

The original documents are located in Box 18, folder “Foreign Aid (2)” of the John Marsh Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

[May 1976?]

THE WHITE HOUSE
WASHINGTON

Max -

We must
have a pre-
notice plan on

Foreign Aid
veto. John



[May 1976?]

TO THE SENATE OF THE UNITED STATES

I am returning, without my approval, S. 2662, a bill that would seriously obstruct the exercise of the President's Constitutional responsibilities for the conduct of foreign affairs. The reasons I have decided that I should veto this bill are as follows:

1. It raises fundamental Constitutional problems that encroach upon the authority of the President.
2. It includes a number of unwise and cumbersome restrictions which would seriously impair my ability to implement a coherent and consistent foreign policy such as:
 - By mandating a termination of grant military assistance and military assistance advisory groups after fiscal year 1977 unless specifically authorized by Congress, it vitiates two important tools which enable us to respond to the needs of many countries and maintain vital controls over military sales programs.
 - By imposing an arbitrary arms sale ceiling, it limits our ability to respond to the legitimate defense needs of our friends and creates obstacles to U.S. industry competing fairly with foreign suppliers.

- By removing my restrictions on trade with North and South Vietnam, S. 2662 undercuts any incentive the North Vietnamese may have to provide an accounting for our MIAs.
- By its provisions for terminating U.S. assistance to countries where visa practices or human rights standards do not meet criteria desired by Congress, the bill ignores the many complex factors of our relationships. Such actions would not only disrupt relations important to our interest, but could actually impair our ability to seek modifications of such practices.

2
[May 1976?]

TO THE SENATE OF THE UNITED STATES

I am returning, without my approval, S. 2662, a bill that would seriously obstruct the exercise of the President's constitutional responsibilities for the conduct of foreign affairs. In addition to raising fundamental constitutional problems, this bill includes a number of unwise restrictions that would seriously inhibit my ability to implement a coherent and consistent foreign policy:

-- By imposing an arbitrary arms sale ceiling, it limits our ability to respond to the legitimate defense needs of our friends and creates obstacles to U. S. industry competing fairly with foreign suppliers.

-- By its provisions for terminating U. S. assistance to countries where visa practices or human rights standards do not meet criteria desired by Congress, the bill ignores the many complex factors of our relationships. Such actions would not only disrupt relations important to our interest, but could actually impair our ability to seek modification of such practices.

-- By removing my restrictions on trade with North and South Vietnam, S. 2662 undercuts any incentive the North Vietnamese may have to provide an accounting for our MIAs.

-- By mandating a termination of grant military assistance and military assistance advisory groups after fiscal year 1977 unless specifically authorized by Congress, it vitiates two important tools which enable us to respond to the needs of many countries and maintain vital controls over military sales programs.

In sum, such cumbersome restrictions would seriously impair the ability of the Executive Branch to make day to day foreign policy decisions necessary to respond to changing events and to the security needs of our friends and allies.

The bill also contains several provisions whereby virtually all significant arms transfer decisions would be subjected on a case-by-case basis to a period of delay for Congressional review and possible disapproval by concurrent resolution of the Congress. These provisions are incompatible with the express provisions in the Constitution that a resolution having the force and effect of law must be presented to the President and, if disapproved, repassed by a two-thirds majority in the Senate and the House of Representatives. They extend to the Congress the power to prohibit specific transactions authorized by law without changing the law -- and without following the constitutional process such a change would require. Moreover, they would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers.

In attempting to insist that our foreign policy and our assistance programs more actively foster congressional humanitarian standards, the Congress has produced legislation which would disrupt our relations with other countries and do serious harm to the long term foreign policy interests of the United States. While I encourage increased Congressional involvement in the formulation of foreign policy, the pattern of unprecedented restrictions contained in this bill requires that I reject such Congressional crippling of the Executive Branch constitutional authority to implement that policy.

[Man 1976?]
[probably Philip Buchen's
annotations]

TO THE SENATE OF THE UNITED STATES

I am returning, without my approval, S. 2662, a bill that would seriously obstruct the exercise of the President's constitutional responsibilities for the conduct of foreign affairs. In addition to raising fundamental constitutional problems, this bill includes a number of unwise restrictions that would seriously inhibit my ability to implement a coherent and consistent foreign policy:

-- By imposing an arbitrary arms sale ceiling, it limits our ability to respond to the legitimate defense needs of our friends and ~~creates obstacles to~~ U. S. industry ^{from} competing fairly with foreign suppliers.

-- By ~~its provisions for terminating~~ ^{conditioning continued} U. S. assistance to ~~countries where~~ ^{on compliance by recipient countries with} visa practices or human rights standards ~~do not meet~~ ^{according} ~~criteria desired by~~ ^{our} Congress, the bill ignores the many ^{other} complex ^{which should govern} factors ^{with those countries, and} of our relationships. ~~Such actions would not only disrupt~~ ~~relations important to our interest, but could actually impair our~~ ^{deal by more appropriate means with objectionable practices of other nations,} ability to ~~seek modification of such practices.~~

-- By removing my restrictions on trade with North and South Vietnam, S. 2662 undercuts any incentive the North Vietnamese may have to provide an accounting for our MIAs.



-- By mandating a termination of grant military assistance and military assistance advisory groups after fiscal year 1977 unless specifically authorized by Congress, ^{the bill} it vitiates two important tools which enable us to respond to the needs of many countries and maintain vital controls over military sales programs.

In sum, such cumbersome restrictions would seriously impair the ability of the Executive Branch to make day to day foreign policy decisions necessary to respond to changing events and to the security needs of our friends and allies.

The bill also contains several provisions whereby virtually all significant arms transfer decisions would be subjected on a case-by-case basis to a period of delay for Congressional review and possible disapproval by concurrent resolution of the Congress. These provisions are incompatible with the express provisions in the Constitution that a resolution having the force and effect of law must be presented to the President and, if disapproved, repassed by a two-thirds majority in the Senate and the House of Representatives. They extend to the Congress the power to prohibit specific transactions authorized by law without changing the law -- and without following the constitutional process such a change would require. Moreover, they would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers.



[In attempting to insist that our foreign policy and our assistance programs more actively foster congressional humanitarian standards, the Congress has produced legislation which would disrupt our relations with other countries and do serious harm to the long term foreign policy interests of the United States.] While I encourage increased Congressional involvement in the formulation of foreign policy, the pattern of unprecedented restrictions contained in this bill requires that I reject such Congressional crippling of the Executive Branch constitutional authority to implement that policy.



TO THE SENATE OF THE UNITED STATES:

I am returning, without my approval, S. 2662, a bill that would unwisely and improperly obstruct the exercise of the President's constitutional responsibilities for the conduct of foreign affairs and do serious harm to the long-term foreign policy interests of the United States.

This legislation authorizes appropriations for security assistance programs for fiscal year 1976. These programs are of great importance to our efforts to promote a more stable and secure world in which constructive international cooperation can flourish. However, the numerous restrictions and cumbersome procedures contained in the bill would seriously impair the ability of the Executive Branch to perform its proper functions.

Constitutional Objections

S. 2662 contains an array of constitutionally objectionable requirements whereby virtually all significant arms transfer decisions would be subjected on a case-by-case basis to a period of delay for Congressional review and possible disapproval by concurrent resolution of the Congress. These provisions are incompatible with the express provision in the Constitution that a resolution having the force and effect of law must be presented to the President and, if disapproved, repassed by a two-thirds majority in the Senate and the House of Representatives. They extend to the Congress the power to prohibit specific transactions authorized by law without changing the law -- and without following the constitutional process such a change would require. Moreover, they would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers. Congress can, by duly adopted legislation, authorize or prohibit such actions as the execution of contracts or the issuance of export licenses; but Congress

cannot itself participate in the Executive functions of deciding whether to enter into a lawful contract or issue a lawful license, either directly or through the disapproval procedures contemplated in this bill.

