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5/7/76
Delivered to the Secretary of the Senate: 5/7/76 (1:20 pm)

S 1/7/76

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: May 11

May 1, 1976

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON 

SUBJECT:

S. 2662 - International Security Assistance and Arms Export Control Act

Attached for your consideration is S. 2662, sponsored by Senator Humphrey, which:

- 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;
- Provides authority to stockpile defense articles for foreign military forces and drawdown Defense stocks to meet emergency requests;
- Terminates the general authority for grant military assistance and military assistance advisory groups after FY 77;
- Establishes a separate foreign military training program;
- Expands the Congressional role in the foreign military sales program; and
- Contains a number of significant policy revisions as contained in the OMB bill report.

A detailed discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, NSC, Max Friedersdorf, Bill Seidman, Counsel's Office (Buchen) and I recommend you disapprove S. 2662 and sign the attached veto message which has been cleared by the White House Editorial Office.



DECISION

Sign S. 2662 at Tab B.

Approve _____ Disapprove _____

Veto S. 2662 and sign the veto message at Tab C.

Approve _____ Disapprove _____

INFORMATION

Attached at Tab D are some Q&A's which were prepared by the National Security Council for use by the Press Office.





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 (Informally)
Department of the Treasury	Would not recommend veto (Informally)

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:

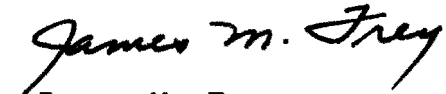
"Apart from the concurrent resolution veto aspect of S. 2662, the Department of Defense is of the view that its provisions can be implemented without significant detriment to the foreign policy and national security of the United States. In general, the Department of Defense believes that the final text 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.

A handwritten signature in black ink that reads "James M. Frey". The signature is written in a cursive style with a large, sweeping initial 'J'.

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.

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.

Delivered to the Secretary of the Senate: 5/7/76 (11:20 PM)

(STONKILLER)

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

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.

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.

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

D

SECURITY ASSISTANCE VETO

- Q: What are the President's specific objections to the legislation?
- A. As set forth in the President's veto message to the Congress, the bill contains numerous provisions which severely impinge upon his authority to implement our security assistance programs. Among other things these include:
- ° Several provisions whereby the Congress can veto actions taken or proposed by the Administration by concurrent resolution, a procedure of questionable constitutionality.
 - ° A \$9 billion annual arms sale ceiling.
 - ° Termination of the Grant Military Assistance Program after 1977, except where specifically authorized.
 - ° Provisions which attempt to legislate solutions to the domestic policies of foreign governments to which we are opposed (such as human rights or discriminatory visa practices).
 - ° Termination of restrictions on trade with Vietnam, with no requirement on their part to account for our missing in action.

SECURITY ASSISTANCE VETO

Q. Why did the President veto the security assistance authorization bill? (International Security Assistance and Arms Export Control Act of 1976)

A. The President decided to veto this legislation because, if enacted, it would impose an unprecedented array of restrictions on the Executive's ability to carry out our security assistance programs. While the President strongly advocates an appropriate Congressional role in U.S. foreign policy, he believes there must be a line drawn on Congressional encroachment on his Constitutional authority and responsibility to formulate and implement that policy. The recent past has demonstrated how inappropriate Congressional involvement in foreign policy can damage our bilateral relationships with friends and allies, as well as to our credibility abroad.

(If you wish to provide examples, cite the impact of the Jackson-Vanik amendment on Jewish emigration from the Soviet Union; or the impact of the aid embargo against Turkey on our bilateral relations with that NATO ally as well as our ability to operate important intelligence facilities in Turkey.)

SECURITY ASSISTANCE VETO

- Q. Senator Humphrey and others charge that the Administration had indicated it could "live" with the provisions of the legislation and that the President's veto violates a tacit understanding that he would sign the bill.
- A. No commitments were made that the Administration could "live" with the bill or that the President would sign it. Administration representatives indicated their concern with the restrictive amendments throughout the legislative process. When the President had an opportunity to analyze its provisions and see their implications, he decided the bill was unacceptable.
- Q. Senator Humphrey and others have also charged that the President vetoed this legislation to avoid a confrontation over the foreign aid appropriations bill due to the Transition Quarter funding for Israel.
- A. The two pieces of legislation are independent of each other. This legislation was vetoed because it contained numerous provisions -- some of questionable constitutionality -- which would severely hamper our

ability to carry out our security assistance program in a way that best serves the interest of the United States as well as our aid recipients. As far as the appropriations bill, which has not yet cleared the Congress, is concerned, the President's position has not changed.

