The original documents are located in Box 36, folder "Office of Management and Budget - Legislation (5)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

AC EMORANDUM WASHINGTON LOG NO.:

Date: May 17, 1976 Time:

FOR ACTION: cc (for information):

Phil Buchen
Max Friedersdorf
Jack Marsh

Brent Scowcroft
Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, May 19 Time: 2 P.M.

SUBJECT:

James Lynn memo 5/17/76 re Transmittal Message for Legislation Approving the Defense Cooperation AGreement with Turkey

ACTION REQUESTED:

___ For Necessary Action — X For Your Recommendations

___ Prepare Agenda and Brief — ___ Draft Reply

X For Your Comments — ___ Draft Remarks

REMARKS:

General Scowcroft -
The package received from Mr. Lynn did not contain the actual copy of the Agreement needed for transmittal -- Please send this to us if it is in the NSC files. Thank you.

No objection -- Ken Lazarus 5/18/76

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.

Jim Connor
For the President

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

MAY 17 1976

SIGNATURE

MEMORANDUM FOR: THE PRESIDENT

FROM: James T. Lynn

SUBJECT: Transmittal Message for Legislation Approving the Defense Cooperation Agreement with Turkey

Attached is a draft of a message to the Congress transmitting the new Defense Cooperation Agreement with Turkey and a proposed joint resolution approving the agreement and authorizing the related foreign aid and other forms of assistance to Turkey during the next four years. The package was prepared by State and has been reviewed by Defense, Treasury, ACDA, OMB, and the NSC staff. The message draft has been checked by White House speechwriters.

The Congress is not expected to act on the Turkey agreement before receiving the related Greek agreement, negotiation of which is not likely to be completed for another month. State, nevertheless and in consideration of our commitments to the Turks, recommends that the Turkish agreement and joint resolution be transmitted now.

You may wish to discuss the timing of the transmittal with your legislative advisers who may be sensitive to the congressional receptivity of new proposals so soon after your veto of the security assistance authorization bill.

Following your transmittal of the joint resolution, I will submit for your approval the corresponding budget amendments.

Attachment

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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 17 1976

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THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

I am hereby requesting that Congress approve and authorize appropriations to implement the Agreement Between the Governments of the United States of America and of the Republic of Turkey Relative to Defense Cooperation Pursuant to Article III of the North Atlantic Treaty in Order to Resist Armed Attack in the North Atlantic Treaty Area, signed in Washington, March 26, 1976, and a related exchange of notes. Accordingly, I am transmitting herewith draft legislation in the form of a Joint Resolution of the Congress for this purpose.

The United States and Turkey have long enjoyed a close mutual security relationship under the North Atlantic Treaty, as well as bilateral cooperation in accordance with Article III of that Treaty. The new Agreement, like its predecessor, the Defense Cooperation Agreement of 1969 which this Agreement would supersede, implements the Treaty. It has been signed as an executive agreement. The Agreement was negotiated with the understanding that it would be subject to Congressional approval and expressly provides that it shall not enter into force until the Parties exchange notes indicating approval of the Agreement in accordance with their respective legal procedures. Full Congressional endorsement of this Agreement will give new strength and stability to continuing U.S. - Turkish security cooperation which has served as a vital buttress on NATO's southeast flank for more than two decades.

The new Agreement is consistent with, but not identical

to the preceding Defense Cooperation Agreement of 1969. Founded on mutual respect for the sovereignty of the parties, the Agreement (Articles II and III) authorizes U.S. participation in defense measures related to the parties' obligations arising out of the North Atlantic Treaty. It is understood that when the Agreement enters into force pursuant to Article XXI, activities will resume which were suspended by the Government of Turkey in July 1975, when the Turkish Government requested negotiation of a new defense cooperation agreement.

The Agreement provides a mutually acceptable framework for this important security cooperation. The installations authorized by the Agreement will be Turkish Armed Forces installations under Turkish command (Articles IV and V). Article V clearly provides for U.S. command and control authority over all U.S. armed forces personnel, other members of the U.S. national element at each installation, and U.S. equipment and support facilities.

The installations shall be operated jointly. In order to facilitate this objective, the United States is committed to a program of technical training of Turkish personnel.

Other provisions of the Agreement deal with traditional operational and administrative matters, including: operation and maintenance of the installations; ceilings on levels of U.S. personnel and equipment; import, export and in-country supply procedures; status of forces and property questions.

Article XIX specifies the amounts of defense support which the United States plans to provide Turkey during

the first four years the Agreement remains in force. We have provided such support to this important NATO ally for many years to help Turkey meet its heavy NATO obligations. The Article provides that during the first four years the Agreement remains in force, the United States will furnish $1,000,000,000 in grants, credits and loan guaranties, to be distributed equally over these four years in accordance with annual plans to be developed by the Governments. It further provides that during the first year of the defense support program, $75 million in grants will be made available, with a total of not less than $200 million in grants to be provided over the four-year life of the program. The Article also sets forth our preparedness to make cash sales to Turkey of defense articles and services over the life of the Agreement.

The related exchange of notes details defense articles we are prepared to sell to the Republic of Turkey at prices consistent with U.S. law. It further provides for Turkish access to the U.S. Defense Communications Satellite System, and for bilateral consultations regarding cooperation in modernizing Turkish defense communications.

The defense support specified in Article XIX and in the related exchange of notes will be provided in accordance with contractual obligations existing and to be entered into by the Governments, and with the general practices applicable to all other recipient countries. The accompanying draft legislation accordingly provides that the generally applicable provisions of our foreign assistance and military sales Acts will govern this defense support, and that it will be exempted from the

provisions of section 620(x) of the Foreign Assistance Act as amended. The draft legislation further provides that it fulfills the requirements of section 36(b) of the Foreign Military Sales Act as amended and section 7307 of Title 10 of the United States Code with respect to the transfer of materiel pursuant to the related exchange of notes.

The Agreement will have a duration of four years, and will be extended for subsequent four-year periods in the absence of notice of termination by one of the parties. As the four-year defense support program comes to an end, the Agreement provides for consultation on the development of a future program as required in accordance with the respective legal procedures of the two Governments. Article XXI stipulates the procedures under which the Agreement can be terminated by either party, and provides for a one-year period following termination during which the Agreement will be considered to remain in force for the purposes of an orderly withdrawal.

This Agreement restores a bilateral relationship that has been important to Western security for more than two decades. I believe it will promote U.S. interests and objectives on the vital southeastern flank of NATO and provide a framework for bilateral cooperation designed solely to reinforce NATO and our common security concerns. To the extent that the Agreement restores trust and confidence between the United States and Turkey, it also enhances the prospects for a constructive dialogue on other regional problems of mutual concern.

I therefore request that the Congress give this Agreement and the accompanying draft legislation prompt and favorable consideration, and approve its entry into force and authorize the appropriation of the funds necessary for its execution.

THE WHITE HOUSE

May , 1976

A JOINT RESOLUTION

To authorize the President to implement an Agreement with the Government of the Republic of Turkey Relative to Defense Cooperation Pursuant to Article III of the North Atlantic Treaty in Order to Resist Armed Attack in the North Atlantic Treaty Area.

Whereas on March 26, 1976, there was signed an Agreement Between the Governments of the United States of America and of the Republic of Turkey Relative to Defense Cooperation Pursuant to Article 3 of the North Atlantic Treaty (which Agreement, together with a related exchange of notes dated April 7 and 13, 1976, are hereinafter referred to collectively as "the Agreement"), and

Whereas the Agreement provides that its entry into force is conditioned upon a further exchange of notes indicating the approval of both parties in accordance with their respective legal procedures; and

Whereas the said Agreement provides for certain undertakings by the United States as part of its obligations under the said Agreement; and

Whereas the entry into force of the Agreement will restore to the United States the use of facilities which are important to the security of the United States and the defense of the North Atlantic Treaty Area; and

Whereas the President has requested the Congress to approve the Agreement and to authorize the appropriation of funds necessary to its execution so that the Agreement may enter into force: Now, therefore, be it

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves the Agreement and the President is authorized to implement the provisions thereof.

SEC. 2. (a) There are authorized to be appropriated the amounts required by the said Agreement for the purpose of carrying out the programs and activities as are provided for therein.

(b) Foreign assistance and military sales programs and activities carried out with funds made available pursuant to subsection (a) of this section shall be conducted in accordance with provisions of law generally applicable to foreign assistance and military sales programs of the

United States: Provided, That section 620(x) of the Foreign Assistance Act of 1961 shall not apply with respect to such programs and activities; and Provided further, That the President is authorized, notwithstanding that section, to furnish to the Government of Turkey those defense articles and defense services with respect to which funds were obligated or reserved under chapter 2 of part II of the Foreign Assistance Act of 1961 on or before February 5, 1975.

(c) This Resolution satisfies the requirement of section 36(b) of the Foreign Military Sales Act and section 7307 of Title 10 of the United States Code with respect to the transfer pursuant to the Agreement of naval vessels and other defense articles and defense services which are referred to in the United States note dated April 7, 1976.