The erosion of the basic distinction between legislative and Executive functions which would result from the enactment of S. 2662, displays itself in an increasing volume of similar legislation which this Congress has passed or is considering. Such legislation would pose a serious threat to our system of government, and would forge impermissible shackles on the President's ability to carry out the laws and conduct the foreign relations of the United States. The President cannot function effectively in domestic matters, and speak for the nation authoritatively in foreign affairs, if his decisions under authority previously conferred can be reversed by a bare majority of the Congress. Also, the attempt of Congress to become a virtual co-administrator in operational decisions would seriously distract it from its proper legislative role. Inefficiency, delay, and uncertainty in the management of our nation's foreign affairs would eventually follow.

Apart from these basic constitutional deficiencies which appear in six sections of the bill, S. 2662 is faulty legislation, containing numerous unwise restrictions.

Trade with Vietnam

The bill would suspend for 180 days the President's authority to control certain trade with North and South Vietnam, thereby removing a vital bargaining instrument for the settlement of a number of differences between the United States and these countries. I have the deepest sympathy for the intent of this provision, which is to obtain an accounting for Americans missing in action in Vietnam. However, the enactment of this legislation would not provide any real assurances that the Vietnamese would now fulfill their long-standing obligation to provide such

an accounting. Indeed, the establishment of a direct linkage between trade and accounting for those missing in action might well only perpetuate Vietnamese demands for greater and greater concessions.

This Administration is prepared to be responsive to Vietnamese action on the question of Americans missing in action. Nevertheless, the delicate process of negotiations with the Vietnamese cannot be replaced by a legislative mandate that would open up trade for a specified number of days and then terminate that trade as a way to achieve our diplomatic objectives. This mandate represents an unacceptable attempt by Congress to manage the diplomatic relations of the United States.

Annual Ceiling on Arms Sales

A further objectionable feature of S. 2662 is an annual ceiling of \$9.0 billion on the total of government sales and commercial exports of military equipment and services. In our search to negotiate mutual restraints in the proliferation of conventional weapons, this self-imposed ceiling would be an impediment to our efforts to obtain the cooperation of other arms-supplying nations. Such an arbitrary ceiling would also require individual transactions to be evaluated, not on their own merits, but on the basis of their relationship to the volume of other, unrelated transactions. This provision would establish an arbitrary, overall limitation as a substitute for case-by-case analyses and decisions based on foreign policy priorities and the legitimate security needs of our allies and friends.

Discrimination and Human Rights

This bill also contains well-intended but misguided provisions to require the termination of military cooperation with countries which engage in practices that discriminate against United States citizens or practices constituting a consistent pattern of gross human rights

violations. This Administration is fully committed to a policy of actively opposing and seeking the elimination of discrimination by foreign governments against United States citizens on the basis of their race, religion, national origin or sex, just as the Administration is fully supportive of internationally recognized human rights as a standard for all nations to respect. The use of the proposed sanctions against sovereign nations is, however, an awkward and ineffective device for the promotion of those policies. These provisions of the bill represent further attempts to ignore important and complex policy considerations by requiring simple legalistic tests to measure the conduct of sovereign foreign governments. If Congress finds such conduct deficient, specific actions by the United States to terminate or limit our cooperation with the government concerned would be mandated. By making any single factor the effective determinant of relationships which must take into account other considerations, such provisions would add a new element of uncertainty to our security assistance programs and would cast doubt upon the reliability of the United States in its dealings with other countries. Moreover, such restrictions would most likely be counterproductive as a means for eliminating discriminatory practices and promoting human rights. The likely result would be a selective disassociation of the United States from governments unpopular with the Congress, thereby diminishing our ability to advance the cause of human rights through diplomatic means.

Termination of Grant Military Assistance and
Advisory Groups

The legislation would terminate grant military assistance and military assistance advisory groups after fiscal year 1977 except where specifically authorized by Congress, thus creating a presumption against such programs and missions. Such a step would have a severe impact on our relations with other nations whose security and well-being

are important to our own national interests. In the case of grant assistance, it would limit our flexibility to assist countries whose national security is important to us but which are not themselves able to bear the full cost of their own defense. In the case of advisory groups, termination of missions by legislative fiat would impair close and long-standing military relationships with important allies. Moreover, such termination is inconsistent with increasing Congressional demands for the kind of information about and control over arms sales which these groups now provide. Such provisions would insert Congress deeply into the details of specific country programs, a role which Congress has neither the information nor the organizational structure to play.

* * * * *

I particularly regret that, notwithstanding the spirit of genuine cooperation between the Legislative and Executive Branches that has characterized the deliberations on this legislation, we have been unable to overcome the major policy differences that exist.

In disapproving this bill, I act as any President would, and must, to retain the ability to function as the foreign policy leader and spokesman of the Nation. In world affairs today, America can have only one foreign policy. Moreover, that foreign policy must be certain, clear and consistent. Foreign governments must know that they can treat with the President on foreign policy matters, and that when he speaks within his authority, they can rely upon his words.

Accordingly, I must veto the bill.

THE WHITE HOUSE,

brought by Les Janka - 5/1/76 - 4:20 p. m.

TO THE SENATE OF THE UNITED STATES

I am returning, without my approval, S. 2662, a bill that would unwisely and improperly obstruct the exercise of the President's constitutional responsibilities for the conduct of foreign affairs and impose numerous and cumbersome restrictions that would impair the ability of the Executive branch to make day to day foreign policy decisions responsive to changing events and the security needs of our friends and allies.

In attempting to impose its insistence that our foreign policy and our assistance programs more actively foster the humanitarian ideals all Americans embrace, the Congress ~~is zealous to do good~~ has produced legislation which can disrupt our relations with other countries and do serious harm to the long-run foreign policy interests of the United States.

I am sure that, for the most part, the motivation behind this legislation was well meant. But the best of intentions sometimes result in bad legislation. S. 2662 is certainly such a case.

The Bill contains several provisions of doubtful constitutionality whereby programs authorized by the Congress could be later reviewed, further restricted or even terminated by a concurrent resolution passed by a majority of both Houses. Such a frustration of operational Executive decisions, by violating the separation of execu-

tive and legislative powers, not only raises constitutional questions but also raises grave doubts over the President's authority to conduct this nation's relations with the rest of the world.

In addition to these fundamental constitutional problems, this bill imposes a vast array of unwise restrictions that would seriously distort the President's ability to implement a coherent and consistent foreign policy:

-- S. 2662 undercuts any incentive the North Vietnamese may have to provide an accounting for our MIAs by removing the President's restrictions on trade with North and South Vietnam.

-- It imposes a \$9 billion arms sale ceiling which would arbitrarily limit our ability to respond to the not always predictable legitimate defense needs of our friends while creating obstacles to U. S. industry in competing with foreign arms suppliers.

-- In disregard of the many complex factors of our relationships with other countries, the bill imposes strict provisions for terminating U. S. assistance to countries where discriminatory visa practices or human rights violations do not meet standards desired by Congress. Such provisions cannot only disrupt relationships important to our interest, but can actually impair our ability to seek modification of such practices.

-- It mandates a termination of grant military assistance and military assistance advisory groups after fiscal year 1977, two important tools which enable us to respond to the needs of poorer countries and maintain vital controls over arms sales programs.