5/4/76

AMOUNTS IN SECURITY ASSISTANCE BILL

Q. The President does not refer to any dollar amounts in the message. Does this mean he is satisfied with the cuts involved?

A. No, the President is not satisfied with the cuts made, since he considers his recommended program to have been a minimum program to do the job in a time of budget austerity. However, as the veto message makes clear, the President was particularly concerned over the many unwise provisions of S-2662.

For your information, the following are the principal amounts authorized by S-2662:

FY 76 Funds Authorized by S-2662
(In millions of dollars)

<u>Program</u>	<u>Request</u>	<u>S-2662</u>
Grant Military Assistance	394.5	228.7
Military Training	30.0	27.0
Military Sales Credits	1,065.0	1,039.0
Contingency Fund	10.0	5.0
Narcotics Control	42.5	40.0
Supporting Assistance	1,873.3	1,766.2
Middle East Special Requirements .	50.0	50.0
Other Accounts	--	11.0
Total	<u>3,465.3</u>	<u>3,166.9</u>

FYI: You should not attempt to get into dollar details since we want to keep the focus on the unacceptable provisions of S-2662, not the funding levels.

5/4/76

SECURITY ASSISTANCE LEGISLATION

Q. What will happen now? If the President's veto is sustained, will he submit new legislation for FY 76?

A. As I understand it, there are two basic options. Congress can develop a new FY 76 authorization bill acceptable to the President, or it can continue funding on what is known as "continuing resolution authority." The Administration is anxious to work jointly with the Congress to develop a speedy and a mutually satisfactory resolution.

Q. But the existing CRA would not accommodate requested funding levels for the Middle East and certain other assistance programs.

A. The President is aware of these problems and hopes that Congress can move quickly to provide a means of funding the programs which are so vital to our peace efforts in the Middle East.

5/4/76



DEPARTMENT OF STATE

Washington, D.C. 20520

April 30, 1976

Dear Mr. Lynn:

Reference is made to Mr. Frey's request for the views and recommendations of the Department of State with respect to S. 2662, an enrolled bill.

The enrolled bill, the International Security Assistance and Arms Export Control Act of 1976, contains authorizations of appropriations to carry out FY 1976 security assistance and certain other programs and makes major changes in the basic legislation governing the organization, management and procedures for carrying out these programs. A summary of the bill's principal provisions is enclosed.

We understand that the President has expressed his intention to veto this bill. We recognize that S. 2662 contains serious encroachments on the President's ability to carry out security assistance programs and that a serious question exists as to whether the long term implications of these encroachments outweigh the potential benefits of an accommodation with Congress that might produce more desirable legislation in the future. In particular, we note that the bill's several provisions for legislative veto by concurrent resolution were adopted despite Executive Branch objections based on constitutional grounds. We believe that the immediate consequences of a veto on the Administration's legislative program need to be carefully considered.

In the absence of the authority contained in this bill, we will be unable to carry out the security supporting assistance and foreign military sales credit and guaranty programs which exceed substantially the FY 1975 program levels governing

The Honorable
James T. Lynn, Director,
Office of Management and Budget.




under the current continuing resolution (P.L. 94-41, as amended). In addition, we will lack authority to forgive repayment by Israel of any FMS credit extended. The necessary authority and funds to overcome these difficulties may be obtained through an amendment to P.L. 94-41, although there would be a risk of additional and undesirable amendments to a bill introduced for this purpose.

Other authorities contained in S. 2662 would seem less likely to be attainable through a new continuing resolution. These include authority for FMS sales and financing for Turkey, overseas stockpiling, a military education and training chapter, emergency draw down authority, greater flexibility in responding to violations of agreements governing the use of U.S. furnished arms, administrative remedies for violations of munitions control regulations, and equitable compensation for AID consultants. It may be more difficult to obtain some of these authorities in the FY 1977 authorization bill in light of the veto of S. 2662.