(d) The costs of Department of Defense programs and activities to be carried out with Department of Defense funds made available pursuant to subsection (a) of this subsection include: operational, maintenance and other costs in connection with the use of installations in Turkey by the United States pursuant to Article XIII of the

Agreement; training (on-the-job and locally) of Turkish personnel assigned or to be assigned to the installations pursuant to Article VI of the Agreement; costs of implementation of communications joint use plans pursuant to Article XVI of the Agreement; and costs of providing access by Turkey to the United States Defense Communications Satellite System pursuant to numbered paragraph 3 of the United States note dated April 7, 1976.

SEC. 3. The authorities contained in this Resolution shall become effective only upon the entry into force of the Agreement and shall continue in effect only for so long as that Agreement remains in force.

SECTION-BY-SECTION ANALYSIS OF THE JOINT RESOLUTION TO AUTHORIZE THE PRESIDENT TO ENTER INTO AND CARRY OUT A DEFENSE COOPERATION AGREEMENT WITH TURKEY

I. INTRODUCTION

The proposed joint resolution implements the Defense Cooperation Agreement signed on behalf of the United States and Turkish Governments on March 26, 1976 and a related exchange of notes dated April 7 and 13, 1976, by authorizing the appropriation of funds necessary to carry out obligations undertaken by the United States therein and by providing that certain provisions of law will not operate to prohibit or impede the carrying out of those obligations.

The new Defense Cooperation Agreement with Turkey supersedes a 1969 Agreement, the operation of which was suspended by Turkey in July 1975. The 1969 Agreement had provided generally for support of the Turkish defense effort, subject to Congressional action, and entered into force on the day it was signed, without prior review by Congress. The Agreement was implemented by the inclusion of funds for Turkey in annual security assistance programs. By contrast, the present Agreement specifies the level of security assistance to be provided over the next four years, and has been negotiated with the understanding that it will not enter into force

until it is approved by Congress through enactment of the proposed joint resolution.

II. PROVISIONS OF THE RESOLUTION

Preamble

The preamble describes the background for the resolution by reciting the signature of the Agreement, its provision for entry into force, the existence of United States undertakings therein, the importance of the United States military activities and facilities in Turkey, and the President's request for Congressional approval of the Agreement.

Section 1. Approval.

Section 1 expresses approval of the Agreement by Congress and authorizes the President to implement its provisions. This section provides the legal basis for the United States to enter into the exchange of notes necessary to bring the Agreement into force and constitutes authority for carrying out the undertakings of the United States under the Agreement.

Section 2(a). Authorization.

Section 2 authorizes the appropriation of funds necessary to carry out the programs and activities provided for in the Agreement. This Agreement provides

for defense support to Turkey over a four year period of not less than $200 million for grant military assistance and military training, including $75 million for fiscal year 1977; sufficient funds for credits or guaranties of loans totaling not less than $800 million to finance Turkish procurement of defense articles and defense services; and necessary amounts for other programs and activities, which include training of local personnel, cooperation in the implementation of communications plans and providing Turkish access to the United States Defense Satellite Communications System. The appropriations under this authorization will be requested on an annual basis. Any successive program of defense support developed in accordance with Article XIX(3) of the Agreement will require enactment of additional authorizing legislation.

Section 2(b). Application of Other Laws.

Section 2(b) provides that provisions of United States law generally applicable to security assistance shall apply to foreign assistance and military sales programs and activities carried out in implementation of the Agreement. This provision ensures that section 1 of the resolution will not be construed as authority to waive

the legal requirements for foreign military sales, training and grant assistance. Thus, the conditions of eligibility, purposes for which articles and services can be used, transfer restrictions, Congressional review procedures, statutory definitions, and other terms governing United States security assistance programs shall apply, and assistance and sales to Turkey will be carried out within the framework of the Foreign Assistance Act of 1961 and the Foreign Military Sales Act. This provision is consistent with the terms of the Agreement.

The first proviso in section 2(b) states that section 620(x) of the Foreign Assistance Act of 1961 shall not apply to security assistance programs in implementation of the Agreement. Section 620(x) prohibits U.S. military assistance and sales to Turkey until "the President determines and certifies to the Congress that the Government of Turkey is in compliance with the Foreign Assistance Act of 1961, the Foreign Military Sales Act, and any agreement entered into under such Acts, and that substantial progress toward agreement has been made regarding military forces in Cyprus...." Such a condition aimed specifically at Turkey would not be consistent

with the provisions of the Agreement and the proposed resolution.

In the same spirit, it was understood in connection with the negotiation of the new Agreement that authorization would be sought to complete, after its entry into force, deliveries of grant defense articles and services valued at approximately $85 million which were suspended as a result of the enactment of section 620(x). The second proviso accordingly authorizes such deliveries with respect to articles and services for which funds were obligated or reserved prior to February 5, 1975. The resumption of such deliveries is consistent with and would complement the new Agreement in renewing defense cooperation with Turkey, which is essential to United States security interests, and thereby enhancing the ability of the United States to play a constructive role in encouraging a Cyprus settlement.

Section 2(c). Notice to Congress.

Section 2(c) specifies that the Congressional review procedures under section 36(b) of the Foreign Military Sales Act and the Congressional review and approval

requirements of 10 U.S.C. 7307 shall not apply to the defense articles and defense services referred to in the exchange of notes dated April 7 and 13, 1976 which is a part of the Agreement. The exchange of notes identifies certain defense articles, including naval vessels, which the United States is prepared to sell to Turkey in accordance with the standards and procedures set out in the Foreign Military Sales Act. If Congress, in connection with this resolution, approves that list of defense articles there would appear to be no need for a second review when the sales are made.

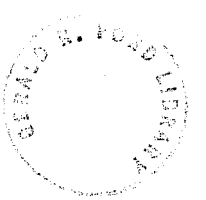
Section 2(d). Department of Defense Costs.

Section 2(d) makes clear that the authorized activities and programs of the Department of Defense, to be financed from the appropriations of the Department of Defense, include operation and maintenance of installations, training of Turkish personnel at the facilities, implementation of communications joint use plans, and providing access to the U.S. Defense Communications Satellite System. These Department of Defense functions will be carried out within the general framework of laws applicable to the activities of the Department of Defense and are not to be regarded as subject to the

provisions of the foreign assistance and military sales legislation.

SEC. 3. Effective Date.

Section 3 provides that the authorities in the resolution shall be effective concurrently with the period that the Agreement is in force and will lapse upon termination of the Agreement.



AGREEMENT BETWEEN
THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND OF
THE REPUBLIC OF TURKEY
RELATIVE TO DEFENSE COOPERATION
PURSUANT TO
ARTICLE III OF THE NORTH ATLANTIC TREATY
IN ORDER TO
RESIST ARMED ATTACK IN THE NORTH ATLANTIC TREATY AREA

PREAMBLE

The Government of the United States of America and the Government of the Republic of Turkey,

In conformity with the aims and principles of the United Nations Charter, and

Reaffirming their determination in exercising their inherent rights of individual and collective self-defense, as envisaged in Article 51 thereof,

Recognizing that cooperation in the field of defense is based on full respect for the sovereignty of the parties,

Expressing their desire to maintain the security and independence of their respective countries, as well as world peace,

Expressing their willingness to continue their bilateral defense cooperation so long as both parties are bound by the North Atlantic Treaty,

Acting on the basis of their continuing friendship, and in recognition of their obligations with regard to the security and defense of the North Atlantic Treaty area, and pursuant to Article III of the North Atlantic Treaty,

Have entered into the following Agreement:

ARTICLE I

The defense cooperation between the parties as set forth in this Agreement is based on the recognition of and full respect for the sovereignty of each.

ARTICLE II

1. The extent of the defense cooperation envisaged in this Agreement shall be limited to obligations arising out of the North Atlantic Treaty.

2. The installations shall not be used for, nor shall the activities serve, purposes other than those authorized by the Government of the Republic of Turkey.

ARTICLE III

1. Pursuant to Article III of the North Atlantic Treaty and in accordance with the provisions of this Agreement, the Government of the Republic of Turkey authorizes the Government of the United States of America to participate in the defense measures to be carried out on the following installations:

-- Intelligence gathering installations.

-- Mutually agreed sites of communication systems and [redacted].

-- Kargaburun Station.

-- Incirlik Installation.

2. The United States organizations and facilities outside these installations, approved by the Government of the Republic of

Turkey, providing command and control, administrative, logistics and general support shall be subject to the provisions of the Agreement.

ARTICLE IV

1. The installations referred to in Article III, paragraph 1 of this Agreement shall be Turkish Armed Forces installations.

The installation commander shall be Turkish. The Turkish flag shall be flown at the installations.

2. The activities and technical operations of the installations shall be conducted in accordance with mutually worked-out programs consistent with the purposes of the installations as approved by the Government of the Republic of Turkey.