While I support and believe a greater congressional role in foreign policy is essential, the unprecedented web of restrictions in this bill, taken as a whole, requires that I draw the line on such Congressional encroachment on the Executive Branch's constitutional authority and responsibility for implementing that policy.

(Pick up remainder of draft message at first sub-head:

Constitutional Objections .)

THE WHITE HOUSE
WASHINGTON

5:24
p. m.

May 1, 1976

TO: JACK MARSH

FROM: DOUG SMITH

Attached is a redraft of the
veto message on S. 2662.

TO THE SENATE OF THE UNITED STATES

I am returning, without my approval, S. 2662, a bill that would unwisely and improperly obstruct the exercise of the President's constitutional responsibilities for the conduct of foreign affairs, ^{The bill contains} and ~~impose~~ numerous ~~and~~ cumbersome restrictions ^{which} ~~that~~ ^{seriously} ~~would~~ impair the ability of the Executive branch to make day to day foreign policy decisions ^{necessary to respond} ~~responsive~~ to changing events and ~~to~~ the security needs of our friends and allies.

~~In attempting to insist~~ ^{In attempting to insist} that our foreign policy and our assistance programs more actively foster the humanitarian ideals all Americans embrace, the Congress ~~'s zeal to do good~~ has produced legislation which can disrupt our relations with other countries and do serious harm to the long ^{term} foreign policy interests of the United States.

^{I have no doubt that this attempt was well} ~~I am sure that, for the most part, the motivation behind this~~ ^{intended} ~~legislation was well meant.~~ But the best of intentions sometimes result in bad legislation. S. 2662 is certainly such a case.

The ~~bill~~ contains several provisions of doubtful constitutionality.

~~Thereby~~ ^{Programs} authorized by the Congress could be later reviewed, further restricted, or even terminated, by a concurrent resolution

passed by a majority of both Houses. Such a frustration of ^{the ability of} ~~operational Executive decisions,~~ ^{not only violates the constitutional} ~~by violating the separation of execu-~~



tive and legislative powers, ~~not only raises constitutional questions~~
but also raises grave doubts ^{about} ~~over~~ the President's authority to conduct
^{our} ~~this nation's~~ relations with ~~the rest of the world.~~ ^{other nations.}

In addition to these fundamental constitutional problems,
this bill ^{includes} ~~imposes~~ a vast array of unwise restrictions that would
seriously distort the President's ability to implement a coherent
and consistent foreign policy:

-- S. 2662 undercuts any incentive the North Vietnamese may
have to provide an accounting for our MIAs by removing the President's
restrictions on trade with North and South Vietnam.

-- It imposes a \$9 billion arms sale ceiling which would
arbitrarily limit our ability to ^{properly} respond to the ~~not always predictable~~
legitimate defense needs of our friends, ^{and at the same time would} ~~while~~ creating obstacles
to U. S. industry ^{fairly} ~~in~~ competing with foreign ~~arms~~ suppliers.

-- In disregard of the many complex factors of our relation-
ships with other countries, the bill imposes strict provisions for
terminating U. S. assistance to countries where discriminatory
visa practices or human rights violations do not meet standards
desired by Congress. Such provisions ^{not only may} ~~cannot only~~ disrupt relation-
ships important to our interest, ^{but} can actually impair our ability
to seek modification of such practices.



-- It mandates a termination of grant military assistance

and military assistance advisory groups after fiscal year 1977, *and thus*

eliminate two important tools which enable us to respond to the needs of *many* countries *at the same time* and maintain vital controls over *military* arms sales programs.

While I support *the goal of* ~~and believe~~ a greater congressional role in the *formulation of* foreign policy, *the pattern of* ~~is essential~~ the unprecedented ~~level of~~ restrictions *contained* in this bill, ~~taken as a whole~~ requires that I *reject* ~~draw the line~~ ~~on~~ such Congressional encroachment on the Executive Branch's constitutional authority and ~~responsibility for implementing~~ *to implement* that policy.

(Pick up remainder of draft message at first sub-head:

Constitutional Objections .)

*Corrected by
AJ Smith
5:16 pm
5/1/72*



09

Re- FOLEY, Dermott

May 3, 1976

MEMORANDUM FOR: THE ATTORNEY GENERAL
 FROM: TED MARRS
 SUBJECT: DERMOT FOLEY LETTER 4-30-76

For your information.

Note comment in regard to Susan Linden.

Enclosure: DFoley ltr 4-30-76

TCM:mcp



May 3, 1976

MEMORANDUM FOR: BRENT SCOWCROFT
FROM: TED MARRS
SUBJECT: FOREIGN AID AUTHORIZATION BILL

I thought you should know of this.

Enclosure: DGFoley ltr 4-30-76

TCM:mcp

May 3, 1976

MEMORANDUM FOR: JACK MARSH
FROM: TED MARRS
SUBJECT: FOREIGN AID AUTHORIZATION BILL

This letter from Dermot Foley -- attorney
for League of Families -- will interest
you.

Enclosure: DGFoley ltr 4-30-76

TCM:mcp

KAPLAN, KILSHEIMER & FOLEY

ATTORNEYS AT LAW

LEO KAPLAN
JAMES B. KILSHEIMER, III
DERMOT G. FOLEY
HAROLD SIMON
ROBERT N. KAPLAN

122 EAST 42ND STREET
NEW YORK, N.Y. 10017
MURRAY HILL 7-1980

April 30, 1976

Dr. Theodore Marrs
Room 103
Executive Office Building
Washington, D. C. 20006

Re: Foreign Aid Authorization Bill

Dear Dr. Marrs:

As always, it was a pleasure speaking with you last evening. The purpose of this letter and the enclosed materials is to elaborate slightly on some of the matters we discussed.

Essentially, I wish to add my voice to those who urge the President to veto the foreign aid authorization bill. I enclose a letter to the President urging this, and a memorandum describing a possible alternative approach to the trade matter. I would sincerely appreciate it if you could have these materials drawn to the President's attention before he makes a decision on the legislation.

A brief word on another matter. As you know, the summary judgment and class certification motions in Crone v. U.S. were argued on March 31. From some of our previous discussions, I am sure you are aware of my respect and faith in the courts, particularly in the Federal courts, when both sides of a case are well presented. Orderliness and our way of living depend heavily on this. In Crone, the government was represented by Miss Susan Linden of the Department of Justice and, I must say, she did a fine job. Neither she nor I created the facts of the case and each of us had to take the law as we found it. However, she made her points intelligently and with dignity. Now we can only await the results.

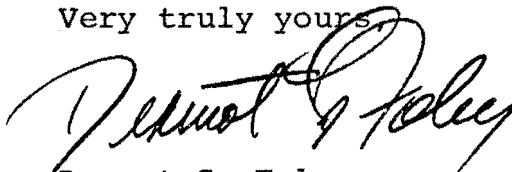
Dr. Theodore Marrs

2.

April 30, 1976

Again, it was a pleasure speaking with you last evening. Please contact me if any comments in this letter or in the enclosed materials are viewed as warranting discussion.

Very truly yours,

A handwritten signature in cursive script, reading "Dermot G. Foley". The signature is written in dark ink and is positioned above the printed name.

Dermot G. Foley

DGF:mw
Encl.

MAY 5 1976

THE WHITE HOUSE
WASHINGTON

May 3, 1976

MEMORANDUM FOR: JACK MARSH
FROM: TED MARRS *Jed*
SUBJECT: FOREIGN AID AUTHORIZATION BILL

This letter from Dermot Foley -- attorney
for League of Families -- will interest
you.

