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THE WHITE HOUSE
WASHINGTON

*For Beling
J.*

Ask Bobbie to
scan this and
prepare responses
for me.

P.

Shirley -
Bobbie has approved
the attached & returned
it to Judy Johnston.

L.



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: January 3

Time: 1000am

FOR ACTION: NSC/S
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann

cc (for information):

Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: January 4

Time: 500pm

SUBJECT:

Executive Orders - Administration of Arms Export Controls
Administration of Foreign Assistance
and Related Functions

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

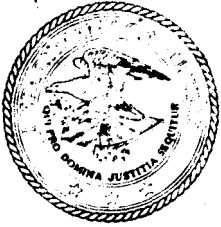
please return to judy johnston, ground floor west wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

James A. Cannon
For the President



Office of the Attorney General
Washington, D. C. 20530

DEC 30 1976

The President,

The White House.

Dear Mr. President:

I am transmitting herewith, in accordance with the provisions of Executive Order No. 11030, as amended, a proposed Executive order entitled "Administration of Foreign Assistance and Related Functions."

The proposed order was submitted to the Office of Management and Budget by the Department of State. It was revised in the Office of Management and Budget on the basis of comments by the Departments of the Treasury, Defense, Justice, and Commerce, and the Agency for International Development.

The order, as revised, was forwarded by the Office of Management and Budget, with the approval of its Director, to the Department of Justice for consideration as to form and legality.

The proposed order is approved as to form and legality.

Respectfully,


Antonin Scalia

Assistant Attorney General
Office of Legal Counsel



DEC 30 1976

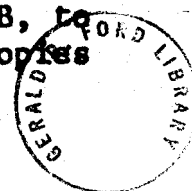
MEMORANDUM

Re: Proposed Executive orders entitled:
"Administration of Foreign Assistance
and Related Functions"
and
"Administration of Arms Export Controls."

The proposed two orders were originally presented by the Department of State to the Office of Management and Budget (OMB) as a single order entitled: "Amending Executive Order No. 10973, Relating to Administration of Foreign Assistance and Related Functions; Revoking Executive Order 11501, Relating to Foreign Military Sales; and Providing for the Administration of Arms Export Controls." That proposal was revised in OMB on the basis of comments from the Departments of the Treasury, Defense, Justice, and Commerce, and the Agency for International Development and divided into the two above-entitled proposed orders. The orders, as revised, were forwarded by OMB, with the approval of its Director, to the Department of Justice for consideration as to form and legality.

The proposed orders were occasioned by legislation of the last two Congresses, especially the International Security Assistance and Arms Export Control Act of 1976, Public Law 94-329, which made substantial changes in the Foreign Assistance Act of 1961 and the Foreign Military Sales Act, changing the title of the latter to Arms Export Control Act. This required corresponding amendments in the Executive orders providing for the delegation of the authority vested in the President by those statutes.

The purposes of those orders and the reasons for their formulation are set forth in detail in the letter of submission from the Assistant Secretary of State for Congressional Relations to the Director, OMB, dated August 19, 1976, and the letters of transmittal from the General Counsel, OMB, to the Attorney General, dated December 16 and 21, 1976, copies of which are attached.



The proposed orders are acceptable as to form and legality. OMB requests that the proposed Executive orders be expeditiously presented for the President's consideration so that they may be issued during the first two weeks of January 1977.

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

Attachments





DEPARTMENT OF STATE

Washington, D.C. 20520

AUG 19 1976

Dear Mr. Lynn:

In accordance with Executive Order 11030, as amended, there is transmitted herewith a proposed Executive order, together with seven copies, to implement the provisions of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94-329). That Act has substantially revised the provisions of the Foreign Assistance Act of 1961, as amended (hereinafter "the FAA"), relating to security assistance, and has made even more sweeping changes in the legislation governing foreign military sales and exports of commercially sold military equipment, material and services. The new legislation extensively amends the Foreign Military Sales Act, which it redesignates the Arms Export Control Act (hereinafter "the AECA"), and incorporates therein provisions on munitions export control which supersede section 414 of the Mutual Security Act of 1954.

The enclosed draft Order amends Executive Order 10973, the principal instrument whereby functions vested in the President by the FAA are delegated to various Executive Branch officials. It also revokes Executive Order 11501, which delegates functions under the former Foreign Military Sales Act, and replaces it with a new set of delegations to implement the AECA.

The principal reason for proposing a new Executive order at this time is to delegate new functions vested in the President by P.L. 94-329. However, we have also included a number of provisions in the draft Order which implement legislative changes enacted by the Foreign Assistance Acts of 1973 (P.L. 93-189) and 1974 (P.L. 93-559) and by the

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



International Development and Food Assistance Act of 1975 (P.L. 94-161). We have thus taken into account all amendments to the relevant legislation enacted since the issuance in 1972 of Executive Order 11685, the most recent general updating of the delegations of functions concerning this subject. The nature, purpose, background and effect of the provisions of the enclosed draft Order, and their relationship to pertinent laws, are explained below.

PART I. FOREIGN ASSISTANCE

This part of the draft Order amends Executive Order 10973, the basic delegation of functions vested in the President by the Foreign Assistance Act of 1961. The basic Order delegates all functions under the FAA to the Secretary of State, except those otherwise expressly delegated or expressly reserved to the President.

Delegation to the Secretary of State.

Paragraph 1 adds to the list of statutory functions delegated to the Secretary of State those under section 607 of P.L. 94-329. That provision requires the President to report to Congress substantiated instances of bribery and extortion involving U.S. firms and foreign officials. This function is closely related to the responsibilities vested in the Secretary of State by section 39 of the Arms Export Control Act concerning reports of agents' fees and other payments. Although this function is enacted as permanent law, it does not amend either the FAA or the AECA and, therefore, must be specifically delegated.

Paragraph 2 revokes a provision regarding coordination of munitions control functions under section 414 of the Mutual Security Act of 1954. That provision of law is repealed by section 212(b)(1) of P.L. 94-329. Munitions control functions, now authorized by section 38 of the AECA, are dealt with in part III of the draft Order.



Delegation to the Secretary of Defense.

Paragraph 3 deletes a reference to section 664(i) of the FAA, which section was repealed by section 22 (2) of P.L. 93-189.

Paragraph 4 adds to the functions on which the Secretary of Defense must consult with the Secretary of State those under sections 514(e) of the FAA. That provision, enacted by section 103 of P.L. 94-329, requires the President to report to Congress on new overseas stockpiles of defense articles, or additions to existing stockpiles, of more than \$10 million in value.

Exclusions from Delegation to the Secretary of Defense.

Paragraph 5 excludes from the functions delegated to the Secretary of Defense the following additional responsibilities, thereby causing those functions to be delegated to the Secretary of State:

(a) Those under section 502B(a)(3) of the FAA (except to the extent they relate to DOD functions). That provision, enacted by section 301(a) of P.L. 94-329, directs the President to formulate and conduct security assistance programs in a manner that will promote human rights and avoid identification of the United States with governments which deny human rights to their people. Delegation of this function to the Secretary of State is consistent with other provisions of the FAA regarding human rights, and with the Secretary of State's supervisory responsibilities for security assistance.

(b) Those under sections 504(a) and 505(d), (e), and (g) of the FAA. Section 504(a), as amended by section 101 of P.L. 94-329, authorizes the President to increase the amounts allocated for military assistance to certain countries. Allocations of funds for military assistance under section 653(a) of the FAA are made by the Secretary of State and this new allocation function should be similarly delegated. Section 505(d), as amended by section 304(a) of P.L. 94-329, requires the President to report to Congress if information is



received indicating a substantial violation of an international agreement regarding the use of U.S. furnished defense articles and defense services. Section 505(e), enacted by section 12(a)(3) of P.L. 93-189 and amended by section 204(b)(2) of P.L. 94-329, requires the President to observe certain conditions in considering requests for consent to third country transfers of U.S. furnished defense articles and services. This provision superseded section 9 of P.L. 91-672 under which functions regarding third country transfers had been delegated to the Secretary of State. These functions have continued to be performed by him. Section 505(g), enacted by section 302(a) of P.L. 94-329, requires the President to report to Congress on instances of discrimination by foreign governments against American citizens because of their race, religion, national origin, or sex.

(c) Those relating to consent under sections 505(a)(1) and (4) of the FAA. These provisions authorize the President to consent to disposition of United States furnished defense articles and services other than by return to the United States. The exclusion of this function from the responsibilities of the Secretary of Defense complements the delegation to the Secretary of State of responsibility for third party transfers.

Delegation to the Secretary of the Treasury.

Paragraph 6 modifies the delegation to the Secretary of the Treasury by deleting references to former section 514 of the FAA, which was repealed by section 12(a)(5) of P.L. 93-189, and to section 414 of the Mutual Security Act of 1954, repealed by section 212(b)(1) of P.L. 94-329. The deletion of reference to the former section 514 of the FAA is not intended to affect responsibilities of the Secretary of the Treasury with respect to foreign currencies owned by the United States which were obtained pursuant to this repealed provision of law.



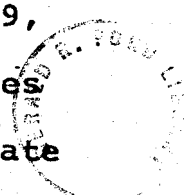
This paragraph retains the Secretary of the Treasury's functions of making reports to Congress under sections 634(f) and (g) of the FAA regarding the indebtedness of foreign countries. These provisions were enacted by section 17 of P.L. 93-189 and were delegated to the Secretary of the Treasury by Executive Order 11816 of October 25, 1974 (39 F.R. 37965). In addition, it delegates to the Secretary of the Treasury the function of transmitting to Congress and the Comptroller General reports of the International Bank for Reconstruction and Development and the Asian Development Bank received under section 301(e)(3) of the FAA. This section of the FAA was added by section 9(l) of P.L. 93-189. It also delegates to the Secretary of the Treasury the function of implementing section 102(d) of the FAA with respect to international development organizations in which the United States is represented by the Secretary of the Treasury. Section 102(d), enacted by section 301 of P.L. 94-161, directs the President to endeavor to bring about the adoption of certain criteria by international development organizations. These criteria are to be developed by AID pursuant to other provisions of section 102(d).

Reservation of Functions to the President.

Subparagraphs (a) and (b) of paragraph 7 reserve to the President the following additional functions:

(a) Those under section 505(c) of the FAA. That provision requires the reduction and termination of military assistance grants to any country having sufficient wealth to enable it to maintain and equip its own military forces without undue burden to its economy. This function involves the formulation of the President's budget and is considered inappropriate for delegation.