3. Family housing units and the related support and social welfare activities on the installations shall be separated to the extent possible from the areas where technical operations of the installations are being carried out.

ARTICLE V

1. The installation commander shall be responsible for:

-- Supervision in order to ensure that the technical

operations and activities of the installations shall be carried out in accordance with the principles mentioned in Article IV, paragraph 2 of this Agreement.

-- Security and administration of the installations.

-- Maintaining order at the installations.

-- Full command and support requirements of the Turkish personnel at the installations, with the exception of those Turkish civilian personnel in the employ of the United States Government.

-- Relations with local Turkish authorities.

2. In the exercise of this authority, the installation commander may issue appropriate directives applicable to the installation as a whole.

3. The Government of the United States of America will assign at each installation a United States detachment commander as the "United States Senior Officer" to function as the single point of contact with the installation commander. The United States flag may be flown at the headquarters of the United States Senior Officer.

4. The United States Senior Officer shall be responsible for the direction and control of the United States national element, its equipment and its support, health and social welfare facilities; and for management of the premises exclusively utilized by the ~~United States national element at the installation. In the exercise~~ of his responsibilities regarding United States equipment, the United States senior officer shall respect the joint use arrangements envisaged in Article VII of this Agreement.

5. The working relationship and procedures for consultation between the installation commander and the United States Senior

Officer shall be mutually agreed by the Parties, taking into account the particularities of each installation.

ARTICLE VI

1. Agreed technical operations and related maintenance services and activities of the authorized installations shall be carried out jointly by Turkish and United States personnel. For this purpose, Turkish personnel shall be assigned by the Turkish authorities up to a level of fifty percent of the total strength required for such operations, services and activities.

2. The manning tables of the installations shall be consistent with the purpose and mission of the installations which have been approved by the Government of the Republic of Turkey. The distribution of manpower spaces for assignment by each party shall be determined jointly, by taking into account to the extent possible standard documents specifying current technical speciality and skill requirements. Turkish personnel above fifty percent of such manning requirements may be assigned to specific installations by mutual agreement between the parties.

3. In the event that the Government of the Republic of Turkey elects not to man fully at the fifty percent level mentioned in paragraph 2 of this Article, United States personnel may be assigned by the appropriate United States authorities in order to fill any vacancies thus created, without prejudice to the Turkish basic right of participation. Any contemplated subsequent change in manning by Turkish personnel shall be communicated to the appropriate United States authorities one year in advance.

4. In furtherance of the Turkish participation objective referred to in this Article, needed training related to the technical activities of the installations, including training in the United States, shall be provided by the Government of the United States of America, to Turkish personnel assigned or to be assigned to the installations, in accordance with mutually agreed programs. Consistent with Article XIX of this Agreement, the training costs shall be borne by the Government of the United States of America.

ARTICLE VII

1. The purpose, mission, location, installation plan and the joint use arrangements of each installation authorized by the Government of the Republic of Turkey shall be further detailed by mutual agreement. These agreements shall also include authorized quantities of arms and ammunition, the authorized numbers of major items of equipment and the authorized strengths of the U.S. force and civilian component. Any increase in such authorized quantities, numbers and strengths shall be subject to prior approval by the appropriate Turkish authorities.

2. The appropriate authorities of the Government of the United States of America shall provide to the appropriate authorities of the Government of the Republic of Turkey quarterly reports on the changes occurring within the limits of the authorizations mentioned in paragraph 1 of this Article, including the Turkish civilian personnel employed by the United States at the installations.

3. Construction of new buildings and other property incorporated in the soil at the installations and facilities, and demolition, removal, alteration or modernization which change the basic

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structure of such property, shall be subject to prior approval by the appropriate Turkish authorities.

4. Replacement of major items of equipment identified pursuant to paragraph 1 which upgrades or increases through modernization operational capability, and the introduction of new major items of equipment, shall be subject to prior approval by the appropriate Turkish authorities.

5. Any other kind of construction, alteration, modernization, maintenance and repair, except those routinely accomplished within local in-country maintenance capability, shall be subject to prior notification to the appropriate Turkish authorities.

ARTICLE VIII

1. Equipment for the United States force, and reasonable quantities of provisions, supplies and other goods for the exclusive use of the United States force, its members, civilian component and dependents, may be imported into and exported from Turkey in accordance with the provisions of the "Agreement Between the Parties of the North Atlantic Treaty Regarding the Status of Their Forces" dated June 19, 1951, and the provisions of the subsequent paragraphs of this Article.

2. The importation into and transfer within Turkey of arms and ammunition shall be subject to prior approval by the appropriate Turkish authorities, and shall be accomplished with safeguards and protections as mutually agreed. Special procedures shall be established for the customs control of arms and ammunition. As for procedures regarding customs control of equipment and material of classified nature, they shall be established through appropriate consultations between the parties.

3. The importation into Turkey of major items of equipment shall be subject to prior notification to the appropriate Turkish authorities.

4. So long as operations at an installation continue under this Agreement, arms and ammunition, and major items of equipment needed for the operation of the installation will not be removed from Turkey without prior consultation between the appropriate authorities of the parties, and no removal will be effected which would prejudice the mission of the North Atlantic Treaty Organization.

5. The appropriate Turkish authorities shall be notified by manifest of the importation, exportation and in-country movement of equipment, provisions, supplies and other goods.

ARTICLE IX

The procedures regarding admittance to the installations shall be mutually agreed by the appropriate authorities of the parties.

ARTICLE X

All intelligence information including raw data produced by the installations shall be shared fully by the two Governments in accordance with mutually agreed procedures. Appropriate United States and Turkish authorities will develop a mutual intelligence requirements program which shall form the basis of the functional assignment of intelligence technical operations and responsibilities.

ARTICLE XI

The activities of the installations authorized by this Agreement should be coordinated in such a manner as to avoid interference between such activities and the activities of other local military and civilian installations, and to avoid damage to life and property. Should any interference arise between the installations and other local military and civilian installations, the United States and Turkish authorities shall cooperate in order to take practicable measures to eliminate such interference.

ARTICLE XII

1. State-owned land areas, including all improvements, utilities, easements and rights of way already allocated by the Government of the Republic of Turkey to the United States of America on the effective date of this Agreement shall continue to be available for the purposes of this Agreement without costs to or claims against the United States of America, without prejudice to the ownership of the Government of the Republic of Turkey of such land areas, improvements, utilities, easements and rights of way.

2. The provisions of paragraph 1 of this Article shall not relieve the Government of the United States of America from any obligation it might have with regard to the settlement of claims of private landowners for any expropriated property rights, and are

without prejudice to the terms of existing non-intergovernmental lease contracts under which certain facilities are provided to the United States of America for the purposes of this Agreement.

3. All non-removable property, including property incorporated in the soil, constructed or installed by or on behalf of the United States on the land areas allocated by the Government of the Republic of Turkey for the purposes of this Agreement shall from the date of its construction or installation, become the property of the Government of the Republic of Turkey. The provisions of this paragraph are without prejudice to the right of the United States and its personnel to use such property, according to the joint use arrangements to be mutually agreed pursuant to Article VII, paragraph 1.

4. In case of termination of this Agreement, or when the activity of any installation is terminated, the property mentioned in paragraph 3 of this Article shall be transferred to the Government of the Republic of Turkey. Buildings so transferred shall include basic utility systems and other fixtures permanently installed in or affixed to the building. The appropriate authorities of the parties shall mutually determine whether there exists any residual value of such property. If so, the United States will be compensated for the residual value in an amount to be determined by mutual agreement between the appropriate authorities of the Government of the United States of America and the authorities of the Government of the Republic of Turkey taking into account past practices between the two Governments regarding residual value.

5. The Government of the Republic of Turkey shall have the right of priority to acquire, in accordance with arrangements to be agreed upon, any equipment, materials and supplies imported into or acquired in Turkey by or on behalf of the United States for the purposes of this Agreement, in the event such equipment, materials and supplies are to be disposed of by the Government of the United States of America.

ARTICLE XIII

1. Except as provided in paragraphs 2 and 3 of this Article, the costs of operation and maintenance and the costs of mutually agreed construction, modernization, alteration and repairs at the installations shall be met by the United States to further the purposes set forth in paragraph 1 of Article XIX of this Agreement.

2. Each party shall pay its own personnel costs.

3. The maintenance and repair costs of the premises exclusively utilized by Turkish personnel, such as living quarters, dining halls and social welfare premises, shall be met by the Government of the Republic of Turkey. The costs of any required additional construction, alteration, change and subsequent improvements to be made at those premises shall be met by the Government of the Republic of Turkey.

4. The costs of mutually agreed extension of local utilities provided by the Government of the Republic of Turkey to the perimeter of the installation areas shall be met by the Government of the United States of America.