Apart from the provisions of the enrolled bill, we anticipate that a veto may seriously impair our efforts to obtain Congressional approval of and authorizations for defense cooperation agreements with Greece, Turkey and the Philippines. In addition, we believe that ratification of the Spanish Treaty of Friendship and Cooperation will be delayed or seriously complicated.

We recommend that the foregoing consequences of a veto be brought to the attention of the President.

Sincerely,


Robert J. McCloskey
Assistant Secretary for
Congressional Relations



SUMMARY OF S.2662

1. Authorizations.

The authorization levels contained in the bill (in millions of dollars), as compared with the amounts requested by the Executive Branch are:

<u>Program</u>	<u>Conference Recommendation</u>	<u>Administration Request</u>
Grant Military Assistance Program	\$ 196.7	\$ 357.5
MAP Administrative Costs	32	37
Military Education and Training	27	30
FMS:Authorization	1,039	1,065
Program Ceiling	(2,374.7)	(2,374.7)
Contingency Fund	5	10
Narcotics Control	40	42.5
Security Supporting Assistance	1,766.2	1,873.3
Middle East Special Requirements Fund	50	50
Supplemental Aid to Cypriot Refugees	10	--
International Atomic Energy Agency	1	--



2. Military Assistance Program

The bill's provisions regarding the grant military assistance program reflect a policy that the program should be phased out, and terminated after FY 1977 except as specifically authorized for particular countries on an exceptional basis. The principal amendments to the military assistance chapter of the Foreign Assistance Act are:

a. Phaseout

Military assistance advisory groups and Defense Attaches performing security assistance functions would no longer be able to operate in foreign

countries after September 30, 1977, except as specifically authorized by law. Instead, not to exceed three members of the Armed Forces may be assigned to any diplomatic mission to perform security assistance functions. Not more than 34 MAAGs are authorized for FY 1977. The grant military assistance program is also terminated after September 30, 1977, except as specifically authorized for particular countries, although delivery of items in the pipeline and other winding up activities may continue. The termination of MAP (except as specifically authorized) will not affect military training, which will continue under a new chapter in the Foreign Assistance Act as a separate program.

b. Stockpiles

The prohibition in existing law on stockpiling for allied forces is repealed, subject to an annual limitation on the value of the items that can be transported to overseas stockpiles.

c. Draw Down Authority

The President's emergency authority to draw upon Department of Defense stocks subject to subsequent reimbursement is retained, but reduced from \$150 million to \$67.5 million and made subject to more stringent criteria.

3. Foreign Military Sales Program

The title of the Foreign Military Sales Act is changed to "Arms Export Control Act" and numerous policy and procedural changes are made in the basic legislation. Chief among these are:

a. Annual Ceiling

An annual ceiling of \$9 billion is established on foreign military sales contracts and commercial arms deliveries. The ceiling would become effective in FY 1977, contains an inflation factor so that it would be computed in constant 1975 dollars, and may be waived by the President if the national security so requires.

b. Third Country Transfers

As a condition of eligibility, foreign governments would have to promise not to transfer



without prior U.S. consent any training or other defense services furnished to them by the U.S. Government. Before consenting to any proposed third country transfer of materiel or services, the President must inform Congress and wait 30 calendar days, during which period Congress can disapprove the transfer by concurrent resolution. This review procedure may be waived by the President for national security reasons.

c. Arms Transfers Procedures

The bill includes a definition of major defense equipment, identified as any significant combat equipment on the United States munitions list having an R&D cost of more than \$50 million or estimated production costs of more than \$200 million. Sales of such major defense equipment valued at \$25 million or more cannot be made through commercial channels except to NATO countries. Sales of major defense equipment valued at \$7 million or more through either FMS or commercial channels must be submitted to Congress for 30 days review and possible disapproval by concurrent resolution in connection with the foreign military sales contract or commercial export license.

4. Eligibility

The law is substantially revised with regard to loss of eligibility for countries that misuse or transfer without authorization MAP or FMS origin items. Under the bill, the President must report to Congress whenever a substantial violation of the recipient country's agreement may have occurred, but need not immediately terminate military assistance or foreign military sales. Termination is required only if the President determines or Congress finds by concurrent resolution that a substantial violation has occurred. The President may waive ineligibility under this revised procedure with respect to items in the MAP pipeline and also with respect to FMS cash sales. However, the foreign military sales waiver is available only if ineligibility results from a Presidential determination rather than from a concurrent resolution by Congress. These changes do not affect Turkey, for which separate provision is made (Item 8 below).

