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THE PRESIDENT HAS SEEN.....

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FROM: JACK MARSH  
TO: DICK CHENEY  
INFO: - DALLAS TEXAS -

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THE WHITE HOUSE

WASHINGTON

April 29, 1976

MEMORANDUM TO: DICK CHENEY

FROM: JOHN O. MARSH, JR. *John*

Attached is a rough draft of a proposed veto message on the Foreign Aid Authorization Bill. This will be considered first in the Senate.

Participants on the draft are: NSC, State, OMB

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To the Senate

I am returning, without my approval, S. 2662, a bill that would make unacceptable encroachments upon the constitutional responsibilities of the President for the conduct of foreign affairs.

This legislation authorizes appropriations for security assistance programs for fiscal year 1976. While these programs are of great importance to our efforts to promote a more stable and secure world in which constructive international cooperation can flourish, the numerous restrictions and cumbersome procedures contained in the bill would run directly counter to the attainment of the objectives of these programs. I cannot approve legislation that would so impair the ability of the Executive Branch to perform its functions.

S. 2662 contains an array of constitutionally objectionable requirements whereby virtually all significant arms transfer decisions would be subjected on a case-by-case basis to a period of delay for congressional review and possible disapproval by concurrent resolution of the Congress. These provisions offend the express provision in the Constitution that a resolution having the force and effect of law must be presented to the President, and, if ~~disapproved~~ approved, repassed by a two-thirds majority in the Senate and the House of Representatives. They extend to the Congress the power to change the law to prohibit specific transactions through a process less formal than required under the Constitution for amending the law. Moreover, they would involve the Congress directly in the performance of Executive functions in clear contravention of the fundamental principle of separation of powers. Congress can, by legislation, authorize or prohibit such actions as the execution of contracts or the issuance of export licenses, but cannot itself participate in the Executive functions of entering into a contract or issuing a license, either directly or through the disapproval procedures contemplated in this bill.

The attempt of Congress to become a virtual co-administration in operational decisions would seriously distract it from its proper legislative role. Inefficiency, delay, and uncertainty in the management of our nation's foreign affairs would eventually follow.

The erosion of the basic distinction between legislative and executive functions that would result from the enactment of S. 2662 would pose a grave threat to our system of government, and would forge impermissible shackles on the President's ability to carry out the laws and conduct the foreign relations of the United States. The President cannot speak for the nation under circumstances where his operational decisions can be frustrated by Congress through the exercise of a procedure less formal than that required by the Constitution for the enactment of legislation.

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Apart from the basic constitutional objections to this bill, S. 2662 is bad legislation, containing numerous unwise restrictions.

The bill would suspend for 180 days the President's authority to control certain trade with North and South Vietnam, thereby removing a vital bargaining instrument for the settlement of a number of differences between the United States and these countries. I have the deepest sympathy for the intent of this provision, which is to obtain an accounting for Americans missing in action in Vietnam. However, the enactment of this legislation would not provide any real assurances that the Vietnamese would now fulfill their long standing obligation to provide such an accounting. Indeed, the establishment of a direct linkage between trade and missing in action might well only perpetuate Vietnamese demands for greater and greater concessions. This Administration is prepared to be responsive to Vietnamese action on the question of Americans missing in action. Nevertheless, the delicate process of negotiations with the Vietnamese cannot be replaced by a legislative mandate that would open up trade for a specified number of days and then terminate that trade as a way to achieve our diplomatic objectives. This represents an unacceptable attempt by Congress to carry out the diplomatic relations of the United States.

A further objectionable feature of S. 2662 is an annual ceiling of \$9.0 billion on the total of government sales and commercial exports of military equipment and services. This unilateral ceiling, even though it contains a waiver ~~ak~~ authority for national security reasons, would be an impediment to our efforts to obtain the cooperation of other nations in achieving mutual restraint in the proliferation of conventional weapons. Such an arbitrary ceiling would also require individual transactions to be evaluated, not on their own merits, but on the basis of their relationship to the volume of other, unrelated transactions. This provision would establish an arbitrary, unilateral limitation as a substitute for rational decision-making.

The bill also contains well intended but misguided provisions to require the termination of cooperation in the military sector with countries which engage in practices that discriminate against United States citizens or practices constituting a consistent pattern of gross human rights violations. This Administration is fully committed to a policy of actively opposing and seeking the elimination of discrimination by foreign governments against United States citizens on the basis of their race, religion, national origin or sex. The use of automatic sanctions against sovereign States is, however, an awkward and ineffective device for the promotion of that policy. These measures represent further attempts to reduce important and complex policy considerations into simple legalistic tests whereby the conduct of sovereign foreign nations is measured against an American statutory formula and, if

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found deficient, must result in specific actions by the United States to terminate or limit our cooperation with the government concerned. By making a single factor the effective determinant of relationships which must take into account numerous considerations, such provisions would add a new element of uncertainty to our security assistance programs and would cast doubt upon the reliability of the United States in its dealings with other countries. Moreover, such restrictions would most likely be counterproductive as a means for eliminating discriminatory practices and promoting human rights.

The legislation would terminate grant military assistance and military assistance advisory groups after fiscal year 1977 except where specifically authorized by Congress. This would create a presumption against such programs and missions after fiscal year 1977. In the case of MAP, this would limit our flexibility to assist countries whose national security is important to us but which are not themselves able to bear the full cost of their own defense. In the case of MAAGs, termination of missions by legislative fiat would undo close and long standing military relationships with important allies. Moreover, MAAG termination is inconsistent with increasing Congressional demands for the kind of information about and control over arms sales which MAAGs now provide.

These examples of legislative provisions which attempt to strip the President of the ability to exercise judgment in meeting the myriad differing circumstances involved in conducting relations with almost 150 foreign nations illustrate why S. 2662 is an intolerable encroachment by Congress upon the Executive.

I particularly regret that notwithstanding the spirit of genuine cooperation between the Legislative and Executive Branches that has characterized the deliberations on this legislation, we have been unable to overcome the major policy differences that exist. In disapproving this bill, I act as any President would, and must, to retain the ability to function as the foreign policy leader. In disapproving this bill, I act as any President would, and spokesman of the Nation. In world affairs today, America can have only one foreign policy. In world affairs today, foreign governments must know that the President is the one sure authority in this government with whom they must treat and must rely upon.

Accordingly, I must veto the bill.

The White House

April , 1976

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