ARTICLE XIV

Materials, equipment, supplies, services and civilian labor required by the Government of the United States of America for the purpose of this Agreement shall be procured in Turkey to the maximum practicable extent. In the implementation of this principle the parties shall consult each other.

ARTICLE XV

The force and civilian component of the United States of America and their dependents assigned or stationed in the territory of the Republic of Turkey for the purposes of this Agreement shall be subject to the "Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces" dated June 19, 1951.

ARTICLE XVI

A joint use plan for the communications system in Turkey (Troposcatter and Line-of-Sight) shall be agreed upon by the Parties.

ARTICLE XVII

The deployment into or from Turkey and operations of rotational squadrons and related support units authorized to be stationed on the territory of the Republic of Turkey in accordance with given NATO defense plans, and their activities on Turkish territory shall be carried out in accordance with mutually agreed arrangements.

ARTICLE XVIII

The provisions of the Montreux Convention are reserved.

ARTICLE XIX

1. In the interest of further developing Turkish defense preparedness and enhancing the mutual security cooperation of both Governments under Article III of the North Atlantic Treaty, the Government of the United States of America shall supply, or finance the procurement by the Government of the Republic of Turkey of, defense articles, services and military technical training in accordance with mutually agreed programs as provided in the subsequent paragraphs of this Article. The defense support to be provided to the Republic of Turkey shall be effectuated in accordance with contractual obligations and with the general practices applicable to all other recipient countries.

2. The Government of the United States of America shall furnish defense support consisting of grants, credits and loan guaranties of $1,000,000,000 during the first four years this Agreement shall remain in effect. This amount shall be distributed evenly over this period in accordance with annual plans to be developed by the appropriate authorities of the two Governments. Unless otherwise mutually agreed, it is understood that the amount made available in each of these first four years may vary by up to 25 percent of the equal annual tranches of $250,000,000 provided that the total aggregate amount herein provided for shall be made available prior to the end of such four year period. For the first year the grant portion will be $75,000,000, and the total amount of the grant portion for the four year period will be not less than $200,000,000. Credits and guaranteed loans herein provided for shall be at interest rates comparable to the rates offered to other NATO countries for similar FMS credits and guaranteed loans. In

furtherance of the objectives set forth in paragraph 1 of this Article, the Government of the United States is also prepared to make cash sales under its Foreign Military Sales Program of defense articles and services including spare parts, components and technical data for the operation and maintenance of defense articles furnished to the Government of Turkey by the United States Government, of types, quantities, and on terms to be mutually agreed, during the period for which this Agreement shall remain in force.

3. At least one year prior to the completion of the term of this Agreement and of the defense support program envisaged in paragraph 2 of this Article, or of any other programs which are subsequently agreed upon consistent with Article XXI, paragraph 1, and pursuant to this paragraph, the parties shall consult to develop defense support programs as required for subsequent periods in accordance with their respective legal procedures. In the event such consultations fail to produce agreement on any such subsequent program or such program does not enter into force, upon completion of the term of the then-current program, the Government of the Republic of Turkey may elect not to extend the validity of this Agreement, in which case the provisions of paragraph 6 of Article XXI shall apply for the purposes of withdrawal and liquidation.

ARTICLE XX

1. In order to assure that the implementation of defense cooperation under this Agreement shall be consistent with the letter and spirit of this Agreement the appropriate authorities of the two Governments shall consult promptly to mutually resolve any differences which may arise concerning interpretation and implementation of this Agreement.

2. Any differences not so resolved within 30 days shall be referred for settlement to the Governments of the parties.

3. In the event that any difference referred for settlement to the governments of the parties is not resolved within a period of two months, either party may serve notice of 30 days to suspend the specific activity in dispute, pending resolution of the difference thereon. In such instances the parties shall, to the extent practicable, assure that this suspension does not affect activities which are not in dispute.

ARTICLE XXI

1. This Agreement shall come into effect on the date of an exchange of notes indicating the approval by both parties of the Agreement in accordance with their respective legal procedures. The Agreement shall remain in force for four years from its entry into force, and shall be extended for subsequent four-year periods, unless either party elects not to extend the validity of the Agreement pursuant to Article XIX, paragraph 3 thereof.

2. The parties shall consult at any time during the term of this Agreement, on the initiative of either, to consider its possible amendment.

3. Either party may terminate this Agreement upon notice in writing of one year.

4. In the event either party, during the four years this Agreement shall remain in force and during such subsequent periods as the parties may develop defense support programs pursuant to Article XIX, paragraph 3, concludes that the other party is not complying with or is unable to comply with the provisions of this Agreement, that party may issue a call for consultations between the two Governments. In the event agreement is not reached within a

period of three months, either party may terminate this Agreement upon notice in writing of thirty days.

5. In the event of termination or non-extension of this Agreement, the provision of defense support under Article XIX shall be terminated on the effective date of termination or non-extension. In such event deliveries of defense services and articles with respect to which sales contracts have been entered into, or for which funds have been obligated, prior to that date shall not be interrupted.

6. In the event of termination or non-extension of this Agreement, the Government of the United States of America shall complete the process of its withdrawal and liquidation within one year after the effective date of termination or non-extension during which period this Agreement shall be considered to remain in force for the purposes of an orderly withdrawal and liquidation.

ARTICLE XXII

DONE at Washington, in duplicate, in the English and Turkish languages, each of which shall be of equal authenticity, this 26th day of March, 1976.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY:

DEPARTMENT OF STATE
WASHINGTON

April 7, 1976

Excellency:

I have the honor to refer to the Defense Cooperation Agreement, signed March 26, 1976, by the Government of the Republic of Turkey and the Government of the United States of America, and to confirm that during the first four years the aforesaid Agreement is in force, the United States Government is prepared to do the following:

1. The United States Government will offer for sale to the Government of the Republic of Turkey, at the lowest prices consistent with applicable United States law, the following materiel from available stocks of the United States Department of Defense: 12 F-100F aircraft; 20 T-37 aircraft; 36 UH-1B and 36 UH-1H helicopters; 3 Gearing class destroyers; 2 Guppy III submarines; and a submarine rescue ship. Delivery of the above-described defense articles will be effected as expeditiously as practicable. The United States Government will also, on an expeditious basis, explore the possibility of providing a modern naval vessel to the Republic of Turkey, by sale from the available stocks of the Department of Defense at the lowest price consistent with applicable United States law.

His Excellency
Ihsan Sabri Caglayangil,
Minister of Foreign Affairs,
Republic of Turkey.

2. The United States Government will also offer for sale to the Government of Turkey, at the lowest prices consistent with applicable United States law, 14 F-4E aircraft from available stocks of the Department of Defense. Four of these F-4E aircraft shall be delivered during each of three successive four month periods immediately following the entry into force of the aforesaid agreement, and the remaining two aircraft shall be delivered during the following three months. During this fifteen month period, the United States Government will offer for sale to the Government of Turkey, at a favorable price consistent with applicable United States law, F-4 aircraft from new procurement, with deliveries scheduled to be at a rate of four each month, beginning at the end of the 18-month period immediately following the entry into force of the aforesaid agreement.

3. The United States Government will provide, without cost to the Government of the Republic of Turkey, access to the United States Defense Satellite Communications System commencing in 1978, for communications between Turkey and Western Europe, including required ground terminal and related equipment. The number of circuits and items of equipment to be provided, and technical implementing arrangements shall be the subject of further agreement between the Governments.

4. The two Governments shall consult regarding mutual cooperation in the improvement and modernization

of the Turkish defense communications system in furtherance of the purposes of the aforesaid Agreement and the North Atlantic Treaty.

It is understood that the above-mentioned undertakings of my Government are to be carried out consistent with the purposes set forth in the first paragraph of Article XIX of the aforesaid Defense Cooperation Agreement, are not exclusive of additional arrangements which may be made by the parties pursuant to that Article, and are to be carried out in accordance with, and subject to, the provisions of that Agreement and with contractual obligations and the general practices applicable to all other recipient countries.

If the foregoing is acceptable to the Government of the Republic of Turkey, I have the honor to propose that this note, together with your Excellency's note in reply indicating such agreement, shall constitute an agreement between our two Governments and shall enter into and remain in force concurrently with the aforesaid Defense Cooperation Agreement.

Department of State,

Washington,

April 7, 1976.

TÜRKİYE CUMHURİYETİ
DIŞİŞLERİ BAKANLIĞI

My dear Secretary:

I have the honor to refer to your note, dated April 7, 1976, regarding the Defense Cooperation Agreement, signed on March 26, 1976 by the Government of the Republic of Turkey and the Government of the United States of America, which note provides as follows:

"Excellency:

"I have the honor to refer to the Defense Cooperation Agreement, signed March 26, 1976 by the Government of the Republic of Turkey and the Government of the United States of America, and to confirm that during the first four years the aforesaid Agreement is in force, the United States Government is prepared to do the following:

"1. The United States Government will offer for sale to the Government of the Republic of Turkey, at the lowest prices consistent with applicable United States law, the following materiel from available stocks of the United States Department of Defense: 12 F-100D aircraft; 30 F-5A aircraft; 36 UH-1B and 36 UH-1H helicopters; 3 Gearing class destroyers; 2 Guppy III submarines; and a submarine rescue ship.