(b) Those under sections 620(x) and 620A of the FAA. The former provision, added by section 22 of P.L. 93-559 and amended by section 403 of P.L. 94-329, authorizes the President to make determinations and certifications regarding military assistance and sales to Turkey. The latter provision, enacted by section 303 of P.L. 94-329, requires the President to terminate



assistance to countries which aid terrorists and authorizes him to waive this requirement on national security grounds.

(c) Those under section 481(a) of the FAA. The reference to section 481(a) conforms the Executive order to an amendment made to section 481 of the FAA by section 11(a) of P.L. 93-189. That amendment designated the former section 481 as subsection (a) and added a new subsection (b) requiring certain reports to the Congress on the International Narcotics Control Program. The submission of these periodic reports need not be reserved for the President and, in fact, the required reports have been submitted by the Department of State on the President's behalf. This change would also cause the function vested in the President by section 481(c)(2) of the FAA to be delegated to the Secretary of State. This function, added by section 504(b) of P.L. 94-329, involves a study and report to Congress on placing our narcotics control program under international organization auspices.

(d) That under section 504(a)(6) of the FAA of determining that the furnishing of sophisticated weapons systems to certain less developed countries is important to the national security. This function, enacted by section 101 of P.L. 94-329, is similar to one in existing law which, in practice, has been performed only by the President.

(e) Those under sections 505(d)(2)(A) and 505(d)(3)(A) of the FAA of determining that a country is ineligible for further assistance because it has violated an agreement on the use of United States furnished defense articles or defense services and determining that such a violation has ceased. These provisions were enacted by section 304(a) of P.L. 94-329.

(f) Those under section 662(a) of the FAA. That section, added by section 32 of P.L. 93-559, prohibits the expenditure of appropriated funds for foreign operations of the Central Intelligence Agency other than intelligence gathering unless the President



determines that the operation is important to the national security and provides a timely report to the Congress.

(g) Those under section 663 of the FAA. That provision authorizes the President to furnish assistance under the FAA or defense articles or services under the FMS program in exchange for raw materials and to allocate raw materials so received to any appropriate U.S. agency for stockpiling or disposal. It was added by section 32 of P.L. 93-559.

(h) Those under section 669(b)(1) of the FAA relating to waiver of the prohibition against assistance to countries which deliver or receive nuclear reprocessing or enrichment equipment, materials or technology. This provision, enacted by section 305 of P.L. 94-329, contemplates that such a waiver be made only by Executive order.

Subparagraph (c) of paragraph 7 adds a proviso to the existing reservation of the function of finding whether military assistance to a country will strengthen the security of the United States and promote world peace. This proviso continues in effect the delegation of authority to the Secretary of State to make such a finding in the context of proposed third country transfers to countries with respect to which an eligibility finding has not previously been made by the President. Similar authority is now delegated to the Secretary of State by Presidential Determination 73-10 of January 2, 1973 (38 F.R. 7211). This subparagraph complements the delegation to the Secretary of State of functions under sections 505(a)(1), (a)(4) and (e), as proposed in paragraph 5 of the draft Order.

PART II. FOREIGN MILITARY SALES

This part of the draft Order revokes Executive Order 11501, which contains the delegations of functions vested in the President by the Foreign Military Sales Act (P.L. 90-629), as amended. That Act has been renamed the "Arms Export Control Act" by P.L. 94-329,



and its provisions have been so extensively revised as to require substantial changes in the delegations of authority. These changes are reflected in part III of the draft Order.

PART III. ARMS EXPORT CONTROLS

This part of the draft Order delegates functions vested in the President by the Arms Export Control Act (AECA). To the extent that the provisions of the newly entitled AECA remain similar to those previously contained in the Foreign Military Sales Act, the delegations follow the basic pattern of Executive Order 11501. However, the draft Order also makes provision for the many new functions established in the recently enacted legislation. Functions not expressly delegated are reserved to the President.

Delegation of Functions.

Section 1 of the draft Order delegates functions vested in the President by specific sections of the AECA, as follows:

Eligibility - Paragraph (a) delegates to the Secretary of State functions under section 3 of the AECA, except the finding that sales to a given country will strengthen the security of the United States and promote world peace, the waiver of a suspension of eligibility because of fishing boat seizures, and the determinations regarding ineligibility because of violation of an agreement on the use of United States furnished defense articles or defense services. These specified functions are reserved to the President.

Paragraph (a) also contains a proviso to the reservation of the function of making findings of eligibility under section 3(a)(1) of the AECA. This proviso allows the Secretary of State to make such a finding in the context of a proposed third country transfer. The proviso is parallel to that set out in paragraph 7(c) of part I of the draft Order, which is limited to articles and services furnished under the FAA, and similarly complements the functions delegated



to the Secretary of State with respect to third country transfers.

Discrimination - Paragraph (b) delegates to the Secretary of State functions under section 5 of the AECA, which was added by section 302(b) of P.L. 94-329. These functions involve the furnishing of reports to Congress on discrimination by foreign governments against Americans on the basis of race, religion, national origin, or sex. The statute contemplates the participation of the State Department's Coordinator for Human Rights and Humanitarian Affairs in the preparation of certain of these reports.

Sales from Stock - Paragraph (c) continues the existing delegation to the Secretary of Defense of functions under section 21 of the AECA, relating to sales of defense articles and defense services from Department of Defense stocks. This paragraph excepts from the delegation functions under the final sentence of subsection (d) and under subsection (h) of section 21. These excepted functions are reserved to the President. Subsection (d), added by section 205 of P.L. 94-329, involves the extension of time for payment under sales contracts when an emergency requires a delay in order to seek legislation to finance the sale. Subsection (h), added by section 206 of P.L. 94-329, requires a certification and report to Congress for any sale that would have a significant adverse effect on the combat readiness of U.S. forces.

Procurement for Cash Sales - Paragraph (d) continues the delegation to the Secretary of Defense of authority to make sales from new procurements under section 22 of the AECA. However, the extraordinary authority in section 22(b) to approve delayed interest-free payment for such sales in emergencies is reserved to the President. This authority, as amended by section 207(b) of P.L. 94-329, is similar to that contained in section 21(d), which authority is similarly reserved to the President by paragraph (c) of this section of the draft Order.



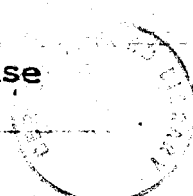
Sales Credits - Paragraph (e) continues the delegation to the Secretary of Defense of authority to extend credits under section 23 of the AECA to finance the procurement of defense articles and defense services. This delegation of authority is modified, however, by a reservation to the President of authority to approve concessional interest rates as being in the national interest under section 23(2). This function was added by section 45(a)(2) of P.L. 93-559.

Guaranties - Paragraph (f) continues the delegation to the Secretary of Defense of authority to issue repayment guaranties under section 24 of the AECA to private U.S. lenders and to the Federal Financing Bank to finance military procurements.

Annual Justification - Paragraph (g) delegates to the Secretary of State authority to transmit to Congress an annual estimate and justification for the Foreign Military Sales program, as required by section 25 of the AECA. This delegation is consistent with the existing responsibility of the Secretary of State for the Congressional presentation. In recognition that information on estimated sales orders must come from the Department of Defense, and arms control impact analysis must involve the Arms Control and Disarmament Agency, the heads of those agencies are directed to assist the Secretary of State in the preparation of presentation materials. Section 25 of the AECA was added by section 209 of P.L. 94-329.

Standards and Criteria - Paragraph (h) continues without change the delegation to the Secretary of State, with concurrence from the Departments of Defense and Treasury on certain aspects, of authority to prescribe standards and criteria for credit and guaranty transactions under section 34 of the AECA.

Less Developed Countries - Paragraph (i) continues the delegation to the Secretary of State to find a less developed country ineligible for sales, credits and guaranties under section 35(a) of the AECA because it has diverted resources needed for development to unnecessary military expenditures.



Foreign Military Sales Reports - Paragraph (j) delegates to the Secretary of Defense responsibility for making quarterly reports to Congress under section 36(a) of the AECA of past sales, projected sales, financing for such sales, and the numbers and functions of overseas personnel. Reports containing some of this information have been submitted by the Secretary of Defense since the enactment of section 36(a) by section 45(a)(5) of P.L. 93-559. The scope of these reports has been modified by section 211(a) of P.L. 94-329.

This paragraph also delegates to the Secretary of Defense authority under section 36(b) of the Act to submit notices to Congress of proposed individual major governmental sales. This function has also been performed heretofore by the Secretary of Defense without formal delegation. The waiver of the thirty-day waiting period after submission of such a notice is reserved to the President.

Consistent with existing practice, the Secretary of Defense is required to consult with the Secretary of State in the performance of functions under this paragraph of the draft Order. The draft Order also requires consultation with ACDA in responding to requests from Congress under section 36(b)(1) of the AECA for information concerning the arms control aspects of proposed sales.

Commercial Sales Reports - Paragraph (k) delegates to the Secretary of State authority to submit quarterly reports to Congress on exports of commercially sold defense articles and defense services and on the numbers of American personnel employed overseas in implementing such exports. These reports, required by an amendment to section 36(a) of the AECA made by section 211 of P.L. 94-329, supersede the periodic reports formerly submitted by the Secretary of State under the now repealed section 414(e) of the Mutual Security Act of 1954, as amended.

In addition, this paragraph delegates to the Secretary of State responsibility for reporting to Congress quarterly on political contributions, gifts, fees, commissions and other payments reported to him under section 39 of the AECA. Such reports are required by



section 36(a)(8) of the AECA, as added by section 604 (a) of P.L. 94-329.

This paragraph also delegates to the Secretary of State authority for submitting notices to Congress of proposed major commercial exports under sections 36(c) and 36(d) of the AECA. The requirement for such notices was enacted by section 211 of P.L. 94-329.

Export Licenses - Paragraph (1) continues the delegation of functions regarding controls over the import and export of defense articles and defense services. Such controls have previously been exercised under section 414 of the Mutual Security Act of 1954, which is superseded by section 38 of the AECA, as added by section 212 of P.L. 94-329.

Subparagraph (1) delegates export control functions to the Secretary of State, subject to the same coordination with the Secretary of Defense as is presently required by section 105 of Executive Order 10973.

Subparagraph (2) delegates import control functions to the Secretary of the Treasury, subject to the same coordination with the Secretaries of State and Defense as is presently required by section 301(b) of Executive Order 10973.