Enclosure



KAPLAN, KILSHEIMER & FOLEY
ATTORNEYS AT LAW

LEO KAPLAN
JAMES B. KILSHEIMER, III
DERMOT G. FOLEY
HAROLD SIMON
ROBERT N. KAPLAN

122 EAST 42ND STREET
NEW YORK, N.Y. 10017
MURRAY HILL 7-1980

April 30, 1976

Hon. Gerald R. Ford
White House
Washington, D.C. 20006

Re: Foreign Aid Authorization Bill

Dear Mr. President:

Yesterday, April 29, the New York Times reported that the House and Senate have passed and sent to the President, a \$4.4 billion dollar foreign aid authorization bill which includes provision for removal of the Vietnam trade embargo. For reasons which I shall discuss below, I strongly urge you to veto this legislation. I must emphasize, however that in making this recommendation I speak for myself and not as a spokesman for MIA families or organizations to whom I have rendered legal services.

With respect to the Vietnam trade embargo, the legislation is deficient in at least the following areas:

a. It surrenders too cheaply what may be our country's best weapon for obtaining a meaningful POW/MIA accounting. As I read the statute, it provides for a complete lifting of the embargo for a six-month period and makes it permanent if, at the end of that period, the President can report to Congress that Hanoi has given some "substantial" information about the men still unaccounted for. How much is "substantial"? How meaningful and complete must such an "accounting" be? Does it mean that really full, candid disclosure of all available information and the return of all

recoverable remains is required within the six-month period? The vagueness of the legislation invites inadequate results on these matters.

b. If the accounting is "substantial" but still manifestly incomplete at the end of the six-month period, the embargo removal is permanent and it is difficult to imagine how the availability of trade could be used thereafter if the Vietnamese cease their efforts or if they then decide to demand additional extractions in return for further pieces of information. This problem will be escalated considerably when business interests, in reliance upon legislation passed by Congress and signed by the President, make bona fide and extensive economic investments in such trade--as they surely will.

c. The President will be severely inhibited in the subsequent use of trade availability as a tool in negotiating for further POW/MIA information. It would be naive to expect Congress to have the disposition and capacity to deal comprehensively with the details and intricacies of such negotiations, if, indeed, it would be appropriate for Congress to do so.

Therefore, I urge a veto.

There may be some concern respecting possible adverse reaction by some MIA families to a veto. I submit that, if the veto is clearly explained, this will not occur. As you know, the board of the National League of Families voted approval of the Trade with Vietnam section before half of its safeguards were removed in conference. I recommend a review of the factors which led to that approval. It was presented as an all-or-nothing proposition--accept the legislation as the only way to induce information or reject it and close the door permanently. Alternative approaches were not offered and, therefore, the vote was inevitable.

I enclose herewith a memorandum which suggests such an alternative approach. I have circulated drafts of this approach among the members of the League board and have

discussed it extensively with League members. I have found unanimous approval. At various times, and particularly during our heavily attended meeting last January in Washington, there was wide-spread agreement that any trade, aid or recognition must coincide with and not precede an accounting.

If this legislation is vetoed, as I submit it should be, the Administration would be unfair to itself and to the families if the reasons for doing so and a description of alternative approaches, are not clearly explained to the board and the membership of the League.

This would dispose also of another difficulty which contributed to the vote by the League board. Justifiably or not, there has been an erosion of confidence in the disposition of the present Administration to make effective, affirmative moves toward getting an accounting. The belief has developed that inactivity, accompanied by statements of goodwill where necessary, will lead to a repetition of the Korean experience.

I state this not in recrimination, but as a factual matter of belief on the part of these families. Consequently, the effect was devastating when legislators and legislative staff-members appeared at our meetings and told us that the choice was between the Bingham-Hatfield bill which offered some hope and slavish loyalty to Kissinger, et al. who were determined to do nothing.

Hopefully, what we had here was a failure of communication. Obviously, it can be cured by renewed communication to explain a veto and to demonstrate that the Administration actually has a meaningful program.

If this is done, I have absolute confidence that criticism of a veto will not be a problem. As I believe you know, I have earned some credibility with these families, and I would be willing to commit myself to this effort and to discuss details with anyone interested.

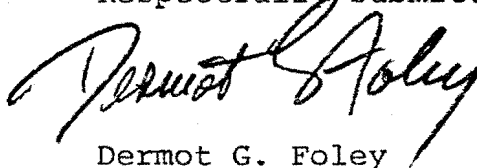
Before leaving the subject of a veto, an additional point should be mentioned. If the legislation is vetoed, there is every reason to believe that its provisions will

April 30, 1976

be re-introduced. At that time, alternatives to the present Trade with Vietnam provision could be presented which would be acceptable to you and most advantageous to the POW/MIA issue. Several possibilities present themselves which could be explored if the occasion arose. What counts now is the realization that all is not lost with a veto. The present bill was ill-conceived and should be dropped in favor of something that offers realizable, rational possibilities.

I am sure there are other aspects of the foreign aid authorization bill which will be of greater concern to other people than they are to me, in comparison with the Trade with Vietnam section. Obviously, I have limited my focus to the issue with which I am concerned. However, I assure you that I do not lack appreciation for the legitimate concerns that others may have about this legislation. On the whole, nonetheless, I believe that a veto is in order, and I sincerely hope that you agree.

Respectfully submitted,

A handwritten signature in cursive script, reading "Dermot G. Foley". The signature is written in dark ink and is positioned above the printed name.

Dermot G. Foley

DGF:mm
Enclosure.

April 30, 1976

M E M O R A N D U M

This memorandum discusses conditions and procedures which, I believe, must govern assistance or cooperation by the United States with or in favor of those now obligated to account for missing American servicemen.

The Trade with Vietnam provision of the foreign aid authorization legislation, passed by the House and Senate this week, is inadequate and demonstrates a need to think the whole problem through. I propose the following analysis.

Recent reports indicate that the insistence of the other side on "reparations" under Article 21 of the Paris Agreement in return for an accounting under Article 8(b) of that Agreement, has been dropped. They now, apparently, accept the fact that Article 21 "reparations" are not to be expected. (Indeed, the whole interdependence concept would appear to be out at this time - if the other side were to claim that all elements of the Paris Agreement must be implemented, they would, for instance, appear to be conceding that they should get out of South Vietnam and return it to

the former government - this is beyond the spectrum of practical expectations and would never occur - thus, any quid pro quo interpretation that ever may have been made at the Paris Agreement is now passé).

And apart from the Paris Agreement, the other side's obligation to account is not diminished under principles of international lawfulness (e.g. Geneva Convention) or under the requirements of rudimentary civilized behavior; if they remain incapable of recognizing these, it would be well to question whether there is any point whatever in dealing with them.

Apart from Article 21 "Aid", it is reported that the North Vietnamese have indicated real need for American help in the following areas:

- a. help in deactivating bombs and other ordinance;
- b. medical supplies and medicine;
- c. food;
- d. trade and an end to the trade embargo;
- e. help in development of oil resources; and
- f. diplomatic relationships and recognition which will reduce their dependence upon and the influence of the USSR and China.

If some, and possibly all, of these needs were shown to be genuine and their extent were verified, help from the

United States, on purely humanitarian grounds, would be conceivable if the overt antagonisms of the War were over (e.g. Germany, Italy and Japan after World War II was over). For instance, if they showed that they have particular health problems or food problems, and, if the accounting problems had been attended to, it would be acceptable and consistent with normal American attitudes, to help them on humanitarian grounds. However, it is elementary that there must be an identifiable motivating relationship between the accounting and any such American help.