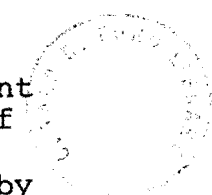


5. Human Rights

The bill declares that security assistance may not be provided to a country that engages in a consistent pattern of gross violations of human rights. It requires the inclusion of a human rights report for each proposed security assistance recipient in the annual Congressional presentation materials. In addition, the Department is required to submit a more detailed report on any particular country when requested by Congress. If the report reveals human rights violations, it must also set forth an explanation of the exceptional circumstances requiring the continuation of security assistance and describe efforts by the U.S. Government to discourage the practices and disassociate U.S. assistance from them. Congress may within 90 days of continuous session after receipt of such a report adopt a concurrent resolution terminating or restricting further security assistance to the country which is the subject of that report. Finally, the bill establishes as a statutory position within the Department of State a Coordinator for Human Rights to be appointed by the President with Senate confirmation. The Coordinator is to be responsible to the Secretary in carrying out reporting responsibilities, making recommendations and performing other functions which serve to promote increased observance of human rights.

6. Discrimination

The bill enunciates U.S. policy not to furnish assistance or make sales to countries which discriminate against U.S. citizens on the basis of their race, sex, religion or national origin; prohibits the U.S. Government and its contractors from acquiescing in such discrimination in their assignment and employment practices; requires reports to Congress in the event of such discrimination; and requires termination of any assistance transaction, sale, or arms export license in the event of persistent discrimination by the recipient country. However, the termination requirement may be waived by the President if it would have a significant adverse impact on the security interests of the United States.



7. Angola

The bill prohibits assistance to any person for military or paramilitary operations in Angola and requires periodic reports to Congress on efforts to terminate the hostilities which were extant at the time the provision was drafted.

8. Turkey

The bill provides partial relief from the existing prohibition against foreign military sales for Turkey by allowing up to \$125 million in sales to Turkey during FY 1976 and the transition quarter, any part of which may be financed by FMS credits or guaranties. This authority is conditioned upon Turkish observance of the ceasefire on Cyprus, refraining from transferring to Cyprus additional U.S. supplied arms and refraining from increasing its military forces or civilian population on Cyprus. Each FMS sale to Turkey must be the subject of a Presidential determination that the items to be sold are necessary for Turkey's NATO responsibilities and the proposed sale must lie before Congress for 30 calendar days, although no provision is made for legislative veto.

9. Chile

The bill prohibits grant or credit security assistance to Chile, but permits FMS cash sales and commercial exports of arms to that country.

10. Korea

The bill requires a report to Congress within 90 days and at least once a year thereafter, reviewing Korean progress in its modernization program and the prospects for a phased reduction of U.S. military forces in Korea.

11. Vietnam

The bill temporarily limits the President's discretionary authority under existing law to control or prohibit trade and financial transfers with North and South Vietnam by persons subject to U.S. jurisdiction.

The only restrictions that can be applied during the 180-day period following enactment are those which are also applicable to the Peoples' Republic of China. However, this provision will lapse at the end of 180 days unless during that period the Vietnamese have accounted for a substantial number of POWs and MIAs and returned a substantial number of bodies.

12. Fees, Contributions, Gifts and Bribes

The bill requires the Secretary of State to prescribe regulations requiring reports and record-keeping on political contributions, gifts and fees paid or offered in order to secure a foreign military sale or commercial arms sale. The regulations may specify the amounts and kinds of payments to be reported and the form and timing of the reports. The information thus acquired is to be made available to U.S. law enforcement agencies and to committees of Congress. Provision is made for regular reports to Congress on such payments. The bill allows the reports to Congress to identify any information considered confidential by the person who submitted it, but does not preclude Congress from disregarding that confidentiality.



Department of Justice
Washington, D.C. 20530

April 30, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request that we consider the Conference Report version of S. 2662 as an enrolled bill and submit a report regarding executive approval.