Subparagraph (3) implements the newly enacted section 38(e) of the AECA, which makes administrative enforcement powers under the Export Administration Act also available to enforce section 38 of the AECA. This subparagraph has been included in the draft Order because the Departments of State and Commerce are discussing the possible utilization of Commerce Department compliance mechanisms to assist in implementing the administrative powers authorized by section 38 of the AECA. It makes clear that any services which may be performed by the Commerce Department relating to such enforcement powers (e.g., decisions by that Department's Appeals Board on behalf of the Secretary of State) are duly authorized.



Fees and Payments - Paragraph (m) delegates to the Secretary of State authority to prohibit, limit or prescribe conditions on payments made to solicit, promote or otherwise secure governmental or commercial sales of defense articles or defense services. This authority is contained in section 39(b) of the AECA, added by section 604(b) of P.L. 94-329. Other regulatory functions under section 39 are vested directly in the Secretary of State by statute. In carrying out this delegation of authority with respect to sales under section 22 of the AECA, the Secretary of State is required to consult with the Secretary of Defense in order to avoid interference in the application of the Armed Services Procurement Regulations and other Department of Defense regulations. Sales under section 22 of the AECA are to be administered by the Secretary of Defense in accordance with paragraph (d) of this section of the draft Order.

General Provisions - Paragraph (n) continues the delegation to the Secretary of Defense of authority to approve offshore procurement under section 42(c) of the FAA. In addition, it delegates to the Secretary of Defense responsibility under section 42(f) for maximizing the overseas use of contractor services, as opposed to services of U.S. military personnel. This new directive in section 42(f) of the AECA was added by section 605(b) of P.L. 94-329.

Coordination.

Section 2 of the draft Order is derived from sections 2 and 3 of Executive Order 11501. Paragraph (a) continues the requirement for consultation by the Secretaries of State and Defense with the Secretary of the Treasury, the Administrator of the Agency for International Development, and the Director of the Arms Control and Disarmament Agency. However, this paragraph is written in more general terms and is not limited to those specified agencies.

Paragraph (b) affirms the supervisory responsibilities of the Secretary of State under section 2(b) of the AECA. In addition, it expressly provides that international agreements under the Act shall be



negotiated, entered into and terminated by or under the authority of the Secretary of State. This provision relating to international agreements parallels the delegation to the Secretary of State under the FAA resulting from section 203(e) of Executive Order 10973, as set out in part I of the draft Order. The terminology is comparable to that contained in other Executive orders. See, e.g., section 4(a) of Executive Order 10841 (24 FR 7941).

Paragraph (c) requires the Secretary of State to ensure that the Coordinator for Human Rights and Humanitarian Affairs participate in the formulation and conduct of security assistance programs. The Coordinator, whose office is established within the Department of State by section 301(b) of P.L. 94-329, will not be an agency head to whom it would be appropriate to delegate functions directly. However, a principal purpose of P.L. 94-329 is to require the taking into account in arms export control and security assistance decisions those considerations specified in the legislation as being of particular concern to Congress. Among these, human rights issues are most prominent. The objectives of the Coordinator's participation as described in this subparagraph is derived from section 502B(a)(3) of the FAA, as enacted by section 301 of P.L. 94-329.

Reservation of Functions.

Section 3 of the draft Order is identical to section 4 of Executive Order 11501. It expressly reserves to the President those functions not expressly delegated.

Allocation of Funds.

Section 4 of the draft Order, which allocates funds under the AECA to the Secretary of Defense, is identical to section 5 of Executive Order 11501.

General Provisions.

Section 5 of the draft Order makes clear that references to the AECA in this Order shall include amendments to the Act made from time to time. This section is identical to section 6 of the Executive Order 11501.



The provisions of the enclosed draft Executive order have been approved by the Under Secretary of State for Security Assistance, following coordination of the views of the several agencies concerned. We hope that formal interagency clearance can be obtained on an expedited basis and the enclosed documents submitted in final form to the President at an early date.

Sincerely,



Robert J. McCloskey
Assistant Secretary for
Congressional Relations

Enclosure:

Proposed Executive
Order.





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

GENERAL COUNSEL

DEC 16 1976

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OFFICE OF LEGAL COUNSEL

Honorable Edward H. Levi
Attorney General
Washington, D. C. 20530

Dear Mr. Attorney General:

Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, are two proposed Executive orders entitled "Administration of Arms Export Controls" and "Administration of Foreign Assistance and Related Functions" respectively.

These two orders were submitted by the Department of State, along with the enclosed transmittal letter. The submission by the Department of State was in the form of a single Executive order. For reasons of form and administrative convenience, it was revised in this office into two proposed orders. Part I of the State draft is now a proposed order entitled "Administration of Foreign Assistance and Related Functions", and Part III is now a proposed order entitled "Administration of Arms Export Controls." Part II of the State draft order has become Section 4 of the proposed order on arms export controls.

The purpose of these two proposed Executive orders is to delegate some of the new functions vested in the President by the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94-329), and the Foreign Assistance Acts of 1973 (Public Law 93-189) and 1974 (Public Law 93-559), and the International Development and Food Assistance Act of 1975 (Public Law 94-161).

The delegations of Presidential authority in the proposed orders are consistent with existing delegations. Some substantive changes have been made in the proposed order. Those changes and relevant agency comments are discussed below.



CS

A very thorough discussion of the proposed orders is contained in the enclosed transmittal letter from the Department of State. The following discussion will track the State letter and, except as noted, the proposed orders also track the format of the State draft, thus making it easy to read the State letter, this letter, and the proposed orders together.

Part I of the State draft - now a separate proposed order entitled "Administration of Foreign Assistance and Related Functions."

Section 1 was changed to add Section 413(b) of Public Law 94-329 to the functions delegated to the Secretary of State, as suggested by the Agency for International Development (AID), Department of State. This would allow AID to settle claims arising out of the collapse of pro-western governments in Indochina.

Section 2 was changed by adding a new Section 105 to Executive Order No. 10973, as amended. This provision provides that with respect to determining the allocation of assistance funds, the Secretary of State will consult with the Director of the Office of Management and Budget.

Section 6 was changed, at the request of the Department of the Treasury, to reflect that the Secretary of the Treasury would continue to administer the still active special foreign country accounts established under prior provisions of law. We have not used the proposed delegatory language, only because there no longer exists any statutory authority to delegate.

There were a few other minor editorial changes, which were made for reasons of clarity, style, or form. For example, the last citation in Section 1 was changed from "22 U.S.C. 239a" to "22 U.S.C. 2394a".

Part III of the State draft - now a separate proposed order entitled "Administration of Arms Export Controls."

Section 1(a) was modified by changing "(c) (4) (A)" to read "(c) (4)". See Section 304(b) of Public Law 94-329 for



the latest amendments to Section 3(c) of the Foreign Military Sales Act, now the Arms Export Control Act (AECA).

Sections 1(j) and (k) were changed, at the request of a representative of the Department of State, by deleting references to subsections (a)(4), (a)(7), and (a)(8) of Section 36 of the AECA. The references would have had the effect of withholding certain reporting requirements from the Department of Defense and vesting them in the Department of State. These items in the required report to the Congress should logically all be made by one department head - the Secretary of Defense.

Section 1(j) was also modified to provide that the Secretary of Defense would consult with the Director of the Office of Management and Budget on the report of projected foreign sales transactions.

Section 1(j) has additionally been modified at the request of the Department of Defense to reflect that appropriate consultation with the Director of the Arms Control and Disarmament Agency shall be performed by the Secretary of State. According to the Department of Defense, this is consistent with established procedures between the Departments of State and Defense.

In Section 1(l)(3) we have deleted the unnecessary reference to a designee of the Secretary of Commerce.

Section 2(b) has been modified to more accurately reflect the statutory language.

Section 2(c) has been deleted as unnecessary. To the extent that the Coordinator for Human Rights and Humanitarian Affairs is to participate in functions under the AECA, such participation is already required by statute (see Section 301 of Public Law 94-329, adding Section 502B to the Foreign Assistance Act of 1961, as amended, especially Section 502B(f)(1) and (a)(2) and (d)(2)).

Section 3 has been deleted as unnecessary, since functions not delegated remain vested in the President.

Section 4, concerning allocation of funds, has become Section 3.



Part II of the State draft order has been added as Section 4 of this proposed order.

There were a few other minor editorial changes, which were made for reasons of clarity, style, or form. For example, the second sentence in Section 1(c) was changed from "exception of subsections (d) (final sentence) and (h)" to "exception of the last sentence of subsection (d) and all of subsection (h)".

It is urged that these proposed Executive orders be expeditiously presented for the President's consideration so that they may be issued during the first two weeks of January 1977.

These proposed Executive orders have the approval of the Director of the Office of Management and Budget.

Sincerely,

William M. Nichols
William M. Nichols
General Counsel

11 Enclosures

2 Executive orders

State transmittal

Comments from:

Commerce

DOD

Treasury

CIA

NSC

USIA

AID

ACDA





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

GENERAL COUNSEL

December 21, 1976

Honorable Edward H. Levi
Attorney General
Washington, D. C. 20530

Dear Mr. Attorney General:

This is in reference to my letter of December 16, 1976, transmitting two proposed Executive orders entitled "Administration of Arms Export Controls" and "Administration of Foreign Assistance and Related Functions" respectively.

Enclosed are pages 4 and 5 for the proposed order entitled "Administration of Arms Export Controls." Please substitute these pages for those transmitted on December 16, 1976.

This change only modifies the provisions of Section 2(b) of the proposed order. This change was informally requested and discussed with a representative of the Department of State, who concurs. The change expands the language of the proposed Section 2(b) and more closely follows the wording of Section 2(b) of the Arms Export Control Act, as amended (including the amendments made by Section 212(a)(2) of Public Law 94-329). Language has been added to make it clear that the responsibilities of the Secretary of State include the supervision and direction of the negotiation, conclusion, and termination of international agreements. This addition is consistent with the statutory language.

Although we are of the opinion that this proposed Section 2(b) is basically unnecessary, and would ordinarily delete it as surplusage, we have agreed to include it because similar language is included in the related Executive Order No. 10973. We would anticipate that such language would not be included when Executive Order No. 10973, as amended, is completely revised.



This proposed revision has the approval of the Director of the Office of Management and Budget.

