament Agency, the National Security Council and the Office of Management and Budget recommend disapproval for the reasons set forth in the attached

proposed veto message. The message has been concurred in by Mr. Buchen, Mr. Scalia, Mr. Scowcroft and Mr. Lynn.

James M. Frey

James M. Frey
Assistant Director for
Legislative Reference

Enclosure



FISCAL YEAR 1976

(appropriations in millions of dollars)

	<u>Authorization Request</u>	<u>Enrolled Bill</u>	<u>Difference</u>
Grant Military Assistance	394.5	228.7	165.8
Foreign Military Training	30.0	27.0	-3.0
Foreign Military Credit Sales	1,065.0	1,039.0	-26.0
(Program)	(2,374.7)	(2,374.7)	(---)
(Authority to forgive Israeli repayments)	(750.0)	(750.0)	(---)
Security Supporting Assistance	1,873.3 ^{1/}	1,766.2	-107.1
Middle East Special Requirement Fund	50.0	50.0	---
Narcotics Control	42.5	40.0	-2.5
Contingency Fund	10.0	5.0	-5.0
Aid to Cypriot Refugees	---	10.0 ^{2/}	+10.0
International Atomic Energy Agency	<u>---</u>	<u>1.0^{3/}</u>	<u>+1.0</u>
Total	3,465.3	3,166.9	-298.4

^{1/} Of the total request, \$25.0 million was for Cyprus relief. This amount has been authorized as a separate account, Aid to Cypriot Refugees.

^{2/} In addition to \$30.0 million authorized in the development assistance bill.

^{3/} In addition to a voluntary contribution of \$3.5 million authorized in the development assistance bill; earmarked for safeguards activities.

TRANSITION QUARTER (JULY 1, 1976 - SEPTEMBER 30, 1976)

	(appropriations in millions of dollars)		
	<u>Authorization Request</u>	<u>Enrolled Bill</u>	<u>Difference</u>
Grant Military Assistance	27.2	57.2	+30.0
Foreign Military Training	7.0	6.8	-.2
Foreign Military Credit Sales	30.0	259.8	+229.8
(Program)	(55.5)	(593.7)	(+538.2)
(Authority to forgive Israeli repayments)	(---)	(187.5)	(+187.5)
Security Supporting Assistance	33.2 ^{1/}	441.6	+408.4
Middle East Special Requirement Fund	10.0	12.5	+2.5
Narcotics Control	13.0	10.0	-3.0
Contingency Fund	5.0	1.2	-3.8
Aid to Cypriot Refugees	---	2.5 ^{2/}	+2.5
International Atomic Energy Agency	<u>---</u>	<u>.2</u>	<u>+.2</u>
Total	125.4	791.8	+666.4

^{1/} Of the total request, \$5.0 million was for Cyprus relief. This amount has been authorized in a separate account, Aid to Cypriot Refugees.

^{2/} In addition to \$5.0 million authorized in the development assistance bill.



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 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,



* CREATE UNWISE AND IMPROPERLY OBTAIN TO THE EXERCISE OF THE PRESIDENT'S CONSTITUTIONAL RESPONSIBILITIES

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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, ~~and that~~ 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 (lawful operational) 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

* CONGRESS AS A BODY SIMPLY DOES NOT HAVE THE INFORMATION AND EXPERTISE OR CAN IT DEVOTE THE CONSTANT ATTENTION WHICH SUCH OPERATIONAL RESPONSIBILITIES FOR THE MANAGEMENT OF ASSISTANCE PROGRAMS REQUIRES. ^{could not properly be given by the Congress.}



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.

NO
af
no af

~~* IT IS THIS ADMINISTRATION'S POLICY TO EXERCISE AND WORK FOR RESTRAINT IN CONVENTIONAL ARMS SALES, WHILE AT THE SAME TIME RECOGNIZING THAT WE MUST REMAIN RESPONSIVE TO 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.* In the case of grant assistance, ~~this~~^{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.

Yes
* 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 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

May , 1976