While S. 2662 was under consideration in the Senate Foreign Relations Committee, the Department of Justice submitted a letter to the committee objecting to a number of provisions of the bill authorizing Congress to prohibit by concurrent resolution action by the President otherwise authorized by new or existing grants of statutory authority. We expressed the view that these provisions were incompatible with Article I, §7 of the Constitution which requires that such resolutions be presented to the President for signature or veto. The report of the Committee rejected this argument. (See Cong. Rec., February 4, 1976, daily ed., S1272-1279.) The Conference Report version of S. 2662 contains six provisions objectionable on this ground (Sec. 204, Sec. 211, Sec. 301, Sec. 303).

The Department of Justice is not in a position to balance policy considerations attending this bill against these Constitutional objections.

Accordingly, the Department of Justice makes no recommendation regarding Executive approval of this bill.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General





UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY
WASHINGTON

April 30, 1976

OFFICE OF
THE DIRECTOR

Dear Mr. Lynn:

Your office has requested the views of this Agency on enrolled bill S. 2662, the International Security Assistance and Arms Export Control Act of 1976. Because more than one agency is substantially affected by this legislation, we have confined our comments to those provisions of key concern to the Arms Control and Disarmament Agency.

Section 209(a) of the bill adds a new section 25 to the Foreign Military Sales Act which requires in section 25(a) (4) that the President transmit to the Congress, as part of the presentation materials for security assistance programs proposed for each fiscal year, an arms control impact statement for each purchasing country prepared by the Director of the Arms Control and Disarmament Agency. Section 22 of the Arms Control and Disarmament Act (22 U.S.C. 2562) specifies that the Director of ACDA is the principal adviser to the Secretary of State, the National Security Council and the President. By stipulating that the President submit statements prepared by his arms control adviser rather than Administration statements which are prepared in consultation with ACDA, the bill raises the constitutional question of the separation of powers.

Section 407 states that it is the sense of Congress that the President should undertake to enter into negotiations with the Soviet Union intended to achieve an agreement limiting the deployment of naval, air and land forces of the Soviet Union and the United States in the Indian Ocean

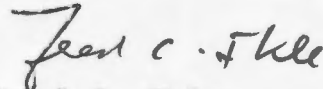
The Honorable
James T. Lynn
Director
Office of Management and Budget



and littoral countries. Such negotiations are to be convened as soon as possible and the President is to submit to the Congress by December 1, 1976, a report on steps taken. On April 15, 1976, the Executive Branch advised the Congress that it had concluded that, while not wishing to prejudice future consideration of initiatives, entering into any negotiations with respect to arms limitations in the Indian Ocean and the littoral countries was not appropriate at this time.

In view of these two sections, the Arms Control and Disarmament Agency would support a Presidential veto of S. 2662.

Sincerely,



Fred C. Ikle





GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

30 April 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Defense with respect to the Enrolled Enactment of S. 2662, 94th Congress, "To amend the Foreign Assistance Act of 1961 and the Foreign Military Sales Act, and for other purposes."

S. 2662 (the "International Security Assistance and Arms Export Control Act of 1976") limits the funds which may be appropriated for fiscal year 1976 military assistance to \$228.7 million compared with the President's request for \$394.5 million and limits the funds which may be appropriated for fiscal year 1976 international military education and training to \$27 million compared with the President's request for \$30 million. The President also requested \$1,065 million for foreign military sales credits and guaranties, but S. 2662 limits the funds which may be appropriated therefor to \$1,039 million. Moreover, for the period July 1, 1976 through September 30, 1976, one-fourth of the amounts authorized in these categories for the fiscal year 1976, i.e., \$57,175,000 for military assistance, \$6,750,000 for international military education and training, and \$259,750,000 for foreign military sales credits and guaranties, may be appropriated.

In enacting S. 2662, the Congress amends the security assistance provisions of the Foreign Assistance Act of 1961, and the Foreign Military Sales Act (renaming the latter the "Arms Export Control Act") in numerous respects, imposing a wide range of restrictions upon the President's authority to provide security assistance.