Sincerely,

William M. Nichols
William M. Nichols
General Counsel

Enclosure



EXECUTIVE ORDER

ADMINISTRATION OF FOREIGN ASSISTANCE AND
RELATED FUNCTIONS

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, Executive Order No. 10973, as amended, is hereby further amended as follows:

Section 1. Section 101 is amended by striking out "and (6)" and inserting in lieu thereof "(6) sections 413(b) and 607 of the International Security Assistance and Arms Export Control Act of 1976 (90 Stat. 761, 768; 22 U.S.C. 2431, note, 2394a), and (7)".

Sec. 2. Section 105 is revoked and the following new section is substituted therefor:

"SEC. 105. ALLOCATION OF FOREIGN ASSISTANCE.

In carrying out the functions conferred upon the President by section 653 of the Act, the Secretary of State shall consult with the Director of the Office of Management and Budget."

Sec. 3. Subsection (c) of Section 201 is revoked.

Sec. 4. Section 202 is amended to read as follows:

"SEC. 202. REPORTS AND INFORMATION. In carrying out the functions under sections 514(e) and 634(b) of the Act delegated to him by section 201 of this order, the Secretary of Defense shall consult with the Secretary of State."



Sec. 5. Section 203 is amended to read as follows:

"SEC. 203. EXCLUSIONS FROM DELEGATION TO SECRETARY OF DEFENSE. The following described functions conferred upon the President by the Act are excluded from the functions delegated by the provisions of section 201(a) of this order:

"(a) Those under section 502(B) (a) (3) of the Act, except to the extent they relate to functions under the Act administered by the Department of Defense.

"(b) Those under sections 504(a), 505(a) relating to other provisions required by the President, and 505(d), (e), and (g) of the Act.

"(c) Those relating to consent under sections 505(a) (1) and (4) of the Act.

"(d) Those under sections 505(b) (1), (2) and (3) of the Act to the extent that they pertain to countries which agree to the conditions set forth therein.

"(e) Those of negotiating, concluding and terminating international agreements."

Sec. 6. Section 301 is amended to read as follows:

"SEC. 301. DEPARTMENT OF THE TREASURY.

There are delegated to the Secretary of the Treasury the functions conferred upon the President by the third sentence of section 102(d) as it relates to international development organizations in which the United States is represented by the Secretary of the Treasury, section 301(e) (3) as it relates to organizations referred to in section 301(e) (2), the second sentence of section 612(a), section 634(f), and section 634(g) of the Act.



The Secretary of the Treasury shall continue to administer any open special foreign country accounts established pursuant to former section 514 of the Act as enacted by section 201(f) of Public Law 92-226 (86 Stat. 25) and repealed by Section 12(b) (5) of Public Law 93-189 (87 Stat. 722).".

Sec. 7. Section 401 is amended as follows:

(a) Subsection (a) is amended:

(1) by inserting "505(c)" immediately after "504(b)"; and

(2) by inserting "620(x), 620A" immediately after "620(d)"; and

(3) by striking out "and 633(b)" and inserting in lieu thereof "633(b), 662(a), and 663(b)".

(b) Subsection (c) is amended:

(1) by striking out "481" and inserting in lieu thereof "481(a), 504(a) (6)"; and

(2) by inserting "505(d) (2) (A), 505(d) (3)" immediately after "505(b) (4),"; and

(3) by striking out "and 634(c)" and inserting in lieu thereof "634(c), 663(a) and 669(b) (1)".

(c) Subsection (d) (1) is amended to read as follows:

"(d) (1) Those under section 503(a) which relate to findings: Provided, That the Secretary of State in the implementation of the functions delegated to him under section 505(a) (1), (a) (4) and (e) of the Act, is authorized to find, in the case of a proposed transfer of a defense article or related training or a related defense service by a foreign country or



international organization to a foreign country or international organization not otherwise eligible under section 503(a) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace."

THE WHITE HOUSE

1977





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

GENERAL COUNSEL

DEC 16 1976

Honorable Edward H. Levi
Attorney General
Washington, D. C. 20530

Dear Mr. Attorney General:

Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, are two proposed Executive orders entitled "Administration of Arms Export Controls" and "Administration of Foreign Assistance and Related Functions" respectively.

These two orders were submitted by the Department of State, along with the enclosed transmittal letter. The submission by the Department of State was in the form of a single Executive order. For reasons of form and administrative convenience, it was revised in this office into two proposed orders. Part I of the State draft is now a proposed order entitled "Administration of Foreign Assistance and Related Functions", and Part III is now a proposed order entitled "Administration of Arms Export Controls." Part II of the State draft order has become Section 4 of the proposed order on arms export controls.

The purpose of these two proposed Executive orders is to delegate some of the new functions vested in the President by the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94-329), and the Foreign Assistance Acts of 1973 (Public Law 93-189) and 1974 (Public Law 93-559), and the International Development and Food Assistance Act of 1975 (Public Law 94-161).

The delegations of Presidential authority in the proposed orders are consistent with existing delegations. Some substantive changes have been made in the proposed order. Those changes and relevant agency comments are discussed below.



A very thorough discussion of the proposed orders is contained in the enclosed transmittal letter from the Department of State. The following discussion will track the State letter and, except as noted, the proposed orders also track the format of the State draft, thus making it easy to read the State letter, this letter, and the proposed orders together.

Part I of the State draft - now a separate proposed order entitled "Administration of Foreign Assistance and Related Functions."

Section 1 was changed to add Section 413(b) of Public Law 94-329 to the functions delegated to the Secretary of State, as suggested by the Agency for International Development (AID), Department of State. This would allow AID to settle claims arising out of the collapse of pro-western governments in Indochina.

Section 2 was changed by adding a new Section 105 to Executive Order No. 10973, as amended. This provision provides that with respect to determining the allocation of assistance funds, the Secretary of State will consult with the Director of the Office of Management and Budget.

Section 6 was changed, at the request of the Department of the Treasury, to reflect that the Secretary of the Treasury would continue to administer the still active special foreign country accounts established under prior provisions of law. We have not used the proposed delegatory language, only because there no longer exists any statutory authority to delegate.

There were a few other minor editorial changes, which were made for reasons of clarity, style, or form. For example, the last citation in Section 1 was changed from "22 U.S.C. 239a" to "22 U.S.C. 2394a".

Part III of the State draft - now a separate proposed order entitled "Administration of Arms Export Controls."

Section 1(a) was modified by changing "(c) (4) (A)" to read "(c) (4)". See Section 304(b) of Public Law 94-329 for



the latest amendments to Section 3(c) of the Foreign Military Sales Act, now the Arms Export Control Act (AECA).

Sections 1(j) and (k) were changed, at the request of a representative of the Department of State, by deleting references to subsections (a) (4), (a) (7), and (a) (8) of Section 36 of the AECA. The references would have had the effect of withholding certain reporting requirements from the Department of Defense and vesting them in the Department of State. These items in the required report to the Congress should logically all be made by one department head - the Secretary of Defense.

Section 1(j) was also modified to provide that the Secretary of Defense would consult with the Director of the Office of Management and Budget on the report of projected foreign sales transactions.

Section 1(j) has additionally been modified at the request of the Department of Defense to reflect that appropriate consultation with the Director of the Arms Control and Disarmament Agency shall be performed by the Secretary of State. According to the Department of Defense, this is consistent with established procedures between the Departments of State and Defense.

In Section 1(l) (3) we have deleted the unnecessary reference to a designee of the Secretary of Commerce.

Section 2(b) has been modified to more accurately reflect the statutory language.

Section 2(c) has been deleted as unnecessary. To the extent that the Coordinator for Human Rights and Humanitarian Affairs is to participate in functions under the AECA, such participation is already required by statute (see Section 301 of Public Law 94-329, adding Section 502B to the Foreign Assistance Act of 1961, as amended, especially Section 502B(f) (1) and (a) (2) and (d) (2)).

Section 3 has been deleted as unnecessary, since functions not delegated remain vested in the President.

Section 4, concerning allocation of funds, has become Section 3.



Part II of the State draft order has been added as Section 4 of this proposed order.

There were a few other minor editorial changes, which were made for reasons of clarity, style, or form. For example, the second sentence in Section 1(c) was changed from "exception of subsections (d) (final sentence) and (h)" to "exception of the last sentence of subsection (d) and all of subsection (h)".

It is urged that these proposed Executive orders be expeditiously presented for the President's consideration so that they may be issued during the first two weeks of January 1977.

These proposed Executive orders have the approval of the Director of the Office of Management and Budget.

Sincerely,

(Signed) William M. Nichols

William M. Nichols
General Counsel

11 Enclosures

2 Executive orders

State transmittal

Comments from:

- Commerce
- DOD
- Treasury
- CIA
- NSC
- USIA
- AID
- ACDA





Office of the Attorney General
Washington, D. C. 20530

DEC 30 1976

The President,

The White House.

Dear Mr. President:

I am transmitting herewith, in accordance with the provisions of Executive Order No. 11030, as amended, a proposed Executive order entitled "Administration of Arms Export Controls."

The proposed order was submitted to the Office of Management and Budget by the Department of State. It was revised in the Office of Management and Budget on the basis of comments by the Departments of the Treasury, Defense, Justice, and Commerce, and the Agency for International Development.

The order, as revised, was forwarded by the Office of Management and Budget, with the approval of its Director, to the Department of Justice for consideration as to form and legality.

The proposed order is approved as to form and legality.

Respectfully,

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel



DEC 30 1976

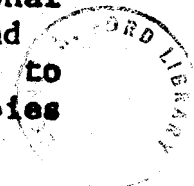
MEMORANDUM

Re: Proposed Executive orders entitled:
"Administration of Foreign Assistance
and Related Functions"
and
"Administration of Arms Export Controls."

The proposed two orders were originally presented by the Department of State to the Office of Management and Budget (OMB) as a single order entitled: "Amending Executive Order No. 10973, Relating to Administration of Foreign Assistance and Related Functions; Revoking Executive Order 11501, Relating to Foreign Military Sales; and Providing for the Administration of Arms Export Controls." That proposal was revised in OMB on the basis of comments from the Departments of the Treasury, Defense, Justice, and Commerce, and the Agency for International Development and divided into the two above-entitled proposed orders. The orders, as revised, were forwarded by OMB, with the approval of its Director, to the Department of Justice for consideration as to form and legality.

The proposed orders were occasioned by legislation of the last two Congresses, especially the International Security Assistance and Arms Export Control Act of 1976, Public Law 94-329, which made substantial changes in the Foreign Assistance Act of 1961 and the Foreign Military Sales Act, changing the title of the latter to Arms Export Control Act. This required corresponding amendments in the Executive orders providing for the delegation of the authority vested in the President by those statutes.