In this context there are some real or imaginary problems with which both sides deal. From the American standpoint, viewing things as they have transpired in the past, we must ask, if we help them now, what basis have we for believing that they will render more than a sham accounting (indeed, if even that). The other side may ask whether, if they do finally give the real accounting, have they a basis for belief that we will give them any help and, if so, how much.

The American problem is well-founded. The other side has consistently ignored its duty to account, not only during their conflict with us, but, indeed, also during their conflict with the French. The utilization of the so-called "Nurenburg Exception", as an excuse for failure to comply with their

undertakings under the Geneva Convention, when that exception was patently inapplicable on its face and as understood internationally, is conclusive evidence of their bad faith. The persistent denial by the other side of knowledge about MIA's when we know, indisputably, that they do have information about a very large number of those MIA's, makes suspicion unavoidable. Finally, the other side has a motive for hiding the truth - returnee debriefings show that they mistreated captured Americans and they must fear the revelation of this in an accounting.

On the other hand, even if unfounded, any problems the other side may claim are clearly and completely manageable. Dishonor of an American assistance commitment, after compliance by the other side, would be totally alien to past American performance and would generate completely unacceptable international public outrage. American compliance, since it can be measured in definite terms (e.g. "X" amounts of medicine, food, trade, etc.), could be the subject of irrevocable commitment analogous to a Letter of Credit or escrow arrangement conditioned upon the fact of and the extent of the other side's performance. Thus, if they keep their word and give a genuine accounting, they have a guarantee of American compliance.

If the United States were to commit itself, irrevocably,

to some form of assistance or cooperation (which would be spelled out in quantitative terms) that commitment must be measured against the extent of the accounting which the other side actually delivers. Of course, we can tell how many missing men are unaccounted for. Obviously, some of these cases are easier to account for than others. It would not be unduly difficult to classify these cases into groups arranged according to their relative difficulty. If help is to be given to the other side as a motivation for an accounting, obviously the tougher cases deserve more motivation and the easier cases deserve less. The extent of such assistance or other cooperation should not merely be measured by the number of men as to whom the accounting is given, but must also consider the relative difficulty or easiness of each such accounting.

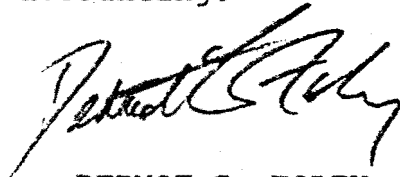
The humanitarian needs of the other side must, of necessity, be identifiable in terms of the quantities of the various items needed and the extent and nature of the trade, investment, and/or other relationships involved. If proof in this detail is not forthcoming, obviously there will not have been any showing of an identifiable humanitarian need. If the other side does not know, in detail, what they need, they do not need it. It presents no serious problem to catalogue these needs in terms ranging from the non-permanent assets which the needy require first, such as

food and medicine, to assets of a more permanent nature, such as plant and equipment or diplomatic relationships which are of less immediate humanitarian concern.

Thus, six factors coincide here which suggest a structure in which an accounting of MIA's can be obtained and the humanitarian needs of the other side can be helped, if the parties are genuinely prepared to get these problems resolved:

- a. information is available on all or most MIA's if both sides are disposed to try hard enough to obtain it;
- b. variations of relative difficulty which are to be expected in producing information on a man-by-man basis can be generally organized;
- c. these categories can be evaluated and such evaluations used to increase the motivation to account in those cases where the accounting is more difficult;
- d. the humanitarian needs of the other side are identifiable and verifiable;
- e. those needs are susceptible to arrangement in terms not only of their immediacy but also in terms of their permanence;
- f. any misgivings which the other may have about the willingness of the United States to furnish humanitarian assistance can be overcome by a commitment on the part of the United States in the form of a Letter of Credit or a similar device conditioned as to the furnishing of assistance and as to the extent thereof, only upon fact of and the degree of compliance by the other side.

Past performance by the other side does not promote confidence that a genuine accounting will be achieved if their needs are met first. Consequently, any assistance given to them must be based not only upon actual humanitarian needs but also upon the complete end to the antagonisms of the recent war and a real accounting for American MIA's. The approach suggested above, rather than relying upon the unjustifiable and unnecessary luxury of blind faith, offers some reason to expect that commitments will be made and kept by both sides. If either side is unprepared to deal on a basis such as this, it is naive to expect that negotiation will lead to a real and meaningful accounting.



DERMOT G. FOLEY

May 4, 1976

MEMORANDUM FOR: BOB LINDER
FROM: JACK MARSH
SUBJECT: President's Veto Statement
S. 2662

Following are my comments on the President's proposed veto message on S. 2662:

- On the first page, I think the indentions should be renumbered. I think the last indention should be number one and the first indention should be number four.
- On Page 2, the first paragraph should also be a bullet with an indention:
 - o "The bill also contains ..." copy
- On Page two, the first sentence under Constitutional Objections, should be reworded as follows:

"With further reference to the matter of Constitutional Objections, S. 2662 contains an array of objectionable requirements whereby virtually ..." copy.
- On page 4, the first sentence should be reworded to say:

"This Administration is fully committed to a policy of not only actively opposing but also seeking the elimination of discrimination ..." copy.

JOM/dl



MAY 4 1976

5/4/76

TO: Mr. Buchen
Mr. Marsh ✓
Mr. Janka
Mr. Linder

FROM: Mr. Ogilvie

Proposed final version.

Please phone any comments to

Bob Linder this morning.

Attachment

TO THE SENATE OF THE UNITED STATES

I am returning, without my approval, S. 2662, a bill that would seriously obstruct the exercise of the President's constitutional responsibilities for the conduct of foreign affairs. In addition to raising fundamental constitutional problems, this bill includes a number of unwise restrictions that would seriously inhibit my ability to implement a coherent and consistent foreign policy:

- ° By removing my restrictions on trade with North and South Vietnam, S. 2662 undercuts any incentive the North Vietnamese may have to provide an accounting for our MIAs.
- ° By imposing an arbitrary arms sale ceiling, it limits our ability to respond to the legitimate defense needs of our friends and obstructs U.S. industry from competing fairly with foreign suppliers.
- ° By requiring compliance by recipient countries with visa practices or human rights standards set by our Congress as a condition for continued U.S. assistance, the bill ignores the many other complex factors which should govern our relationships with those countries; and it impairs our ability to deal by more appropriate means with objectionable practices of other nations.
- ° By mandating a termination of grant military assistance and military assistance advisory groups after fiscal year 1977 unless specifically authorized by Congress, the bill vitiates two important tools which enable us to respond to the needs of many countries and maintain vital controls over military sales programs.

The bill also contains several provisions which violate the constitutional separation of executive and legislative powers. By a concurrent resolution passed by a majority of both Houses, programs authorized by the Congress can be later reviewed, further restricted, or even terminated. Such frustration of the ability of the Executive to make operational decisions violates the President's constitutional authority to conduct our relations with other nations.

While I encourage increased Congressional involvement in the formulation of foreign policy, the pattern of unprecedented restrictions contained in this bill requires that I reject such Congressional encroachment on the Executive Branch's constitutional authority to implement that policy.

Constitutional Objections

"S. 2662 contains an array of constitutionally objectionable"

[etc. -- no change in attached pages 1A, 2-5]

defense needs of our friends, and at the same time would create obstacles to U. S. industry competing fairly with foreign suppliers.

-- In disregard of the many complex factors of our relationships with other countries, the bill imposes strict provisions for terminating U. S. assistance to countries where discriminatory visa practices or human rights violations do not meet standards desired by Congress. Such provisions not only may disrupt relationships important to our interest, but can actually impair our ability to seek modification of such practices.