Honorable Henry A. Kissinger
Secretary of State
Washington, D.C.

Delivery of the above-described defense articles will be effected as expeditiously as practicable. The United States Government will also, on an expeditious basis, explore the possibility of providing a modern naval vessel to the Republic of Turkey, by sale from the available stocks of the Department of Defense at the lowest price consistent with applicable United States law.

"2. The United States Government will also offer for sale to the Government of Turkey, at the lowest prices consistent with applicable United States law, 14 F-4E aircraft from available stocks of the Department of Defense. Four of these F-4E aircraft shall be delivered during each of three successive four month periods immediately following the entry into force of the aforesaid agreement, and the remaining two aircraft shall be delivered during the following three months. During this fifteen month period the United States Government will offer for sale to the Government of Turkey at a favorable price consistent with applicable United States law F-4 aircraft from new procurement, with deliveries scheduled to be at a rate of four each month, beginning at the end of the 18-month period immediately following the entry into force of the aforesaid agreement.

"3. The United States Government will provide, without cost to the Government of the Republic of Turkey, access to the United States Defense Satellite Communications System commencing in 1978, for communications between Turkey and

Western Europe including required ground terminal and related equipment. The number of circuits and items of equipment to be provided, and technical implementing arrangements shall be the subject of further agreement between the Governments.

"4. The two Governments shall consult regarding mutual cooperation in the improvement and modernization of the Turkish defense communications system in furtherance of the purposes of the aforesaid Agreement and the North Atlantic Treaty.

"It is understood that the above-mentioned undertakings of my Government are to be carried out consistent with the purposes set forth in the first paragraph of Article XIX of the aforesaid Defense Cooperation Agreement, are not exclusive of additional arrangements which may be made by the parties pursuant to that Article, and are to be carried out in accordance with, and subject to, the provisions of that Agreement and with contractual obligations and the general practices applicable to all other recipient countries.

"If the foregoing is acceptable to the Government of the Republic of Turkey, I have the honor to propose that this note, together with your Excellency's note in reply indicating such agreement, shall constitute an agreement between our two Governments and shall enter into and remain in force concurrently with the aforesaid Defense Cooperation Agreement."

I have the honor to confirm that the foregoing note is acceptable to the Government of the Republic of Turkey and, therefore, that note and this reply shall constitute an agreement between our two Governments which shall enter into and remain in force concurrently with the aforesaid Defense Cooperation Agreement.

Ankara, April 13, 1976

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

29 JUN 1976

Honorable Philip Buchen
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Buchen:

This is in regard to the Foreign Assistance and Related Programs Appropriation Bill for the fiscal year 1976 and the transition quarter, which is currently before the President for signature.

The bill contains a provision which raises serious constitutional issues. Although we have recommended that the President sign the bill because of the vital national interests involved, we also believe that it is of the utmost importance that the President make clear in his signing statement that he does not intend to give effect to this unconstitutional provision in approving the bill.

The provision in question is contained in Title I, Economic Assistance. It would restrict the obligation of funds for certain purposes until the Appropriations Committees of both Houses of Congress have expressly approved the programs involved. This requirement engrafts an Executive function on the Legislative Branch, and thus violates the fundamental doctrine of separation of powers.

A similar Committee approval requirement was recently included in the Department of Defense Appropriation Act, 1976. The President, in his signing statement, expressly pointed out that such requirements are unconstitutional, and, although he signed the bill for other reasons, he noted that he intended to treat the Committee approval requirement as "a complete nullity".

The same issues are raised by the Committee approval requirement in the foreign aid appropriation bill, and we believe it is vitally important that the President make an equally emphatic record that he does not intend to give effect to this provision. In this regard, I have enclosed at Tab A a proposed signing statement that we have submitted to the Office of Management and Budget along with our comments on the bill.

I am also enclosing for your information a legal memorandum on the constitutional problems created by this provision (Tab B). We have forwarded a copy of this memorandum to the Department of Justice. In light of the President's comments when he signed the Department of Defense Appropriation Act, 1976, in February 1976, I am hopeful that we will be able to obtain a similarly strong statement if he approves the foreign aid appropriation bill. I have enclosed a copy of the relevant provision from our appropriation bill (H.R. 12203) at Tab C as well as a copy of the President's signing statement that accompanied the Department of Defense Appropriation Act, 1976 at Tab D.

Sincerely yours,

Charles L. Gladson
General Counsel

A

FOREIGN ASSISTANCE AND RELATED PROGRAMS APPROPRIATION ACT, 1976, AND THE PERIOD ENDING SEPTEMBER 30, 1976

Statement by the President Upon Signing the Bill Into Law While Expressing Reservations About Certain of Its Provisions

I have signed H.R. 12203, the Foreign Assistance and Related Programs Appropriation Act, 1976, and the period ending September 30, 1976. The bill appropriates funds for a variety of programs in support of U.S. foreign policy objectives, most importantly our pursuit of a peaceful solution to the problems of the Middle East.

Nevertheless, I have serious reservations regarding one element of the bill, and believe it is necessary to comment on why I have signed the bill notwithstanding my objections to it.

I refer to the provision in Title I, Economic Assistance, which was added by the Senate and accepted in Conference with a minor modification,that would require the approval of the Appropriations Committees of both Houses of Congress before certain funds appropriated by this bill "shall be available for obligation". This requirement violates the fundamental constitutional doctrine of separation of powers.

This provision causes me particular concern because it is substantially identical to a provision in the Department of Defense Appropriation Act, 1976, to which I also expressed my strong objections several months ago. As I stated then, the exercise of an otherwise valid Executive power cannot be limited by a discretionary act of a Committee of Congress nor can a Committee give the Executive a power which it otherwise would not have. The legislative branch cannot inject itself into the Executive functions, and opposition to attempts of the kind contained in this bill have been expressed by Presidents for more than fifty years.

Under more normal circumstances, the Committee approval provision in this bill would require that I veto this legislation. However, because we are now in the last week of the fiscal year 1976, and because the programs funded by appropriations contained in this bill are vital to the interests of the United States, I shall not veto this bill. As I stated when I signed the Department of Defense Appropriation Act, 1976, however, I will treat this patently unconstitutional provision, to the extent it requires further Congressional Committee approval for programs funded by this bill, as a complete nullity.

Though the Congress has the right to be fully and completely informed of actions taken in execution of laws, I cannot concur in this type of legislative encroachment upon the constitutional powers of the Executive Branch.

B

LEGAL OPINION

Constitutionality of Committee Approval Requirements

The Conference Report accompanying H.R. 12203,[1] the "Foreign Assistance and Related Programs Appropriation Act, 1976, and the period ending September 30, 1976" (hereinafter "the Act"), contains a Senate amendment, reported in technical disagreement, that requires the "approval" of the Appropriations Committees of both Houses of the Congress before funds can be obligated for "activities, programs, projects, type of material assistance, countries, or other operations not justified[2] or in excess of the amount justified to the Appropriations Committees."[3]

1/ H.Rep. No. 94-1006, 94th Cong. 2nd Sess. 8-9 (1976)

2/ The Conference Report states that "any activity, program, project, type of material assistance, or other operation... shall be deemed to have been justified" if it was included by country and by amount in the fiscal year 1976 Congressional Presentation documents.

3/ This requirement would apply to all funds appropriated by the Act for the following appropriation categories: 'Food and nutrition, Development Assistance,' 'Population planning and health, Development Assistance,' 'Education and human resources development, Development Assistance,' 'Technical assistance, energy, research, reconstruction, and selected development problems, Development Assistance,' 'International organizations and programs,' 'United Nations Environment Fund,' 'American schools and hospitals abroad,' 'Indus Basin Development Fund,' 'International narcotics control,' 'African development program,' 'Security supporting assistance,' 'Operating Expenses of the Agency for International Development,' 'Middle East Special requirements fund,' 'Military assistance,' 'International military education and training,' 'Inter-American Foundation,' 'Peace Corps,' 'Migration and refugee assistance,' or 'Assistance to refugees from the Soviet Union or other Communist countries in Eastern Europe.'

In its practical application, this provision means that funds previously authorized and appropriated for the general purposes enumerated in the Act, e.g. Food and Nutrition, Population Planning and Health, cannot be obligated for specific projects and activities not included or in excess of the amounts included in the Congressional Presentation documents without the approval of the appropriations committees. As a matter of procedure, the Conference Report states that when such increases are submitted to the committees, "constructive consent will be implied if no objection is raised within fifteen days after notification of the proposed reprogramming."

Committee approval or veto requirements represent a relatively recent phenomenon in the legislative process. Nevertheless, because they attack the very heart of the separation of powers doctrine, a considerable body of constitutional law has evolved regarding their validity.