Particularly notable provisions of S. 2662 are those relating to country-by-country ceilings on military assistance (sec. 101); termination of military assistance (and associated



Rec'd omb/uro 4/30/76

military groups and missions overseas) after the fiscal year 1977 unless specifically authorized by country and amount (secs. 104 and 105); the separation of grant training from the military assistance program (sec. 106); extensive provisions relating to conventional arms control policies (sec. 202), human rights (sec. 301), and discrimination (sec. 302); an annual \$9 billion ceiling on U.S. reimbursable government and commercial arms exports (sec. 213); disclosure of arms sales agent fees and related payments (sec. 604); and partial relaxation of restrictions on security assistance to Turkey (sec. 403) and of the trade embargo regarding Vietnam (sec. 413). A comprehensive scheme for the reporting to the Congress of U.S. reimbursable government and commercial arms exports (including proposed transactions to a very considerable extent) is contained in sec. 211, in addition to the annual reports and projections required by sec. 209 and sec. 217.

In its 24 December 1974 report on the enrolled enactment of the fiscal year 1975 foreign aid authorization (P. L. 93-559; S. 3394, 93rd Congress), the Department of Defense recommended that the President's signing statement note Constitutional objections to the purported Congressional "veto by concurrent resolution" power set forth in two places in S. 3394. This recommendation is all the more strongly reiterated as regards S. 2662, 94th Congress, since it contains six sections relating to such purported "veto":

- 1) Section 204, relating to Presidential consent to transfers of defense articles and services by military assistance recipients and foreign military sales purchasers;
- 2) Section 211, relating to almost all significant foreign military sales and commercial munitions exports which the President proposes to make or license;
- 3) Section 301, relating to terminating, restricting, or continuing security assistance to a foreign country that is the subject of a specially-required statement submitted by the Secretary of State to the Congress on human rights practices within such country;
- 4) Section 303, relating to termination of all military assistance and foreign military sales to a foreign country violating its agreements with the United States (although section 403 allows the President to suspend such provisions as they relate to foreign military sales to Turkey until September 30, 1976);



- 5) Section 304, relating to termination of foreign assistance to foreign countries which grant sanctuary to international terrorists, even though the President finds that national security justifies continuation of such assistance; and
- 6) Section 601, relating to expedited Senate procedures to facilitate consideration of concurrent resolutions and simple Senate resolutions under S. 2662.

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.

With respect to the concurrent resolution feature of the enrolled enactment, the Department of Defense is of the view that a veto on that ground would be inappropriate inasmuch as the fiscal year 1975 foreign aid authorization was not vetoed on that ground and numerous other bills presented to the President for signature over the past 30 years containing provisions for Congressional "veto" by concurrent resolution were similarly not vetoed by the President. The Department of Defense is of the position, however, that a firm stand must be taken against such legislation. Accordingly, it is recommended that the President issue a statement upon signature of S. 2662 which includes a passage substantially as follows:

"I am signing this bill in view of the importance of the authorizations of funds in it to national security policy. I do this despite the serious concern I have with the unconstitutional provisions relating to the purported power of the Congress to 'veto' by concurrent resolution my exercise of authority granted by law. Article I, Section 7, Clause 2, of the Constitution states that:



'Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.'

"The Congress cannot evade this Constitutional requirement by the simple expedient of adopting a concurrent resolution. The founding fathers closed that loophole in Clause 3 of Article I, Section 7. It states that:

'Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.'

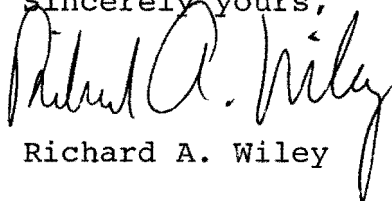
"Accordingly, any concurrent resolution which is not submitted to the President for approval does not become the law. Not being law, it cannot modify or repeal the law.

"I would welcome a speedy and decisive judicial test of these provisions. Meanwhile, I am instructing the Executive Branch to comply with the prescribed requirements of Congressional notification and waiting periods, in a spirit of comity with the Congress. Pending a court decision, however, I reserve the question of compliance should a concurrent resolution envisaged by this bill be adopted."



Alternatively, should the President desire to signify his dissatisfaction with S. 2662 in stronger fashion, the Department of Defense recommends that the President announce that he will permit S. 2662 to become law without his signature and that he include a statement similar to the foregoing in such announcement.