The purposes of those orders and the reasons for their formulation are set forth in detail in the letter of submission from the Assistant Secretary of State for Congressional Relations to the Director, OMB, dated August 19, 1976, and the letters of transmittal from the General Counsel, OMB, to the Attorney General, dated December 16 and 21, 1976, copies of which are attached.



The proposed orders are acceptable as to form and legality. OMB requests that the proposed Executive orders be expeditiously presented for the President's consideration so that they may be issued during the first two weeks of January 1977.

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

Attachments



EXECUTIVE ORDER

ADMINISTRATION OF ARMS EXPORT CONTROLS

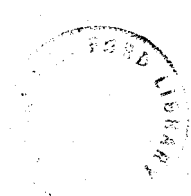
By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Arms Export Control Act, as amended (22 U.S.C. 2751 et seq.), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. Delegation of Functions. The following functions conferred upon the President by the Arms Export Control Act (22 U.S.C. 2751 et seq.), hereinafter referred to as the Act, are delegated as follows:

(a) Those under Section 3 of the Act, with the exception of subsections (a) (1), (b), (c) (3) and (c) (4), to the Secretary of State: Provided, That the Secretary of State, in the implementation of the functions delegated to him under Sections 3(a) and (d) of the Act, is authorized to find, in the case of a proposed transfer of a defense article or related training or other defense service by a foreign country or international organization not otherwise eligible under Section 3(a) (1) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace.

(b) Those under Section 5 to the Secretary of State.

(c) Those under Section 21 of the Act, with the exception of the last sentence of subsection (d) and all of subsection (h), to the Secretary of Defense.



(d) Those under Section 22(a) of the Act to the Secretary of Defense.

(e) Those under Section 23 of the Act, with the exception of the function of certifying a rate of interest to the Congress as provided by paragraph (2) of that Section, to the Secretary of Defense.

(f) Those under Section 24 of the Act to the Secretary of Defense.

(g) Those under Section 25 of the Act to the Secretary of State. The Secretary of Defense and the Director of the Arms Control and Disarmament Agency, within their respective areas of responsibility, shall assist the Secretary of State in the preparation of materials for presentation to the Congress under that Section.

(h) Those under Section 34 of the Act to the Secretary of State. To the extent the standards and criteria for credit and guaranty transactions are based upon national security and financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of the Treasury, respectively.

(i) Those under Section 35(a) of the Act to the Secretary of State.

(j) Those under Sections 36(a) and 36(b) (1) of the Act, except with respect to the certification of an emergency as provided by subsection (b) (1), to the Secretary of Defense. The Secretary of Defense, in the implementation of the functions delegated to him under Sections 36(a) and (b) (1) shall consult with the Secretary of State, who shall, with respect to matters related



to subparagraphs (D) and (I) of Section 36(b)(1), consult with the Director of the Arms Control and Disarmament Agency. With respect to those functions under Sections 36(a)(5) and (6), the Secretary of Defense shall consult with the Director of the Office of Management and Budget.

(k) Those under Sections 36(c) and (d) of the Act to the Secretary of State.

(1) Those under Section 38 of the Act:

(1) to the Secretary of State, except as otherwise provided in this subsection. Designations, including changes in designations, by the Secretary of State of items or categories of items which shall be considered as defense articles and defense services subject to export control under Section 38 shall have the concurrence of the Secretary of Defense;

(2) to the Secretary of the Treasury, to the extent they relate to the control of the import of defense articles and defense services. In carrying out such functions, the Secretary of the Treasury shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. Designations including changes in designations, by the Secretary of the Treasury of items or categories of items which shall be considered as defense articles and defense services subject to import control under Section 38 of the Act shall have the concurrence of the Secretary of State and the Secretary of Defense;

(3) to the Secretary of Commerce, to carry out on behalf of the Secretary of State, to the extent



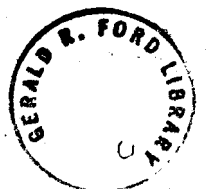
such functions involve Section 38(e) of the Act and are agreed to by the Secretary of State and the Secretary of Commerce.

(m) Those under Section 39(b) of the Act to the Secretary of State. In carrying out such functions, the Secretary of State shall consult with the Secretary of Defense as may be necessary to avoid interference in the application of Department of Defense regulations to sales made under Section 22 of the Act.

(n) Those under Sections 42(c) and (f) of the Act to the Secretary of Defense.

Sec. 2. Coordination. (a) In addition to the specific provisions of Section 1 of this Order, the Secretary of State and the Secretary of Defense, in carrying out the functions delegated to them under this Order, shall consult with each other and with the heads of other departments and agencies, including the Secretary of the Treasury, the Administrator of the Agency for International Development, and the Director of the Arms Control and Disarmament Agency, on matters pertaining to their responsibilities.

(b) In accordance with Section 2(b) of the Act and under the directions of the President, the Secretary of State, taking into account other United States activities abroad, shall be responsible for the continuous supervision and general direction of sales and exports under the Act, including but not limited to, the negotiation, conclusion, and termination of international agreements, and determining whether there shall be a sale to a country and the



amount thereof, and whether there shall be delivery or other performance under such sale or export, to the end that sales and exports are integrated with other United States activities and the foreign policy of the United States is best served thereby.

Sec. 3. Allocation of Funds. Funds appropriated to the President for carrying out the Act shall be deemed to be allocated to the Secretary of Defense without any further action of the President.

Sec. 4. Revocation. Executive Order No. 11501, as amended, is revoked; except that, to the extent consistent with this Order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, taken or entered into under the provisions of Executive Order No. 11501, as amended, and not revoked, superseded or otherwise made inapplicable, shall continue in full force and effect until amended, modified or terminated by appropriate authority.

THE WHITE HOUSE

, 1977





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

GENERAL COUNSEL

DEC 16 1976

Honorable Edward H. Levi
Attorney General
Washington, D. C. 20530

Dear Mr. Attorney General:

Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, are two proposed Executive orders entitled "Administration of Arms Export Controls" and "Administration of Foreign Assistance and Related Functions" respectively.

These two orders were submitted by the Department of State, along with the enclosed transmittal letter. The submission by the Department of State was in the form of a single Executive order. For reasons of form and administrative convenience, it was revised in this office into two proposed orders. Part I of the State draft is now a proposed order entitled "Administration of Foreign Assistance and Related Functions", and Part III is now a proposed order entitled "Administration of Arms Export Controls." Part II of the State draft order has become Section 4 of the proposed order on arms export controls.

The purpose of these two proposed Executive orders is to delegate some of the new functions vested in the President by the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94-329), and the Foreign Assistance Acts of 1973 (Public Law 93-189) and 1974 (Public Law 93-559), and the International Development and Food Assistance Act of 1975 (Public Law 94-161).

The delegations of Presidential authority in the proposed orders are consistent with existing delegations. Some substantive changes have been made in the proposed order. Those changes and relevant agency comments are discussed below.



A very thorough discussion of the proposed orders is contained in the enclosed transmittal letter from the Department of State. The following discussion will track the State letter and, except as noted, the proposed orders also track the format of the State draft, thus making it easy to read the State letter, this letter, and the proposed orders together.

Part I of the State draft - now a separate proposed order entitled "Administration of Foreign Assistance and Related Functions."

Section 1 was changed to add Section 413(b) of Public Law 94-329 to the functions delegated to the Secretary of State, as suggested by the Agency for International Development (AID), Department of State. This would allow AID to settle claims arising out of the collapse of pro-western governments in Indochina.

Section 2 was changed by adding a new Section 105 to Executive Order No. 10973, as amended. This provision provides that with respect to determining the allocation of assistance funds, the Secretary of State will consult with the Director of the Office of Management and Budget.

Section 6 was changed, at the request of the Department of the Treasury, to reflect that the Secretary of the Treasury would continue to administer the still active special foreign country accounts established under prior provisions of law. We have not used the proposed delegatory language, only because there no longer exists any statutory authority to delegate.

There were a few other minor editorial changes, which were made for reasons of clarity, style, or form. For example, the last citation in Section 1 was changed from "22 U.S.C. 239a" to "22 U.S.C. 2394a".

Part III of the State draft - now a separate proposed order entitled "Administration of Arms Export Controls."

Section 1(a) was modified by changing "(c) (4) (A)" to read "(c) (4)". See Section 304(b) of Public Law 94-329 for



the latest amendments to Section 3(c) of the Foreign Military Sales Act, now the Arms Export Control Act (AECA).

Sections 1(j) and (k) were changed, at the request of a representative of the Department of State, by deleting references to subsections (a) (4), (a) (7), and (a) (8) of Section 36 of the AECA. The references would have had the effect of withholding certain reporting requirements from the Department of Defense and vesting them in the Department of State. These items in the required report to the Congress should logically all be made by one department head - the Secretary of Defense.

Section 1(j) was also modified to provide that the Secretary of Defense would consult with the Director of the Office of Management and Budget on the report of projected foreign sales transactions.

Section 1(j) has additionally been modified at the request of the Department of Defense to reflect that appropriate consultation with the Director of the Arms Control and Disarmament Agency shall be performed by the Secretary of State. According to the Department of Defense, this is consistent with established procedures between the Departments of State and Defense.

In Section 1(l) (3) we have deleted the unnecessary reference to a designee of the Secretary of Commerce.

Section 2(b) has been modified to more accurately reflect the statutory language.

Section 2(c) has been deleted as unnecessary. To the extent that the Coordinator for Human Rights and Humanitarian Affairs is to participate in functions under the AECA, such participation is already required by statute (see Section 301 of Public Law 94-329, adding Section 502B to the Foreign Assistance Act of 1961, as amended, especially Section 502B(f) (1) and (a) (2) and (d) (2)).

Section 3 has been deleted as unnecessary, since functions not delegated remain vested in the President.

Section 4, concerning allocation of funds, has become Section 3.



4

Part II of the State draft order has been added as Section 4 of this proposed order.

There were a few other minor editorial changes, which were made for reasons of clarity, style, or form. For example, the second sentence in Section 1(c) was changed from "exception of subsections (d) (final sentence) and (h)" to "exception of the last sentence of subsection (d) and all of subsection (h)".

It is urged that these proposed Executive orders be expeditiously presented for the President's consideration so that they may be issued during the first two weeks of January 1977.

These proposed Executive orders have the approval of the Director of the Office of Management and Budget.