In a 1966 memorandum requested by the Senate Committee on Foreign Relations, which was considering the constitutional questions which might arise with respect to a proposed amendment to the Foreign Assistance Act of 1961 which would have provided that development loans not be made in more than 10 countries, and that technical assistance and development grants not be made in more than 40 countries, unless such action was approved by the authorizing committees within a special period of time, the Office of the Legislative Counsel of the Senate summarized the constitutional objections to such committee approval provisions:

> "(1) These provisions vest an executive function upon a legislative body in violation of the principle of separation of powers described in Articles I and II of the Constitution. They involve participation by congressional committees in the administration and implementation of laws, which is a purely executive function.
>
> (2) The Congress may not legally delegate to its committees or members the capacity to pass legislation, a function which the Constitution contemplates the Congress itself, as an entity, should exercise.

> (3) These provision exclude the President from his constitutional role in the legislative process as required by Article I, section 7 of the Constitution under which all legislation must be presented to the President for his specific approval or disapproval." Memorandum for Committee on Foreign Relations, United States Senate, Office of the Legislative Counsel (June 1, 1966).

Although the memorandum of the Legal Counsel did not draw a conclusion regarding the constitutionality of the provision in question, other than to observe that Presidents had relied on each of the above reasons in vetoing acts containing similar provisions, the weight of evidence indicating that such provisions are unconstitutional is far from inconclusive. Constitutional commentators have concluded with near unanimity that efforts to bestow governmental control to Congressional Committees by providing statutory authority for a "committee veto", which conditions powers created in the Executive Branch with a requirement that an administrator gain the approval of one or more committees before that power is exercised, "present the clearest case of a device which is constitutionally invalid." 4/ Similarly, Attorneys General of the United States have consistently held that statutes of this type violate the fundamental doctrine of separation of powers enunciated in Articles I and II of the Constitution.5/ For example, in 1965 President Johnson vetoed the Military Construction Authorization Act of 1966 because it contained a provision which would have required the President to report any proposed closing of a military base and delay the proposed action for a period of 120 days following such report. Although President Johnson acknowledged the distinction between a notification requirement and a statutory committee approval provision, he recognized that even the less offensive "notification and wait" requirement was

4/ Watson, Congress Steps Out: A Look at Congressional Control of the Executive, 63 Calif. L. Rev. 983, 1053 (July 1975). See also Ginnane, The Control of Federal Administration by Congressional Resolutions and Committees, 66 Harv. L. Rev. 569, 605 (1953); Small, The Committee Veto: Its Current Use and Appraisals of Its Validity, Library of Congressional Research Service. Document JK 1015 C (January 16, 1967). But see Cooper and Cooper, The Legislative Veto and the Constitution, 30 Geo. Wash. L. Rev. 417 (1962).

5/ 37 Op. Att'y Gen. 56 (1933); 39 Op. Att'y Gen. 61 (1937) 41 Op. Att'y Gen. 230 (1955); Id. at 300 (1957). But see 6 Op. Att'y Gen. 680 (1854)

constitutionally repugnant, and noted that:

> "... Attorneys General in unbroken succession since at least the time of President Wilson have advised their Chief Executives that so-called "come into agreement" clauses, requiring approval of executive action by legislative committees, are unconstitutional." Public Papers of the Presidents: Lyndon B. Johnson, 1965, at 908.

The Constitutional doctrine of separation of powers upon which these provisions have been held invalid is founded in Articles I, II and III of the Constitution. Article I, Section 1 provides that "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives". Article II, Sections 1 and 3 provide that "The executive power shall be vested in a President of the United States of America. ... he shall take care that the laws be faithfully executed." These provisions, together with Article III, which vests the judicial power in an independent judiciary, prevent the concentration of all governmental power in a single organ of the national government.

The fundamental nature of the separation of powers doctrine to our system of government, which is clearly contradicted by a requirement that Congressional Committees approve executive actions, was plainly stated by Chief Justice Taft writing for the Court in Myers v. United States:

> "The general doctrine of our Constitution then is, that the executive power of the nation is vested in the President; subject only to...the participation of the Senate in the appointment of officers, and in the making of treaties. .../ and/ the right of the legislature to declare war and grant letters of marque and reprisal.
>
> With these exceptions, the executive power of the United States is completely lodged in the President." 272 U.S. 52, 139 (1926).

Similarly, in Kilbourn v. Thompson, a case involving the authority of the legislative branch to exercise certain judicial functions, the Supreme Court emphasized the fundamental importance of the separation of powers doctrine to our constitutional form of government.

> "It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether State or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined.
>
> It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.
>
> .... In the main, however, that instrument (the Constitution) the model on which are constructed the fundamental laws of the States, has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments cannot be exercised by another.
>
> It may be said that these are truisms which need no repetition here to give them force. But while the experience of almost a century has in general shown a wise and commendable forbearance in each of these branches from encroachments upon the others, it is not to be denied that such attempts have been made, and it is believed not always without success." 103 U.S. 168, 190-191 (1880).

The precise question of the constitutionality of a committee "approval" or "veto" requirement, however, has not been directly considered by the Federal Courts. One commentator suggests that this may result "from the fact that the principal effect of these procedures is not identifiable injury to individuals as such, but rather a general shift in the focus of governmental power and the operation of the governmental system... the

political question doctrine may prompt the judiciary to shy away from these questions of distribution of power between the executive and legislative branches. Thus, this may be an area where any restraint must come from Congress itself.[6]

Nevertheless, case law involving questions relating to the separation of powers doctrine leaves no doubt that the proposition that statutory provisions subjecting executive action to the approval or disapproval of congressional committees is unconstitutional.[7] The principal case upon which this conclusion is based, and which has been relied on by several Attorneys General in opinions dealing with statutory committee approval requirements,[8] is Springer v. Philippine Islands, 277 U.S. 189 (1927). In declaring invalid certain acts of the Philippine legislature vesting executive power in the legislature, the Court said:

> "It may be stated then, as a general rule inherent in the American constitutional system, that, unless otherwise expressly provided or incidental to the powers conferred, the legislature cannot exercise either executive or judicial power; the executive cannot exercise either legislative or judicial power; the judiciary cannot exercise either executive or legislative power. ...
>
> Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions. It is unnecessary to enlarge further upon the general subject, since it has so recently received the full consideration of this Court. Meyers v. United States.
>
> Not having the power of appointment, unless expressly granted or incidental to its powers, the legislative cannot engraft executive duties upon a legislative office..." Supra at 202.

6/ Watson, supra note 4, at 989 - 990.

7/ Ginnane, supra note 4, at 605.

8/ 37 Op. Att'y Gen. 56 (1933), 39 Op Att'y Gen. 61 (1937); 41 Op. Att'y Gen. 230 (1955).

The decision in Springer has not been qualified by the Supreme Court or lower Federal Courts, and, indeed, was recently relied on in the case of Buckley et al v. Valeo, Secretary of the United States Senate, et al, 44 U.S. L.W. 4127 (U.S. Jan. 30, 1976). In Buckley, the Supreme Court cited Springer in holding unconstitutional that portion of the Federal Election Campaign Act of 1971, as amended, that permitted the Congress to appoint four of the six voting members of the Commission as a violation of the Appointments Clause of Article II, section 2 of the Constitution. The Court in Buckley cited Chief Justice Taft's opinion in Hampton and Co. v. United States, 276 U.S. 394 (1928), wherein the Court observed:

> "The rule is that in the actual administration of the government Congress or the Legislature should exercise the legislative power, the President or the State executive, the Governor, the executive power, and the Courts or the judiciary, the judicial power, ... it is a breach of the national fundamental law if Congress gives up its legislative power and transfers it to the President, or to the judicial branch, or if by law it attempts to invest itself or its members with either executive power or judicial power." Id.at 406.

The Court in Buckley also referred to James Madison, writing in the Federalist No. 47, who quoted Montesquieu to dramatically defend the work of the Constitutional Convention in creating separate and distinct branches of government:

> "When the legislative and executive powers are united in the same person or body there can be no liberty, because apprehensions may arise lest the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner." Supra at 4163.

Citing, inter alia, Springer v. Philippine Islands, four Attorneys General have held that attempts to give to a Congressional Committee the power to approve or disprove executive acts is unconstitutional.

In 1932 President Hoover requested Attorney General Mitchell's opinion on whether he should sign the Urgent Deficiency Bill, H.R. 13975 (1933), which contained the following provision:

> "Provided, That no refund or credit of any income or profits, estate, or gift tax in excess of $20,000 shall be made after the enactment of this Act until a report thereof ... and the facts in connection therewith are submitted by the Commissioner of Internal Revenue to the Joint Committee on Internal Revenue Taxation and action thereon taken by said committee ... and no refund or credit in excess of $20,000 shall be made without the approval of said committee."