Sincerely yours,

A handwritten signature in cursive script that reads "Richard A. Wiley". The signature is written in dark ink and is positioned above the typed name.

Richard A. Wiley



DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

30 APR 1976

Mr. James Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This letter replies to your request for the Agency for International Development's comments on the Enrolled Bill, S.2662, the International Security Assistance and Arms Export Control Act of 1976.

The bill contains a number of features which are of direct interest to the Agency, the most important of which follow:

- An authorization of appropriations for fiscal year 1976 for security supporting assistance of \$1,766,200,000 which level would permit nearly full funding of the President's request for the Middle Eastern countries as well as others such as Portugal, Zaire and Greece. (Pending appropriations legislation, however, would reduce the actual amount available by approximately \$60,000,000.)

- Authorization of appropriations for the Middle East Special Requirements Fund at the level of the President's request (\$50,000,000) and for the President's Contingency Fund at \$5,000,000 (\$5,000,000 less than requested).

- Authorization for the continued availability of Indochina Postwar Reconstruction funds to meet termination costs and authority to settle certain claims arising from the termination of the program.

- Authority to compensate experts and consultants in amounts equal to the government-wide ceiling of \$145 per day. A recent GAO ruling had reduced the Agency's ceiling to \$100 per day.



Rec'd OMB/KRO 4/30/76

Two restrictive provisions contained in the bill could impact on the Agency's programs. Section 301, relating to human rights, requires the termination, inter alia, of security supporting assistance programs to countries whose governments engage in consistent patterns of gross violations of internationally recognized human rights. The section does appear to provide for exceptions in extraordinary circumstances. However, it also permits the Congress to terminate or otherwise circumscribe assistance programs by concurrent resolution. In our view such a procedure is unconstitutional. On the other hand, we believe that it is highly unlikely that any of the present programs of security supporting assistance would be targets of such a procedure.

The second restriction which we find troublesome is contained in section 304 of the bill. The section, in essence, prohibits furnishing any assistance under the Foreign Assistance Act to a country "which aids or abets, by granting sanctuary from prosecution to, any individual which has committed an act of international terrorism." Although we have had some success through the legislative process in narrowing the definition of the offensive governmental conduct, we remain concerned that this prohibition could potentially impact on our economic assistance programs. The danger is particularly high in the Middle East and in southern Africa. We are protected by a Presidential "national security" waiver authority, but that authority is in turn subject to concurrent resolution by the Congress. As noted above in the context of the human rights provision, we believe that such procedures are constitutionally defective.

We view the restrictions cited above with concern. However, to be perfectly candid, we would not recommend a Presidential veto of S.2662, at least from the standpoint of A.I.D.'s parochial interest in the program. None of the provisions contained in the bill are, in the short-term at least, likely to impede our implementation of economic assistance activities. The bill does contain authorities which will facilitate the Agency's administration of economic assistance programs, and it includes authorizations of appropriations for economic assistance for the Middle East and for other assistance programs which we believe are of great importance to the foreign policy of the United States.



We would recommend strongly, however, that if the President should decide to approve the bill, that he include a forceful statement challenging the constitutionality of the concurrent resolution veto provisions mentioned above, as well as others applying to military programs.

Sincerely yours,



Charles E. Gladson
General Counsel





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 5-4-76

TO: Bob Linder

FROM: Jim Frey

Attached is the Commerce views letter on S. 2662. Please have it included in the enrolled bill file. Thanks.



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

MAY 3 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Washington, D. C. 20503

Dear Jim:

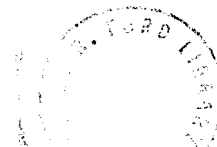
This responds to your request for the comments of this Department on the Conference Report on S. 2662, the "International Security Assistance and Arms Export Control Act of 1976."

While we defer to the Departments of State and Defense regarding the overall defense and foreign policy acceptability of this legislation, we do wish to comment on Section 604. Section 604 requires the Secretary of State to issue regulations requiring accurate and timely reporting of political contributions, gifts, commissions and fees paid any person pursuant to foreign military sales activities; allows the President to prohibit or limit such contributions, gifts, commissions or fees; and forbids reimbursement of such fees under any U.S. procurement contract unless found to be reasonable, allocable to the contract, and not made to secure a sale through improper influence. Section 604 further provides that the President shall file quarterly reports with Congress concerning the details of such payments, identifying for Congress any information considered to be confidential business information by the person originally submitting it.