Sincerely,

(Signed) William M. Nichols

William M. Nichols
General Counsel

11 Enclosures

2 Executive orders

State transmittal

Comments from:

Commerce

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CIA

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USIA

AID

ACDA





GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

OCT 22 1976

Mr. William M. Nichols
General Counsel
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Nichols:

This is in response to your letter of August 23, 1976, in which you request comments on a proposed Executive Order entitled:

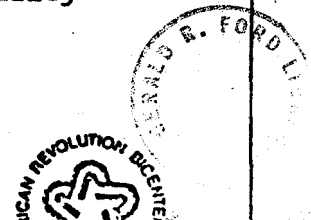
"Amending Executive Order No. 10973, Relating to Administration of Foreign Assistance and Related Functions; Revoking Executive Order 11501, Relating to Foreign Military Sales; and Providing for the Administration of Arms Export Controls."

The proposed Executive Order delegates functions vested in the President by the International Security Assistance and Arms Export Control Act of 1976 (P.L. 94-329). It also includes provisions implementing legislative changes enacted by the Foreign Assistance Acts of 1973 (P.L. 93-189) and 1974 (P.L. 93-559) and by the International Development and Food Assistance Act of 1975 (P.L. 94-161).

The Department of Commerce poses no objections to the issuance of the proposed Executive Order. We address comments to one provision of the order that relates to this Department.

Subparagraph (1)(3) of Part III (Arms Export Controls) of the Executive Order delegates to the Secretary of Commerce, or his designee, the functions provided for under Section 38(e) of the Arms Export Control Act (22 USC 2778) to carryout on behalf of the Secretary of State such functions thereunder as may be agreed to by both Secretaries.

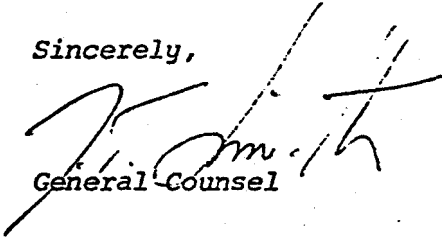
Section 38(e) provides, inter alia, the basis in part for the adoption by the State Department of administrative remedial sanctions (debarment, suspension and civil penalties) for violations of the munitions control regulations. The Department of State proposes to establish procedures for administrative sanctions modeled after those of the Commerce Department's export control regulations under the Export Administration Act. Such procedures will require provisions for hearings and appeals for persons against whom an administrative sanction is proposed. Since State does not have the present capability



to conduct such proceedings, it proposes to utilize on a cost reimbursement basis the existing administrative machinery of the Department of Commerce. This proposal contemplates that hearings for administrative sanctions would be conducted by the Department's Hearing Commissioner and that appeals be brought to the Department's Appeals Board.

The Department of Commerce is amenable to undertaking these functions on behalf of the Department of State and discussions are now in process to work out final arrangements.

Sincerely,



General Counsel





GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

12 October 1976

Mr. William M. Nichols
General Counsel
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Nichols:

Reference is made to your request for the views of the Department of Defense on a proposed Executive order submitted by the Department of State entitled "Amending Executive Order No. 10973, Relating to Administration of Foreign Assistance and Related Functions; Revoking Executive Order 115-1, Relating to Foreign Military Sales; and Providing for the Administration of Arms Export Controls."

The Department of Defense concurs in the proposed order except as follows:

Part III, Section 1(j): Delete the second sentence and substitute "The Secretary of Defense, in the implementation of the functions delegated to him under Sections 36(a) and (b)(1), shall consult with the Secretary of State. Insofar as this involves matters related to subparagraphs (D) and (I) of Section 36(b)(1), the Secretary of State shall also consult with the Director of the Arms Control and Disarmament Agency."

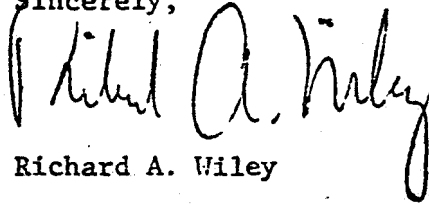
Reason: The Department of Defense has established procedures to interface with the Arms Control and Disarmament Agency through the Bureau of Politico-Military Affairs, Department of State. By continuing a single point of contact by Department of Defense with State, the Department of Defense will avoid involvement in possible differences within the Department of State. The recommended change to the Executive order is consistent with established procedures.

With respect to Part III, subsection 1(m), the Department of Defense is of the opinion that neither that subsection nor section 39(b) of the Arms Export Control Act (to which the subsection relates) is considered as legally precluding the Secretary of Defense, acting under 10 USC 2202, without prior consultation with the Secretary of State, from revising the ASPR to prohibit, limit, or prescribe conditions with respect to such contributions, gifts, commissions, and fees which may be paid, or offered or agreed to be paid by any person in connection with sales of defense articles or defense services under section 22 of the Arms Export



Control Act to or for the armed forces of a foreign country or international organization in order to solicit, promote, or otherwise to secure the conclusion of such sales.

Sincerely,

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

Richard A. Wiley





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

SEP 23 1976

Dear Mr. Nichols:

Reference is made to your request for the views of this Department on proposed Executive order entitled, "Amending Executive Order No. 10973, Relating to Administration of Foreign Assistance and Related Functions; Revoking Executive Order 11501, Relating to Foreign Military Sales; and Providing for the Administration of Arms Export Controls".

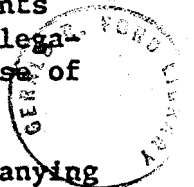
The draft Order implements the provisions of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94-329). That act amended the Foreign Assistance Act of 1961, as amended (the "FAA") with respect to security assistance and also modified the Foreign Military Sales Act, which it renamed the Arms Export Control Act (the "AECA"), incorporating therein provisions pertaining to the import and export of munitions, which provisions supercede section 414 of the Munitions Security Act of 1954.

The draft Order amends Executive Order 10973 which delegates functions vested in the President under the FAA and revokes Executive Order 11501, which delegates functions under the former Foreign Military Sales Act, replacing it with new delegations under the AECA.

The Department has serious objections to the draft Order as currently written.

First, reference to Section 514 of the Foreign Assistance Act is deleted in Paragraph 6 of Part I of the Order since the former Section 514 was repealed by P.L. 93-189. The former Section 514, entitled "Special Foreign Country Accounts", prohibited the granting of military assistance to a foreign country until a specified percentage of the cost of such assistance was paid, in the country's currency, into a special account. The Secretary of the Treasury, in consultation with the Secretary of State, was delegated the President's functions under subsections (a)(2) and (b) of Section 514 and an account was established at the Department of the Treasury to handle the currencies. Some countries are still liable for amounts they failed to pay into the account before Section 514 was repealed. As long as foreign countries still owe amounts under this Section, the Secretary of the Treasury should retain the delegation of authority under former Section 514 to receive, authorize the use of or waive deposit of such funds.

The transmittal letter from the Department of State to OMB accompanying the draft Order contained the statement on page 4 that:



"The deletion of reference to the former Section 514 of the FAA is not intended to affect responsibilities of the Secretary of the Treasury with respect to foreign currencies owned by the United States which were obtained pursuant to this repealed provision of law."

This statement is merely explanatory and is of no legal consequence. We therefore recommend that Paragraph 6 of Part I of the draft Order be amended to read as follows:

"SEC. 301. DEPARTMENT OF THE TREASURY

There are delegated to the Secretary of the Treasury the functions conferred upon the President by Sections 102(d) (third sentence, as it relates to international development organizations in which the United States is represented by the Secretary of the Treasury), 301 (e)(3) (as it relates to organizations referred to in Section 301(e)(2)), former Sections 514(a)(2) and 514(b) enacted by Section 201(f) of P.L. 92-226 and repealed by Section 12(b)(5) of P.L. 93-189 (to the extent that any accounts created pursuant to said former Section 514 (a) remain open) and in consultation with the Secretary of State, Sections 612(a) (second sentence), 634(f), and 634 (g) of the Act."

Second, the transmittal letter notes on page 5 that Paragraph 6 of Part I delegates to the Secretary of the Treasury the function of implementing Section 102(d) of the FAA with respect to international development organizations in which the United States is represented by the Secretary of the Treasury. Section 102(d) directs the President to endeavor to bring about in international development organizations the adoption of criteria similar to those adopted for bilateral assistance for the purpose of ensuring that assistance is effectively utilized. The transmittal letter then states that, "These criteria are to be developed by AID pursuant to other provisions of Section 102(d)."

The Department believes that this latter statement is incorrect insofar as the criteria to be applied to international development organizations in accordance with the statute may differ somewhat from those applied to country recipients of bilateral assistance. For that reason it will be necessary for Treasury to adapt as necessary, criteria developed by AID for bilateral aid, to the characteristics of international development organizations which meet the standards set forth in Section 102(d).

Third, the Department feels that Paragraph (b) of Section 2 of Part III of the draft Order is too broadly drafted. It states that:



"In accordance with Section 2(b) of the Act, the performance of functions under the Act shall be under the continuous supervision and general direction of the Secretary of State, whose responsibilities shall include, but not be limited to, determining whether a sale or export shall be made or performed, and the amount thereof. International agreements under the Act shall be negotiated, entered into and terminated by or under the authority of the Secretary of State."

Section 2(b) of the Act states, in part, that the Secretary of State "* * * shall be responsible for the continuous supervision and general direction of sales under this Act, including, but not limited to, determining whether there shall be a sale to a country and the amount thereof * * *." (Emphasis added.) Likewise, the existing delegation of authority to the Secretary of State under Section 2 of Executive Order 11501, as amended, states that:

"Nothing in this order shall be construed as modifying in any way the responsibility conferred upon the Secretary of State by Section 2(b) of the Act for the continuous supervision and general direction of sales under the Act, including, but not limited to, determining whether a sale should be negotiated, concluded, or terminated and the amount thereof." (Emphasis added.)

Both the statute and the existing delegation of authority indicate that the supervisory and general directive authority of the Secretary of State is limited to sales made under the Act and should not be expanded to include the "performance of functions" - a vague term that could encompass more than sales. Moreover, Section 2(b) of the Act does not grant statutory authority for the inclusion of the last sentence of Section 2(b) of the draft Order. That sentence purports to delegate to the Secretary of State exclusive authority under the Act to negotiate, enter into and terminate international agreements. Accordingly, we recommend that Section 2(b) be revised to read as follows:

"In accordance with Section 2(b) of the Act, the Secretary of State shall be responsible for the continuous supervision and general direction of sales under the Act, which responsibilities shall include, but shall not be limited to, determining whether a sale or export shall be made or performed, and the amount thereof."