The Attorney General concluded that the provision was obnoxious to the Constitution because "It attempts to entrust to members of the legislative branch, acting ex officio, executive functions in the execution of the law, and it attempts to give to a committee of the legislative branch power to approve or disapprove executive acts". 37 Op. Att'y Gen. 56, 58 (1933). Attorney General Mitchell further stated:

> "This proviso cannot be sustained on the theory that it is a proper condition attached to an appropriation. Congress holds the purse strings, and it may grant or withhold appropriations as it chooses, and when making an appropriation may direct the purposes to which the appropriation shall be devoted and impose conditions in respect to its use, provided always that the conditions do not require operation of the Government in a way forbidden by the Constitution. Congress may not, by conditions attached to appropriations, provide for a discharge of the functions of Government in a manner not authorized by the Constitution. If such a practice were permissible, Congress could subvert the Constitution." Id. 61.

and he explained that:

> "Attempting to have committees of Congress approve executive acts, or execute administrative functions, or participate in the execution of laws is not a new idea. Carried to its logical conclusion, it would enable Congress, through committees or persons selected by it, gradually to take over all executive functions or at least exercise a veto power upon executive action, not by legislation withdrawing authority, but by the action of committees.... Id. at 62.

In recommending that President Hoover veto the Urgent Deficiency Bill because of this proviso, the Attorney General stressed that "the proviso in this deficiency bill may not be important in itself, but the principle at stake is vital. Encroachments on the executive authority are not likely to be deliberate but that very fact makes them all the more insidious." Id. at 65.

In 1937, when President Roosevelt received for signature a Joint Resolution establishing a World's Fair Commission composed largely of members of Congress, who would have the authority to expend the appropriation made by the resolution, Attorney General Cummings cited Springer v. Philippine Islands and Attorney General Mitchell's 1933 opinion in recommending that the President veto the Resolution on constitutional grounds. 39 Op. Att'y Gen. 61 (1937). Similarly, in 1955 President Eisenhower was asked to sign the Department of Defense Appropriation Act, 1956, which contained the following provision:

> "Section 638. No part of the funds appropriated in this act may be used for the disposal or transfer by contract or otherwise of work that has been for a period of three years or more performed by civilian personnel of the Department of Defense unless justified to the Appropriations Committees of the Senate and the House of Representatives, ...Provided, That no such disposal or transfer shall be made if disapproved by either committee within the ninety-day period...."

Attorney General Brownell, Jr. advised the President that this provision was unconstitutional under the separation of powers doctrine, and noted that his conclusions were "fully supported by and are consistent with the Constitution of the United States, views long espoused by past Presidents of the United States, and by opinions of the judicial branch of our Government." 41 Op. Att'y Gen. 230, 231-232 (1955).

In explaining his conclusion, Attorney General Brownell noted that:

> "The practical effect of these provisions is to vest the power to administer the particular program jointly in the Secretary of Defense and the members of the Appropriations Committees,with the overriding right to forbid action reserved to the two Committees. This, I believe, engrafts executive functions upon legislative members and thus overreaches the permitted sweep of legislative authority. At the same time, it serves to usurp

> power confided to the executive branch. The result, therefore, is violative of the fundamental constitutional principle of separation of powers prescribed in Articles I and II of the Constitution which places the legislative power in the Congress and the executive power in the executive branch." Id. at 231.

The Attorney General also noted that it was not necessary to veto the entire act in order to nullify the offending provision. He pointed out that "whenever a provision in a statute is found invalid, question arises whether the whole act falls or only the objectionable section. This depends on whether the unconstitutional provision is separable from the rest of the act /i.e./ ... whether Congress would have intended the balance of the act to stand without the obnoxious provision." Id at 234-235. In this instance the Attorney General concluded:

> "It is my opinion that the proviso which purports to vest disapproval authority on either of the two Appropriations Committees is separable from the remainder of the act and, if viewed as imposing an invalid condition, does not affect the validity of the remaining provisions". Id. at 235.

Finally, in 1957, Acting Attorney General Rogers considered a provision of Public Law 155, which provided that no accessions, leases, transfers, or declarations of surplus, of any real property, could be made by any designated officer of the military departments, where the amount involved exceeded $25,000, unless the designated officer of the military department first came into agreement with the Committee on Armed Services of the Senate and of the House of Representatives. The Attorney General stated:

> "Legislative proposals and enactments in recent years have reflected a growing trend whereby authority is sought to be vested in congressional committees to approve or disapprove actions of the executive branch. Of the several legislative devices employed, that which subjects executive department action to the prior approval or disapproval of congressional committees may well be the most inimical to responsible government. It not only permits organs of the legislative branch to take binding actions having the effect of law without opportunity for the President to participate in the legislative process, but it also permits mere handfuls of members to speak for a Congress which is given no opportunity to participate as a whole."
> 41 Op. Att'y Gen. 300, 301 (1957).

In concluding that the proviso in question was unconstitutional, Attorney General Rogers also referred to Attorney General Brownell's 1955 opinion on the fiscal year 1956 Defense Appropriation Act, and noted that if the provision in question were deemed "separable" from the rest of the act, "the offending section was not to be regarded as a legally binding limitation which the Congress could constitutionally impose". Id.at 306.

Relying on judicial precedents and opinions of various Attorneys General, statutes portending to authorize committee approval for executive functions have been vetoed by Presidents Buchanan, Wilson, Hoover, Roosevelt, Truman, Eisenhower and Johnson.9/

In 1920, President Wilson vetoed an appropriation act that contained a proviso that certain documents should not be printed by any executive branch or officer except with the approval of the Joint Committee on Printing. President Wilson stated:

> "The Congress and the Executive should function within their respective spheres. Otherwise efficient and responsible management will be impossible and progress impeded by wasteful forces of disorganization and destruction. The Congress has the power and the right to grant or deny an appropriation, or to enact or refuse to enact a law; but once an appropriation is made or a law is passed, the appropriation should be administered or the law executed by the executive branch of the Government. In no other way can the Government be efficiently managed and responsibility definitely fixed. The Congress has the right to confer upon its committees full authority for purposes of investigation and the accumulation of information for its guidance, but I do not concede the right, and certainly not the wisdom, of the Congress endowing a committee of either House or a joint committee of both Houses with power to prescribe "regulations" under which executive departments may operate."
> 59 Cong.Rec. 7026 (1920)

Despite the weight of judicial precedent, and numerous vetoes of acts with committee approval provisions, Congress has continued to include approval as well as "notify and wait" provisions with increasing frequency,10/ and a number of acts with such provisions have been enacted into law. It does not follow,

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9/ See Memorandum of the Senate Legislative Counsel, supra at 2,4,6,7,8; Watson, supra note 4, at 1017-1029

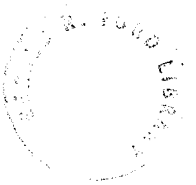
10/ Watson, supra note 4 at 1017-1029, footnote 407 at 1060

however, that such provisions have become constitutionally acceptable through usage. In a April 1, 1974 letter to Mr. Arthur Z. Gardiner, General Counsel, A.I.D., the Assistant Attorney General, Office of Legal Counsel, Department of Justice, pointed out that adoption of a provision giving Congress the right to terminate foreign assistance programs by concurrent resolution (section 617 of the Foreign Assistance Act of 1961, as amended) did not resolve the constitutionality of that provision even though it was not vetoed by the President. The Assistant Attorney General pointed out that "if any deference is to be given to practice and precedent, we believe that the practice begun with the adoption of the Constitution and continued uniformly for approximately 150 years is entitled to far greater weight than the more recent, sporadic and often debated examples of lawmaking by concurrent resolution."

There can be many reasons why a President would sign into law an act that contains an objectionable provision. For example, Supreme Court Justice Jackson revealed that while he was Attorney General, President Roosevelt approved a defense appropriation bill that contained a committee approval provision which he believed to be unconstitutional.[11] At the time he signed the bill, however, President Roosevelt also submitted a memorandum to the Attorney General notifying him that he believed the offending provision to be unconstitutional, and that he had signed the bill due to the "existing exigencies of the world situation." The President submitted the memorandum because "I should not wish my action in approving the bill which includes this invalid clause, to be used as a precedent for any future legislation comprising provisions of a similar nature." Id. at 1358.

In a like manner, Presidents have signed laws containing committee approval requirement while at the same time directing the affected agencies not to comply with the constitutionally objectionable provisions. President Eisenhower, in signing the fiscal year 1956 Defense Appropriation Act, advised that the committee approval requirement contained in section 638 of the act would be "regarded as invalid by the Executive Branch of the Government in the administration of H.R. 6042, unless otherwise determined by a Court of competent jurisdiction." 100 Cong.Rec. Pt. 6, 7135 (July 12, 1955).