It is rumored that the President may veto S. 2662 on foreign policy or other grounds. As Chairman of the President's Task Force on Questionable Corporate Payments Abroad, I would strongly suggest that any veto message not imply that the President opposes constructive measures directed to the problem of questionable payments abroad.

Sincerely,

Elliot L. Richardson





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 5-5-76

TO: Bob Linder

FROM: Jim Frey

Attached is the Treasury views
letter on S. 2662 for inclusion
in the enrolled bill file.



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

MAY 4 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S. 2662, the "International Security Assistance and Arms Export Control Act of 1976."

This is a complex piece of legislation upon which the Department has not previously commented. Accordingly, and because of time limitations, we will comment only on areas of primary interest to the Department. Section 413 and section 504(a) are of such interest.

Section 413 deals with trade between the United States and Vietnam and limits the restrictions which can be placed on exports from the United States to North or South Vietnam. A principal purpose of the freeze on transactions with Vietnam has been to preserve the United States bargaining position on the resolution of U.S. claims and other issues, such as the status of POWs/MIAs. The Department believes that the lifting of restrictions on current transactions between the United States and Vietnam may significantly reduce the pressure on Vietnam to deal meaningfully with U.S. claims. The inclusion of section 413 in the legislation is apparently premised on the possibility that a unilateral concession by the United States in the trade area will induce a reciprocal concession by the Vietnamese on the POW/MIA issue. However, this Department believes that in view of the history of the negotiations on the POW/MIA issue, it is unlikely that it will be resolved except as part of a quid pro quo negotiation.

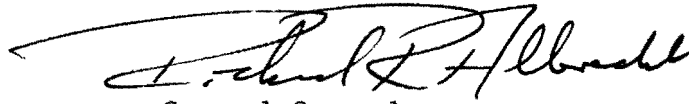
Moreover, approximately \$6 billion of U.S.-supplied military equipment fell into the hands of the People's Revolutionary Government last spring as a result of the fall of South Vietnam. Section 413 would permit U.S. firms to deal in this war materiel for their own accounts or on behalf of the Vietnamese. It should be recognized that U.S. firms could become involved in channeling such equipment to troubled areas such as the Middle East or elsewhere to the detriment of U.S. interests.



Section 504(a) deals with international narcotics control. It prohibits international narcotics assistance by the United States where illegal traffic in opiates has been a significant problem unless the President determines that such assistance is significantly reducing the amount of illegal drugs entering international markets. This Department questions whether such a prohibition would contribute to the objectives which Congress intended. However, the Department understands that the prohibition reflects an agreement between Congressman Lester Wolf and the Department of State's Senior Advisor for International Matters. Consequently, on this matter, the Department defers to the Department of State.

Although the Department expresses concern with respect to sections 413 and 504(a), the Department would not recommend a veto insofar as the enrolled enactment affects this Department.

Sincerely yours,



General Counsel
Richard R. Albrecht



Date: April 30

Time: 800pm

FOR ACTION: Brent Scowcroft
Max Friedlander
Ken Lazarus
Robert Hartmann

cc (for information):

Jack Marsh
Ed Schnalts

Bin Semwan

FROM THE STAFF SECRETARY

DUE: Date: May 1

Time: 1030

SUBJECT:

S. 26693 International Security Assistance and Arms Export Control Act

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*a good veto message!! Vets!
JMS*



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary for assistance.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: April 30

Time: 800am

FOR ACTION: Brent Scowcroft
Max Friedersdorf
Ken Lazarus
Robert Hartmann

cc (for information):

Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: May 1

Time: asap

SUBJECT:

S. 26622 International Security Assistance and
Arms Export Control Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

May 1, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *fw*
SUBJECT: S. 2662 - International Security Assistance and
Arms Export Control Act

The Office of Legislative Affairs concurs with the agencies that the subject bill be vetoed and concurs with veto message.

Attachments



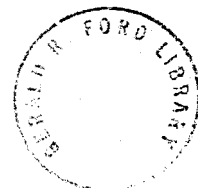
TO THE SENATE OF THE UNITED STATES

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,



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.

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.

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 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.

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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