Sincerely yours,


General Counsel

Richard R. Allrecht

The Honorable
William M. Nichols, General Counsel
Executive Office of the President

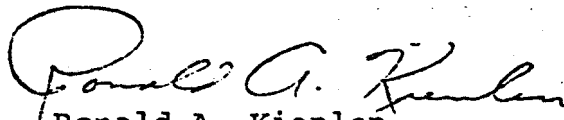


September 15, 1976

MEMORANDUM FOR THE RECORD

Subject: Proposed Executive order entitled "Amending Executive Order No. 10973, Relating to Administration of Foreign Assistance and Related Functions; Revoking Executive Order No. 11501, Relating to Foreign Military Sales; and Providing for the Administration of Arms Export Controls"

Mr. Bill Barr, Office of Legislative Counsel, CIA (351-6136) advised they have no objection to the issuance of this proposed Executive order.



Ronald A. Kienlen
Assistant General Counsel



September 8, 1976

MEMORANDUM FOR THE RECORD

Subject: Proposed Executive Order Entitled "Amending Executive Order No. 10973, Relating to Administration of Foreign Assistance and Related Functions; Revoking Executive Order 11501, Relating to Foreign Military Sales; and Providing for the Administration of Arms Export Controls"

Ms. Barbara Diering, National Security Council (Ext. 4996), advised they had no objection to the issuance of this proposed Executive order.



Ronald A. Kienlen
Assistant General Counsel




September 7, 1976

MEMORANDUM FOR THE RECORD

Subject: Proposed Executive Order Entitled "Amending Executive Order No. 10973, Relating to Administration of Foreign Assistance and Related Functions; Revoking Executive Order 11501, Relating to Foreign Military Sales; and Providing for the Administration of Arms Export Controls"

Ms. Marilyn Dexheimer, United States Information Agency (632-5133), advised they had no objections to the issuance of this proposed Executive order.


Ronald A. Kienlen
Assistant General Counsel



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

17 SEP 1976

Mr. William M. Nichols
General Counsel
Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Nichols:

This is in response to your August 23, 1976, request for comments on a proposed Executive Order, one of whose purposes is to implement the provisions of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94-329).

We believe the proposed Executive Order should be amended in three respects.

1) Section 413(b) of P.L. 94-329 authorizes the President:

"to adopt as a contract of the United States Government, and assume any liabilities arising thereunder (in whole or in part), any contract which had been funded or approved for funding by the Agency for International Development prior to June 30, 1975, for financing with funds made available under the Foreign Assistance Act of 1961 or the Foreign Assistance Act of 1974, or any equitable claim based upon a letter of intent issued prior to April 30, 1975, in which the Agency had expressed its intention to finance a transaction subject to the availability of funds, between the former Governments of Vietnam or Cambodia (including any of their agencies) or the Government of Laos (or any of its agencies) and any person and to apply with respect to any such contract the authorities of the Foreign Assistance Act of 1961."

This authority was requested by the Executive Branch to permit the Agency for International Development to provide compensation to certain categories of contractors who have rendered performance or who have incurred costs in carrying out A.I.D. projects under the Foreign Assistance Act of 1961, as amended, or under the Foreign Assistance Act of 1974, but who have not been paid because of the collapse of



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The Department of State is in receipt of the proposed Executive Order and is in the process of reviewing it. The Department is also in receipt of the proposed Executive Order and is in the process of reviewing it.

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We believe it would be appropriate to designate the Secretary of State as the Secretary of State and to designate the Secretary of State as the Secretary of State. We believe it would be appropriate to designate the Secretary of State as the Secretary of State and to designate the Secretary of State as the Secretary of State.

"(b) It is hereby ordered that the Secretary of State be designated as the Secretary of State and that the Secretary of State be designated as the Secretary of State." (b) It is hereby ordered that the Secretary of State be designated as the Secretary of State and that the Secretary of State be designated as the Secretary of State.

With these reservations we have no objections to the implementation of the proposed Executive Order. The Department of State is in receipt of the proposed Executive Order and is in the process of reviewing it.



These are the only two copies of the original document
retained by the office.

Sincerely yours,

~~Richard M. Nixon~~
Richard M. Nixon, Jr.
Special Counsel



September 11, 1974

Mr. [Name] [Address]

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[Signature]





DEPARTMENT OF STATE

OFFICE OF THE SECRETARY

FEB 21 1973

Case No. 1000

The attached report, dated February 14, 1973, at Washington, D.C., contains information regarding the activities of the Communist Party, USA, in the United States. This information was obtained from a confidential source who has provided reliable information in the past. The information indicates that the Communist Party, USA, is continuing its efforts to recruit and organize members in the United States. It is noted that the Communist Party, USA, has a membership of approximately 100,000 in the United States. The information also indicates that the Communist Party, USA, is active in the field of international relations and is seeking to establish contacts with other Communist parties and organizations. The information is being provided to you for your information and use.

The attached report, dated February 14, 1973, at Washington, D.C., contains information regarding the activities of the Communist Party, USA, in the United States. This information was obtained from a confidential source who has provided reliable information in the past. The information indicates that the Communist Party, USA, is continuing its efforts to recruit and organize members in the United States. It is noted that the Communist Party, USA, has a membership of approximately 100,000 in the United States. The information also indicates that the Communist Party, USA, is active in the field of international relations and is seeking to establish contacts with other Communist parties and organizations. The information is being provided to you for your information and use.

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The Honorable
James H. Doolittle, Director,
Office of Management and Budget



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Department of the Secretary of the Treasury

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The information in this document is classified "Secret" because it contains information the disclosure of which would be injurious to the national defense. This information is being disseminated to you for your information only. It is not to be distributed outside your agency.

SECRET

John F. Kennedy

John F. Kennedy
President of the United States
Washington, D.C.

SECRET

SECRET



EXECUTIVE ORDER

AMENDING EXECUTIVE ORDER NO. 10973, RELATING TO
ADMINISTRATION OF FOREIGN ASSISTANCE AND RELATED
FUNCTIONS; REVOKING EXECUTIVE ORDER 11501, RELATING
TO FOREIGN MILITARY SALES; AND PROVIDING FOR THE
ADMINISTRATION OF ARMS EXPORT CONTROLS

By virtue of the authority vested in me by section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and section 301 of title 3, United States Code, and as President of the United States, it is hereby ordered as follows:

PART I. FOREIGN ASSISTANCE

Executive Order No. 10973 of November 3, 1961 (26 F.R. 10469), as heretofore amended, is hereby further amended as follows:

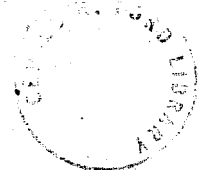
1. Section 101 is amended by striking out "and (6)" and inserting in lieu thereof "(6) section 607 of the International Security Assistance and Arms Export Control Act of 1976 (90 Stat. 768; 22 U.S.C. 239a), and (7)".

2. Section 105 is revoked.

3. Paragraph (c) of section 201 is revoked.

4. Section 202 is amended to read as follows:

"SEC. 202. REPORTS AND INFORMATION. In carrying out the functions under sections 514(e) and 634(b) of the Act delegated to him by section 201 of this Order, the Secretary of Defense shall consult with the Secretary of State."



5. Section 203 is revised to read as follows:

"SEC. 203. EXCLUSIONS FROM DELEGATION TO SECRETARY OF DEFENSE. The following described functions conferred upon the President by the Act are excluded from the functions delegated by the provisions of section 201(a) of this order:

"(a) Those under section 502B(a) (3) of the Act, except to the extent they relate to functions under the Act administered by the Department of Defense.

"(b) Those under sections 504(a), 505(a) (introductory clause), and 505(d), (e), and (g) of the Act.

"(c) Those relating to consent under sections 505(a) (1) and (4) of the Act.

"(d) Those under sections 505(b) (1), (2) and (3) of the Act to the extent that they pertain to countries which agree to the conditions set forth therein.

"(e) Those of negotiating, concluding and terminating international agreements."

6. Section 301 is amended to read as follows:

"SEC. 301. DEPARTMENT OF THE TREASURY.

There are delegated to the Secretary of the Treasury the functions conferred upon the President by sections 102(d) (third sentence, as it relates to international development organizations in which the United States is represented



by the Secretary of the Treasury), 301(e)(3) (as it relates to organizations referred to in section 301 (e)(2)), 612(a) (second sentence), 634(f), and 634(g) of the Act."

7. Section 401 is amended as follows:

(a) Paragraph (a) is amended --

- (1) by inserting "505(c)" immediately after "504(b)";
- (2) by inserting "620(x), 620A" immediately after "620(d).";
- (3) by striking out "and 633(b)" and inserting in lieu thereof "633(b), 662(a), and 663(b)".

(b) Paragraph (c) is amended --

- (1) by striking out "481" and inserting in lieu thereof "481(a), 504(a)(6)";
- (2) by inserting "505(d)(2)(A), 505(d)(3)(A)" immediately after "505(b)(4),"; and
- (3) by striking out "and 634(c)" and inserting in lieu thereof "634(c), 663(a) and 669(b)(1)".

(c) Subparagraph (d)(1) is amended to read as follows:

"(d)(1) Those under section 503(a) with respect to findings: Provided, That the Secretary of State, in the implementation of the function delegated to him under



section 505(a)(1), (a)(4) and (e) of the Act, is authorized to find, in the case of a proposed transfer of a defense article or related training or a related defense service by a foreign country or international organization to a foreign country or international organization not otherwise eligible under section 503(a) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace."

PART II. FOREIGN MILITARY SALES

Executive Order No. 11501 of December 22, 1969 (34 F.R. 20169), as amended, is revoked. Except to the extent they may be inconsistent with this order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued or entered into with respect to any function affected by this order and not revoked, superseded or otherwise made inapplicable before the date of this order, shall continue in full force and effect until amended, modified or terminated by appropriate authority.

PART III. ARMS EXPORT CONTROLS

Section 1. DELEGATION OF FUNCTIONS. The following functions conferred upon the President by the Arms Export Control Act (22 U.S.C. 2751-2793), hereinafter referred to as "the Act", are hereby delegated as follows:



(a) Those under section 3 of the Act, with the exception of subsections (a) (1), (b), (c) (3) and (c) (4) (A), to the Secretary of State: Provided, That the Secretary of State, in the implementation of the functions delegated to him under sections 3(a) and (d) of the Act, is authorized to find, in the case of a proposed transfer of a defense article or related training or other defense service by a foreign country or international organization to a foreign country or international organization not otherwise eligible under section 3(a) (1) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace.