-- It mandates a termination of grant military assistance and military assistance advisory groups after fiscal year 1977 unless specifically authorized by Congress, and this eliminates two important tools which enable us to respond to the needs of many countries and at the same time maintain vital controls over military sales programs.

While I encourage increased Congressional involvement in the formulation of foreign policy, the pattern of unprecedented restrictions contained in this bill requires that I reject such Congressional encroachment on the Executive Branch's constitutional authority to implement that policy.

Constitutional Objections

hi- () S. 2662 contains an array of constitutionally objectionable requirements whereby virtually all significant arms transfer decisions would be subjected on a case-by-case basis to a period of delay for Congressional review and possible disapproval by concurrent resolution of the Congress. These provisions are incompatible with the express provision in the Constitution that a resolution having the force and effect of law must be presented to the President and, if disapproved, repassed by a two-thirds majority in the Senate and the House of Representatives. They extend to the Congress the power to prohibit specific transactions authorized by law without changing the law -- and without following the constitutional process such a change would require. Moreover, they would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers. Congress can, by duly adopted legislation, authorize or prohibit such actions as the execution of contracts or the issuance of export licenses; but Congress

cannot itself participate in the Executive functions of deciding whether to enter into a lawful contract or issue a lawful license, either directly or through the disapproval procedures contemplated in this bill.

The erosion of the basic distinction between legislative and Executive functions which would result from the enactment of S. 2662, displays itself in an increasing volume of similar legislation which this Congress has passed or is considering. Such legislation would pose a serious threat to our system of government, and would forge impermissible shackles on the President's ability to carry out the laws and conduct the foreign relations of the United States. The President cannot function effectively in domestic matters, and speak for the nation authoritatively in foreign affairs, if his decisions under authority previously conferred can be reversed by a bare majority of the Congress. Also, the attempt of Congress to become a virtual co-administrator in operational decisions would seriously distract it from its proper legislative role. Inefficiency, delay, and uncertainty in the management of our nation's foreign affairs would eventually follow.

Apart from these basic constitutional deficiencies which appear in six sections of the bill, S. 2662 is faulty legislation, containing numerous unwise restrictions.

Trade with Vietnam

The bill would suspend for 180 days the President's authority to control certain trade with North and South Vietnam, thereby removing a vital bargaining instrument for the settlement of a number of differences between the United States and these countries. I have the deepest sympathy for the intent of this provision, which is to obtain an accounting for Americans missing in action in Vietnam. However, the enactment of this legislation would not provide any real assurances that the Vietnamese would now fulfill their long-standing obligation to provide such

an accounting. Indeed, the establishment of a direct linkage between trade and accounting for those missing in action might well only perpetuate Vietnamese demands for greater and greater concessions.

This Administration is prepared to be responsive to Vietnamese action on the question of Americans missing in action. Nevertheless, the delicate process of negotiations with the Vietnamese cannot be replaced by a legislative mandate that would open up trade for a specified number of days and then terminate that trade as a way to achieve our diplomatic objectives. This mandate represents an unacceptable attempt by Congress to manage the diplomatic relations of the United States.

Annual Ceiling on Arms Sales

A further objectionable feature of S. 2662 is an annual ceiling of \$9.0 billion on the total of government sales and commercial exports of military equipment and services. In our search to negotiate mutual restraints in the proliferation of conventional weapons, this self-imposed ceiling would be an impediment to our efforts to obtain the cooperation of other arms-supplying nations. Such an arbitrary ceiling would also require individual transactions to be evaluated, not on their own merits, but on the basis of their relationship to the volume of other, unrelated transactions. This provision would establish an arbitrary, overall limitation as a substitute for case-by-case analyses and decisions based on foreign policy priorities and the legitimate security needs of our allies and friends.

Discrimination and Human Rights

This bill also contains well-intended but misguided provisions to require the termination of military cooperation with countries which engage in practices that discriminate against United States citizens or practices constituting a consistent pattern of gross human rights

violations. This Administration is fully committed to a policy of actively opposing and seeking the elimination of discrimination by foreign governments against United States citizens on the basis of their race, religion, national origin or sex, just as the Administration is fully supportive of internationally recognized human rights as a standard for all nations to respect. The use of the proposed sanctions against sovereign nations is, however, an awkward and ineffective device for the promotion of those policies. These provisions of the bill represent further attempts to ignore important and complex policy considerations by requiring simple legalistic tests to measure the conduct of sovereign foreign governments. If Congress finds such conduct deficient, specific actions by the United States to terminate or limit our cooperation with the government concerned would be mandated. By making any single factor the effective determinant of relationships which must take into account other considerations, such provisions would add a new element of uncertainty to our security assistance programs and would cast doubt upon the reliability of the United States in its dealings with other countries. Moreover, such restrictions would most likely be counterproductive as a means for eliminating discriminatory practices and promoting human rights. The likely result would be a selective disassociation of the United States from governments unpopular with the Congress, thereby diminishing our ability to advance the cause of human rights through diplomatic means.

Termination of Grant Military Assistance and
Advisory Groups

The legislation would terminate grant military assistance and military assistance advisory groups after fiscal year 1977 except where specifically authorized by Congress, thus creating a presumption against such programs and missions. Such a step would have a severe impact on our relations with other nations whose security and well-being

are important to our own national interests. In the case of grant assistance, it would limit our flexibility to assist countries whose national security is important to us but which are not themselves able to bear the full cost of their own defense. In the case of advisory groups, termination of missions by legislative fiat would impair close and long-standing military relationships with important allies. Moreover, such termination is inconsistent with increasing Congressional demands for the kind of information about and control over arms sales which these groups now provide. Such provisions would insert Congress deeply into the details of specific country programs, a role which Congress has neither the information nor the organizational structure to play.

* * * * *

I particularly regret that, notwithstanding the spirit of genuine cooperation between the Legislative and Executive Branches that has characterized the deliberations on this legislation, we have been unable to overcome the major policy differences that exist.

In disapproving this bill, I act as any President would, and must, to retain the ability to function as the foreign policy leader and spokesman of the Nation. In world affairs today, America can have only one foreign policy. Moreover, that foreign policy must be certain, clear and consistent. Foreign governments must know that they can treat with the President on foreign policy matters, and that when he speaks within his authority, they can rely upon his words.

Accordingly, I must veto the bill.

THE WHITE HOUSE,

IMM
PRECEDENCE

UNCLAS
CLASSIFICATION

FOR COMMCENTER USE ONLY

FROM: LES JANRA

TO: JACK MARSH

INFO:

DEX 007

DAC _____

GPS _____

LDX _____

PAGES 4

TTY _____

CITE _____

DTG: 032330Z

RELEASED BY:
GE

TOR:

SPECIAL INSTRUCTIONS:

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

May 3, 1976

DEX TO BIRMINGHAM

FOR JACK MARSH

FROM LES JANKA

ATTACHED IS THE RE-DO OF THE INTRODUCTION TO THE
VETO MESSAGE YOU REQUESTED OF DON OGILVIE. HE HAS
REVIEWED AND APPROVED THIS TEXT.

TO THE SENATE OF THE UNITED STATES

I am returning, without my approval, S. 2662, a bill that would unwisely and improperly obstruct the exercise of the President's constitutional responsibilities for the conduct of foreign affairs. In addition to raising fundamental constitutional problems, this bill includes a vast array of unwise restrictions that would seriously distort the President's ability to implement a coherent and consistent foreign policy:

-- By removing the President's restrictions on trade with North and South Vietnam, S. 2662 undercuts any incentive the North Vietnamese may have to provide an accounting for our MIAs.