11/ Jackson, A Presidential Legal Opinion, 66 Harv. L. Rev.1353 (June 1953)



In 1963, the foreign assistance appropriation act contained a provision which stated that program changes involving funds for economic assistance carried forward from prior years could be made only if the appropriations committees of the Congress were notified prior to such changes and no objection was entered by either Committee within 60 days. In a memorandum to the Administrator of A.I.D., President Kennedy noted that:

> "I have been advised by the Attorney General that this provision is unconstitutional either as a delegation to Congressional Committees of powers which reside only in the Congress as a whole or as an attempt to confer executive powers on the committee in violation of the principle of separation of powers prescribed in Articles I and II of the Constitution, Previous Presidents and Attorneys General have objected to similar provisions permitting a Committee to veto executive action authorized by law." Public Papers of the Presidents: John F. Kennedy, 1963, at 6.

President Kennedy directed the Administrator to treat this provision as a request for information, giving no effect to the requirement that A.I.D. wait 60 days before reprogramming affected funds. Id.

More recently, the Department of Defense Appropriation Act, 1976 (P.L. 94-212, February 10, 1976) was signed by President Ford with a provision which requires:

> "That none of the funds provided in this Act may be obligated for construction or modernization of government-owned contractor-operator Army Ammunition Plants for the production of 105mm artillery projectile metal parts until a new study is made of such requirements by the Department of the Army; the Secretary of the Army certifies to Congress that such obligations are essential to the national defense; and until approval is received from the Appropriations and Armed Services Committees of the House and the Senate..." 90 Stat. 162 (emphasis added)

In his signing statement, President Ford objected to this provision because it "violates the fundamental doctrine of separation of powers." Presidential Documents: Gerald R. Ford, Vol. 12, No. 7, 172 (1976). The President commented that:

> "The exercise of an otherwise valid Executive power cannot be limited by a discretionary act of a Committee of Congress nor can a Committee give the Executive a power which it otherwise would not have. The legislative branch cannot inject itself into the Executive functions, and opposition to attempts of the kind embodied in this bill has been expressed by Presidents for more than fifty years." Id.

Although the President signed the bill because of other problems that would have resulted from a delay caused by a veto, he stated that: "I intend to treat the unconstitutional provision in the appropriation "Procurement of Ammunition, Army," to the extent it requires further congressional committee approval, as a complete nullity. I cannot concur in this legislative encroachment upon the constitutional powers of the Executive Branch." Id.

Conclusion:

As Ginnane concluded in his article more than twenty years ago: "The arguments against the validity of statutory provisions vesting in legislative committees the power to approve or disapprove proposed actions of executive officers thus seem to be overwhelming. Not only Springer v. Philippine Islands, but most of the State decisions are opposed. Likewise, Presidents Wilson, Hoover, Roosevelt and Truman have opposed, sometimes successfully, such statutes and proposals as encroachments upon the executive branch." supra at 608. This conclusion has been strengthened in the intervening years.[12/] President Ford's recent statement when he signed into law the Department of Defense Appropriation Act, 1976, makes it clear that the executive branch will not accept the constitutionality of committee approval requirements such as that contained in H.R. 12203.

If the committee approval requirement is retained in the act sent to the President, and the act is not vetoed, we recommend that the Attorney General be asked to render an advisory opinion regarding its constitutionality.

Charles L. Gladson
General Counsel
Agency for International Development

22 APR 1976

12/ Watson, in his 1975 Comment on the use of the Committee veto, supra at 1060, concluded that any statute containing such provisions "should be per se invalid."

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made under the authority of the Foreign Assistance Act of 1961, as amended, for the same general purpose as any of the subparagraphs under "Economic Assistance," "Middle East Special Requirements Fund," "Security Supporting Assistance," (31)*"Operating Expenses of the Agency for International Development,"* "International Military Education and Training," and "Indochina Postwar Reconstruction Assistance," are hereby continued available for the same period as the respective appropriations in such subparagraphs for the same general purpose: *Provided,* That such purpose relates to a project or program previously justified to Congress, and the Committees on Appropriations of the House of Representatives and the Senate are notified prior to the reobligation of funds for such projects or programs.

(32)*None of the funds made available under this Act for "Food and nutrition, Development Assistance," "Population planning and health, Development Assistance," "Education and human resources development, Development Assistance," "Technical assistance, energy, research, reconstruction, and selected development problems, Development Assistance," "International organizations and programs," "United Nations Environment Fund," "American schools and hospitals abroad," "Indus Basin Development Fund," "International narcotics control," "African development program," "Security supporting assistance," "Operating Expenses of the*

Agency for International Development," "Middle East Special requirements fund," "Military assistance," "International military education and training," "Inter-American Foundation," "Peace Corps," "Migration and refugee assistance," or "Assistance to refugees from the Soviet Union or other Communist countries in Eastern Europe," shall be available for obligation for activities, programs, projects, type of materiel assistance, countries, or other operations not justified or in excess of the amount justified to the Appropriations Committees for obligation under any of these specific headings for the current fiscal year without the express approval of the Appropriations Committees of both Houses of the Congress, and of the Foreign Relations Committee of the Senate and the International Relations Committee of the House of Representatives.

MIDDLE EAST SPECIAL REQUIREMENTS FUND

Middle East special requirements fund: For necessary expenses to carry out the provisions of section 901 and section 903 of the Foreign Assistance Act of 1961, as amended, $50,000,000(33)~~: *Provided,* That none of the funds appropriated under this heading may be used to provide a United States contribution to the United Nations Relief and Works Agency~~.

For "Middle East special requirements fund" for the

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that I think the American people will greatly respect and thoroughly enjoy.

So, I congratulate you all and wish you the very best. I think it will have a great impact not only on all that see it, but it will have a significant impact on the Cape Canaveral-Kennedy Space Center operations.

I thank you for your cooperation, and let's make sure it is the very best we can possibly do.

NOTE: The President spoke at 12:35 p.m. in the Cabinet Room at the White House where he was meeting with James C. Fletcher, Administrator, National Aeronautics and Space Administration, John W. Warner, Administrator, American Revolution Bicentennial Administration, H. Guyford Stever, Director, National Science Foundation, and Lee Sherer, Director, Kennedy Space Center, on the exhibition.

Little Beaver Creek, Ohio

The President's Message to the Congress Transmitting a Report Pursuant to the Provisions of the Wild and Scenic Rivers Act, as Amended. February 10, 1976

To the Congress of the United States:

I am pleased to transmit this report on Little Beaver Creek, Ohio. The report was prepared in response to the provisions of the Wild and Scenic Rivers Act, Public Law 90–542, as amended.

This study found that 33 miles of the Little Beaver and its tributaries meet the criteria for inclusion in the National Wild and Scenic Rivers System, and recommended this stretch of the river be included in the National System under the administration of the State of Ohio as identified by Section 2(a)(ii) of the Act.

The State of Ohio filed an application requesting that this segment of the Little Beaver be included as a State-administered component of the National System. On October 23, 1975, Secretary Kleppe approved the application of the State of Ohio and so informed Governor Rhodes. The Congress is not required to take action in order for Little Beaver Creek to become a component of the Wild and Scenic Rivers System.

I am pleased that the Congress, in establishing this program, has made provision for the State administration of Wild and Scenic River components. This report and its recommendations demonstrate the capability of both Federal and State governments to profitably cooperate with each other.

GERALD R. FORD

The White House,
February 10, 1976.

NOTE: The report is entitled "Little Beaver Creek, A Wild and Scenic Study" (Government Printing Office, 174 pp.).

Department of Defense Appropriation Act, 1976

Statement by the President Upon Signing the Bill Into Law, While Expressing Reservations About Certain of Its Provisions. February 10, 1976

Although I have signed H.R. 9861, the Department of Defense Appropriation Act, 1976, I believe it is necessary for me to comment upon certain provisions. One, added by the conference committee, violates the fundamental doctrine of separation of powers. The other would severely limit our effectiveness in international affairs.

The appropriation, "Procurement of Ammunition, Army," in title IV of the bill restricts the obligation of funds for certain purposes "until approval is received from the Appropriations and Armed Services Committees of the House and Senate."

The exercise of an otherwise valid Executive power cannot be limited by a discretionary act of a Committee of Congress nor can a Committee give the Executive a power which it otherwise would not have. The legislative branch cannot inject itself into the Executive functions, and opposition to attempts of the kind embodied in this bill has been expressed by Presidents for more than 50 years.

In addition, I am deeply disappointed that the Congress has acted in this bill to deprive the people of Angola of the assistance needed to resist Soviet and Cuban military intervention in their country. I believe this provision is an extremely undesirable precedent that could limit severely our ability to play a positive and effective role in international affairs.

Because of the importance of the programs which are funded by appropriations contained in this bill and the problems which would be caused by a further delay of this legislation, I shall not veto the bill. However, I intend to treat the unconstitutional provision in the appropriation "Procurement of Ammunition, Army," to the extent it requires further Congressional committee approval, as a complete nullity. I cannot concur in this legislative encroachment upon the constitutional powers of the Executive Branch.

NOTE: As enacted, the bill (H.R. 9861) is Public Law 94–212, approved February 10, 1976.