(b) Those under section 5 to the Secretary of State.

(c) Those under section 21 of the Act, with the exception of subsections (d) (final sentence) and (h), to the Secretary of Defense.

(d) Those under section 22(a) of the Act to the Secretary of Defense.

(e) Those under section 23 of the Act, with the exception of paragraph (2) of that section, to the Secretary of Defense.

(f) Those under section 24 of the Act to the Secretary of Defense.

(g) Those under section 25 of the Act to the Secretary of State. The Secretary of Defense and the Director of the Arms Control and Disarmament Agency, within their respective areas of responsibility, shall



assist the Secretary of State in the preparation of materials for presentation to the Congress under that section.

(h) Those under section 34 of the Act to the Secretary of State. To the extent the standards and criteria for credit and guaranty transactions are based upon national security and financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of the Treasury, respectively.

(i) Those under section 35(a) of the Act to the Secretary of State.

(j) Those under sections 36(a) and 36(b)(1) of the Act, except subsections (a)(4), (a)(7) (as it relates to commercial exports), (a)(8) and (b)(1) (with respect to certification of an emergency), to the Secretary of Defense. The Secretary of Defense, in the implementation of the functions delegated to him under sections 36(a) and (b)(1) shall consult with the Secretary of State, and in the implementation of the functions delegated to him by subparagraphs (D) and (I) of section 36(b)(1) shall also consult with the Director of the Arms Control and Disarmament Agency.

(k) Those under sections 36(a)(4), 36(a)(7) (as it relates to commercial exports), 36(a)(8), 36(c) and 36(d) of the Act to the Secretary of State.

(l) Those under section 38 of the Act --



(1) to the Secretary of State, except as otherwise provided in this paragraph. Designations, including changes in designations, by the Secretary of State of items or categories of items which shall be considered as defense articles and defense services subject to export control under section 38 shall have the concurrence of the Secretary of Defense.

(2) to the Secretary of the Treasury, to the extent they relate to the control of the import of defense articles and defense services. In carrying out such functions, the Secretary of the Treasury shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. Designations, including changes in designations, by the Secretary of the Treasury of items or categories of items which shall be considered as defense articles and defense services subject to import control under section 38 shall have the concurrence of the Secretary of State and the Secretary of Defense.

(3) to the Secretary of Commerce, or his designee, to carry out on behalf of the Secretary of State, to the extent such functions involve section 38(e) and are agreed to by the Secretary of State and the Secretary of Commerce.



(m) Those under section 39(b) of the Act to the Secretary of State. In carrying out such functions, the Secretary of State shall consult with the Secretary of Defense as may be necessary to avoid interference in the application of Department of Defense regulations to sales made under section 22 of the Act.

(n) Those under sections 42(c) and 42(f) of the Act to the Secretary of Defense.

SEC. 2. COORDINATION. (a) In addition to the specific provisions of section 1 of this order regarding consultation and concurrence requirements, the Secretaries of State and Defense, in carrying out the functions delegated to them under this order, shall consult with each other and with the heads of other agencies of the United States Government, including the Secretary of the Treasury, the Administrator of the Agency for International Development, and the Director of the Arms Control and Disarmament Agency on matters pertaining to their responsibilities.

(b) In accordance with section 2(b) of the Act, the performance of functions under the Act shall be under the continuous supervision and general direction of the Secretary of State, whose responsibilities shall include, but not be limited to, determining whether a sale or export shall be made or performed, and the amount thereof.* International agreements under the Act shall be negotiated, entered into and terminated by or under the authority of the Secretary of State.



(c) The Secretary of State shall ensure that the Coordinator for Human Rights and Humanitarian Affairs participates in the carrying out of functions under the Act and under the Foreign Assistance Act of 1961, by assisting in the formulation and conduct of security assistance and arms export control policies, programs and activities which will promote and advance human rights and fundamental freedoms, and the avoidance of United States identification, through such policies, programs and activities, with governments which deny to their people internationally recognized human rights and fundamental freedoms.

SEC. 3. RESERVATION OF FUNCTIONS. All functions conferred upon the President by the Act that are not delegated by the provisions of this order are hereby reserved to the President.

SEC. 4. ALLOCATION OF FUNDS. Funds appropriated to the President for carrying out the Act shall be deemed to be allocated to the Secretary of Defense without any further action of the President.

SEC. 5. GENERAL PROVISIONS. References in this order to the provisions of the Act shall be deemed to include references thereto, respectively, as amended from time to time.

The White House,

, 1976



THE WHITE HOUSE
WASHINGTON

January 3, 1977

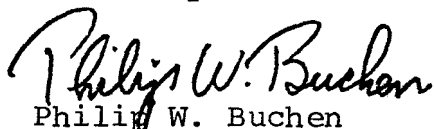
Dear Judge MacKinnon:

Your communication to the President regarding the sentencing of Ms. Patricia Campbell Hearst has been referred to me for response. I know the President greatly appreciates your suggestion and the interest you have expressed in this matter.

I have been advised by Assistant Attorney General Richard L. Thornburgh of the Department of Justice's Criminal Division, that while Ms. Hearst was ineligible due to her age at the time of conviction and sentencing to be sentenced as a "youth offender" under the Youth Corrections Act, Title 18, United States Code, Section 5001 et seq., she was eligible to be considered for sentencing under the provisions of that Act as a "young adult offender" under Title 18, United States Code, Section 4209 (now Title 18, United States Code, Section 4216). United States District Court Judge William H. Orrick, Jr., however, made a specific finding at the time of sentencing, that Ms. Hearst would not benefit from treatment under the Youth Corrections Act and accordingly sentenced her as an adult.

As you know, Ms. Hearst's conviction has been appealed to the Ninth Circuit Court of Appeals and thus is still within the jurisdiction of the Courts. Under these circumstances, it is believed that it would be inappropriate for the President to intercede in the case at this time.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable George E. MacKinnon
United States Circuit Judge
United States Court of Appeals
District of Columbia Circuit
Washington, D. C. 20001



THE WHITE HOUSE

WASHINGTON

November 24, 1976

Justice

MEMORANDUM FOR

THE HONORABLE EDWARD H. LEVI

Attached is a copy of a letter to the President from The Honorable George E. MacKinnon regarding the Patricia Hearst case.

I would appreciate suggestions from your office as to a proper response which I could send in behalf of the President.

P.W.B.

Philip W. Buchen
Counsel to the President

Attachment



sent the original to Bobbie
was it typed?

December 23, 1976

**MEMORANDUM FOR: Mr. Philip W. Buchen
Counsel to the President
The White House**

**FROM: Richard L. Thornburgh
Assistant Attorney General
Criminal Division**

Pursuant to your request of November 24, 1976, regarding an inquiry from The Honorable George E. MacKinnon for information concerning the sentencing of Ms. Patricia Campbell Hearst, enclosed herewith is a draft reply.

Also enclosed is the original correspondence which you forwarded to us.

Enclosures

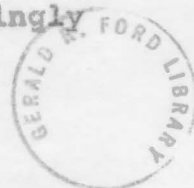


Honorable George E. MacKinnon
United States Circuit Judge
United States Court of Appeals
District of Columbia Circuit
Washington, D. C. 20001

Dear Judge MacKinnon:

Your communication to the President regarding the sentencing of Ms. Patricia Campbell Hearst has been referred to me for response. I know the President greatly appreciates your suggestion and the interest you have expressed in this matter.

I have been advised by Assistant Attorney General Richard L. Thornburgh of the Department of Justice's Criminal Division, that while Ms. Hearst was ineligible due to her age at the time of conviction and sentencing to be sentenced as a "youth offender" under the Youth Corrections Act, Title 18, United States Code, Section 5001 et seq., she was eligible to be considered for sentencing under the provisions of that Act as a "young adult offender" under Title 18, United States Code, Section 4209 (now Title 18, United States Code, Section 4216). United States District Court Judge William H. Orrick, Jr., however, made a specific finding at the time of sentencing, that Ms. Hearst would not benefit from treatment under the Youth Corrections Act and accordingly sentenced her as an adult.



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As you know, Ms. Hearst's conviction has been appealed to the Ninth Circuit Court of Appeals and thus is still within the jurisdiction of the Courts. Under these circumstances, it is believed that it would be inappropriate for the President to intercede in the case at this time.

Sincerely,



UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, D. C. 20001

GEORGE E. MACKINNON
UNITED STATES CIRCUIT JUDGE

November 22, 1976

President Gerald R. Ford
The White House
Washington, D. C.

Re: Miss Patricia Hearst

Dear Mr. President:

You may want to consider whether the sentence of Miss Hearst should be commuted to a sentence under the Youth Corrections Act, 18 U.S.C. § 5001 et seq.

She was born on February 20, 1954 and reached her 22nd birthday on February 20, 1976. Thus she did not meet the definition of being a youth offender as "a person under the age of 22 years at the time of conviction." 18 U.S.C. § 5006(e) (emphasis added). The timing of her trial, since it finished after her 22nd birthday, moved her outside of the Act though all of her offenses were committed at such an age that she could have been sentenced as a youth offender if the trial had terminated more promptly.

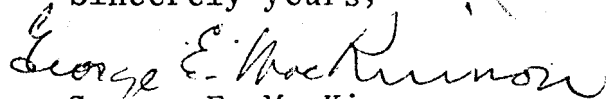
The statute in this respect works a hardship on a person in her position. Had her trial been conducted more promptly and her sentence been imposed prior to her 22nd birthday; she could have been sentenced under the Youth Corrections Act and, by her good conduct and rehabilitation during confinement, she could have possibly eventually earned a certificate whereby "the conviction [would] be automatically set aside" 18 U.S.C. § 5021(a).

A case closely in point was that of Heidi Fletcher who, a short while back, participated in a bank robbery in the District of Columbia in which one policeman was killed. She was close to her 22nd birthday at the time and standing trial would have brought her beyond her 22nd birthday. ~~Under such circumstances she quickly entered a guilty plea,~~ received a Youth Corrections sentence and, I understand, is presently released.

Because Miss Hearst lost her eligibility for a Youth Corrections sentence by such a close margin, you might want to consider the possibility of issuing a commutation to a Youth Corrections sentence. I make this suggestion to you from some considerable experience with the workings of the Act and because this possibility may not have been presented to you.

With very best personal regards,

Sincerely yours,


George E. MacKinnon

CC: Philip W. Buchen, Esq. ✓
Counsel to the President