-- It imposes a \$9 billion arms sale ceiling which arbitrarily limits our ability to respond to the legitimate defense needs of our friends, and creates obstacles to U. S. industry competing fairly with foreign suppliers.

-- The bill imposes strict provisions for terminating U. S. assistance to countries where discriminatory visa practices or human rights violations do not meet standards desired by Congress. By disregarding the many complex factors of our relationships such actions would not only disrupt relations important to our interest, but could actually impair our ability to seek modification of such practices.

-- It mandates a termination of grant military assistance and military assistance advisory groups after fiscal year 1977 unless specifically authorized by Congress, thus vitiating two important tools which enable us to respond to the needs of many countries and maintain vital controls over military sales programs.

In sum, such cumbersome restrictions would seriously impair the ability of the Executive Branch to make day to day foreign policy decisions necessary to respond to changing events and to the security needs of our friends and allies.

The bill also contains several provisions which violate the constitutional separation of executive and legislative powers. By a concurrent resolution passed by a majority of both Houses, programs authorized by the Congress can be later reviewed, further restricted, or even terminated. Such a frustration of the ability of the Executive to make operational decisions raises grave doubts about the President's authority to conduct our relations with other nations.

In attempting to insist that our foreign policy and our assistance programs more actively foster the humanitarian ideals all Americans embrace, the Congress has produced legislation which would disrupt our relations with other countries and do serious harm to the long term foreign policy interests of the United States. While I encourage increased Congressional involvement in the formulation of foreign policy, the pattern

of unprecedented restrictions contained in this bill requires that I reject such Congressional encroachment on the Executive Branch's constitutional authority to implement that policy.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 18, 1976

Time:

quick turn around
MAY 18 1976

FOR ACTION:

cc (for information):

Max Friedersdorf
Jack Marsh



FROM THE STAFF SECRETARY

DUE: Date:

Quick Turn Around

Time:

SUBJECT:

Brent Scowcroft memo 5/18/76 re
Revised Security Assistance Legislation

ACTION REQUESTED:

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

REMARKS:

You will note that a Telephone Call is requested to be made today - May 18 - on ~~the~~ this subject, therefore, your immediate review of this memorandum is requested.

Thank you.

*Judy 5/17/76
2:50pm*

*Concur with
Mum*



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

Jim Connor
For the President


THE WHITE HOUSE

WASHINGTON

~~CONFIDENTIAL~~ACTION

May 18, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: BRENT SCOWCROFT 

SUBJECT: Revised Security Assistance Legislation

Both the House International Relations Committee and the Senate Foreign Relations Committee have reported revised security assistance authorization bills accommodating both FY 76 and FY 77. Floor votes could come as early as Wednesday May 19 with a conference following soon thereafter. In each case, the committees have attempted to be responsive to the objections you raised in vetoing S. 2662. For example, most of the concurrent resolution provisions have been dropped and the section regarding trade with Vietnam has been deleted. In most instances where one committee retained an objectionable provision, the other committee dropped it, thereby providing latitude for further deletions or modifications in conference committee. In preparation for the conference, we need your guidance on the positions the Administration should take on specific provisions of this revised legislation, and on the strategy we should follow to achieve a bill acceptable to you.

We have reached tentative agreement with the leaders in both houses to oppose all floor amendments and concentrate on reaching accommodation in conference. (The sole exception will be our support for a likely Congressionally initiated amendment in the House to restore a 50 percent cut in Korean assistance levels.) We believe we will be in a strong position in conference: both houses are weary of the debate and anxious to provide money to ease the Israeli cash flow problem; enthusiasm for restrictive amendments is waning. Nevertheless, some accommodation on your part may yet be necessary to ensure passage of an acceptable bill.

In this regard, the key element remains the issue of Transition Quarter funding for Israel. There is some evidence that Congress

Subject to GDS of E. E. 11652
Automatically Declassified on
December 31, 1982.

CONFIDENTIAL - GDS

DA-D 119/86

expects you to be forthcoming on the TQ in reaction to what the Hill feels are significant Congressional concessions to your position on authorizing legislation. Meanwhile, the Israelis have signaled to us that they need only \$281 million by the end of the TQ to avoid the risk of default on commercial purchases (versus the \$550 million for Israel at present in the appropriations bill). This figure is almost exactly the amount which can be provided without exceeding the budget authority figures in your original budget request.

There follows a list of the troublesome provisions which remain in one or the other of the committee bills. With regard to each major provision we have included a recommended course of action: we will use your guidance as the basis for our negotiations with the conferees.

1. Human Rights. The House bill retains a provision allowing Congress, by concurrent resolution, to terminate aid for human rights abuses. The Senate version substitutes a joint resolution, and changes the prohibition against aid to a statement of policy (which removes the potential argument that assistance is "illegal"). Since a joint resolution is subject to veto, this procedure is not constitutionally objectionable, but it continues to impinge on the foreign policy process by raising the constant specter of Congressional intervention.

RECOMMENDATION: Fight for elimination of termination provisions in favor of a policy statement; accept the Senate version (joint resolution); if necessary, use veto threat against the House version (concurrent resolution). OMB, State and AID concur.

Agree ✓

Disagree _____

2. \$9.0 Billion Ceiling: The House retained unchanged the \$9.0 billion ceiling on arms sales which was one major reason for your previous veto. The Senate bill drops the ceiling. There is talk in the House of a compromise retaining the ceiling principle but requiring you only to report every sale over \$9.0 billion. We

think compromise should be avoided and that we should mobilize in support of the Senate on this issue.

RECOMMENDATION: No compromise on the House version, support the Senate deletion of any ceiling provision. State, DOD, AID and OMB concur.

Agree

Disagree

3. Nuclear Transfers: A Symington amendment added to the legislation by the Senate would prohibit assistance (except for P. L. 480 and disaster relief) to countries which either receive or deliver nuclear fuel reprocessing or enrichment technology or materials -- unless managed by multilateral controls "when available" and under IAEA auspices. As written the provision is sweeping and could affect several programs (notably those with Brazil and Pakistan), hindering our diplomatic efforts to solve the proliferation problem. Moreover, the amendment could be read to imply that any country which meets the two conditions of subscription to IAEA safeguards and "multilateral controls" is acceptable to us as a recipient of reprocessing facilities. The House has no similar provision. We think the best available compromise is a Congressional study of this proposal.

RECOMMENDATION: That we press for deletion of the Symington amendment with a Congressional study of the proposal as a fallback position. OMB, State and AID concur.

Agree

Disagree

4. Discrimination. The Senate has deleted the earlier provision requiring automatic termination of a transaction involving persistent discrimination against Americans. It has substituted a requirement for a Presidential report, and a specific assertion of Congressional authority to terminate assistance in cases where discrimination persists. Under the new formula a transaction would be terminated automatically only if the President failed to submit a report requested by Congress within 60 days. If Congress was not satisfied, it could then pass a Joint Resolution terminating assistance. This process is not constitutionally objectionable, but it remains an institutionalized procedure for public examination of the conduct of foreign governments. Senator Case, believing that these changes represent significant concessions, will be obdurate on this issue. The House bill retains a statement of policy but has dropped the termination sanctions entirely.

RECOMMENDATION: The Senate can, with existing authority, already do all that this provision allows. Nevertheless, the Senate version increases the chances for both unwanted publicity and direct Congressional intervention in these sensitive areas. We recommend strong opposition to the Senate version, but no veto threat. OMB, State and AID concur.

Agree

Disagree

5. Korea Funding Level: The House committee accepted a Fraser amendment limiting military assistance to Korea to a total of \$290 million in the period FY 1976-TQ 1977 (vs. your combined request for \$490 million) and economic assistance to \$175.0 million in the same period (vs. your request for \$281.0 million). Cuts of this magnitude would have a serious effect on all of our Korean programs and, in particular, impede progress of the Korean force modernization plan. More importantly, such cuts would damage our close relationship with an important ally.

RECOMMENDATION: Make a major effort to raise the Korea FMS and economic assistance levels to acceptable levels, including a veto threat, if necessary. OMB, State, DOD and AID concur.

Agree

Disagree

6. Review of Military Sales. Under the Nelson-Bingham amendment, signed into law in 1974, Congress can forbid by concurrent resolution individual FMS sales over \$25 million. In the new Senate bill, this authority is extended to all FMS and commercial sales of "major defense equipment" over \$7.0 million; the House bill is similar, but applies only to FMS sales. Although the concurrent resolution authority is onerous, we believe Congress would resist strongly any attempt to delete or modify this provision post hoc (during mark-up we could find no one, even among staunch supporters, to sponsor such a move).

RECOMMENDATION: Strongly resist any expansion of existing Congressional review procedures which provide for veto of individual FMS sales over \$25 million by concurrent resolution; as a maximum, accept only House provision for expansion to only FMS sales over \$7 million. (If you must sign a bill containing any concurrent resolution, we recommend a strong dissent in the signing statement.) Phil Buchen, OMB, State and AID concur.

Agree

Disagree

7. Assistance to Chile. A Kennedy amendment to the Senate bill imposes a total embargo on military assistance or sales to Chile after October 1, 1976. Pipeline sales which have been held up could go forward but even spare parts sales after October 1 would be banned. The House has retained the Buchanan amendment cutting off assistance but permitting cash sales of military equipment. We prefer the House version, but we do not believe the Senate version in itself would be grounds for veto of an otherwise acceptable bill.

RECOMMENDATION: Support for the House version. OMB, State and AID concur.

Agree _____ Disagree ✓

8. MAP and MAAG Termination: Both bills retain provisions terminating MAP and MAAGS after FY 1977, except as specifically authorized by Congress. We feel there is sufficient legislative history on this subject to support a presumption that both MAP and MAAGs will be authorized, and that the new provision will amount to no more than a country line-item authorization for both. Although we would prefer to see this otherwise, Congress appears adamant on retaining the MAP and MAAG provisions and our acceptance would be seen as a useful concession.

RECOMMENDATION: Accept the MAP and MAAG provisions, but emphasize our expectation that authorization for both will be forthcoming after FY 77. OMB, State, and DOD concur.

Agree _____ Disagree ✓

9. Greece-Turkey. The House has retained the partial embargo on grant assistance and FMS sales to Turkey, while providing "such sums as may be necessary" for Greece once a base agreement is approved by law. The putative intent of this is, we believe, to make eventual assistance to Turkey as part of a base agreement subject to the section 620(x) embargo of MAP and of FMS sales over \$125 million.

RECOMMENDATION: We believe that the House version attempts to prejudge the issues of Greece and Turkey for FY 1977, and that we should support strongly the Senate approach of deferring action on both until Congress considers the base agreement. OMB and State concur.

Agree ✓ Disagree _____

In addition to the foregoing, there are other undesirable features of the new legislation which we will be working to correct in conference. Included are:



- A Senate cut of FY 77 MAP for Jordan from \$70 million to \$40 million.
- A Senate cut in the FY 77 authorization for Stockpiles of Defense Articles for Foreign Countries from \$125 million to \$50 million.
- A Senate cut in the overall FY 77 FMS authorization of about 10 percent and in overall MAP program of approximately 30 percent.

The new bills also have several improvements over S. 2662:

- deletion by both House and Senate of three of the concurrent resolution provisions: (1) regarding the determination that a country is ineligible for further assistance due to misuse of U.S. supplied arms; (2) regarding third country transfers; and (3) regarding the termination of assistance to countries harboring terrorists.
- deletion of the requirement that ACDA draft an annual arms impact statement;
- modification in the Senate bill of the process whereby a country becomes ineligible for further US assistance due to misuse or illegal transfer of U.S. supplied arms. Under existing law termination is automatic, whereas in the revised bill termination must result from Presidential action or passage of a joint resolution. The Senate also added a Presidential waiver provision.

STRATEGY

Chairman Morgan is anxious to reach some accommodation with you quickly. He believes it is possible to complete final Congressional action on an acceptable bill by the end of next week (May 21), but that you should meet personally with the conferees to ensure this outcome. It is very likely, however, that the conferees would take the opportunity of any meeting with you to raise the TQ funding issue, seeking to define the terms of a compromise.

How we implement your decision on the TQ issue is therefore fundamental to our tactics on the authorization bill. If you decide to offer a TQ compromise in advance of conference action as an explicit means to

obtain further concessions, a meeting with conferees would be extremely useful, providing you the opportunity to lay out precisely the terms of an acceptable compromise. Any discussion of such a compromise would, of course, have to include Chairman Passman, who has strongly supported your position in the House.

The advantage of this approach is that some political benefit can be derived from an early compromise on the TQ, -- both in terms of an acceptable authorization bill and in lessening the acrimony which followed in the wake of your veto. On the other hand, any compromise on the TQ places you in a position of reversing yourself on a publicly held position and appearing to manipulate Congressional support for Israel.

On the other hand, you may feel that your bargaining position in this instance is sufficiently strong that you will not have to compromise in order to achieve a successful bill. If so, a meeting with conferees would probably be counterproductive as you would be in the position of demanding concessions while offering little in return. Instead, you could authorize us to let it be known quietly that if the conference reports an acceptable bill, you will be prepared to drop your objections to TQ funding that does not exceed your requested outlay levels when the appropriations bill is taken up in the House. This approach has the advantage of maintaining the integrity of your veto position on the unacceptable provisions of S. 2662 while avoiding another confrontation with Congress on an issue directly involving Israel. Such a course would, however, reduce your leverage on eliminating entirely all objectionable aspects of the new legislation in the conference process.

On balance, I believe that you should not meet with the conferees to discuss a compromise in advance of the conference, but I do recommend that you talk by telephone with Morgan (and Broomfield), Humphrey (and Case) to discuss with them your remaining reservations and a strategy for achieving a bill you can sign from the conference. A willingness to discuss a TQ compromise after you have an acceptable authorization could be signalled in that call.

RECOMMENDATION

1. That you not offer a TQ compromise in advance of the conference. Max Friedersdorf and OMB concur, as does Jack Marsh.

Approve _____

Disapprove _____

2. That you not meet with the conferees but do call Morgan and Humphrey. OMB and Max Friedersdorf concur; Max Friedersdorf also urges a prior call to the ranking minority members. (Talking points at Tab A) Jack Marsh concurs with Max Friedersdorf.

Approve _____

Disapprove _____

THE WHITE HOUSE

WASHINGTON

RECOMMENDED TELEPHONE CALL

TO: Senator Humphrey and Chairman Morgan

DATE: Tuesday, May 18, 1976

RECOMMENDED BY: Brent Scowcroft
(OMB, Max Friedersdorf and Jack Marsh concur.)

PURPOSE: A first step in the process of insuring that the upcoming security assistance authorization bill conference results in an acceptable bill.

TALKING POINTS:

1. I am pleased by reports of your preliminary work which has already taken care of many of the objections which forced me to veto the last Security Assistance bill.
2. I am sure you agree with me that it is high time that we put this problem behind us.
3. I hope the Senate (House) can move as expeditiously as possible to bring the bill to a floor vote. It appears that the remaining issues that concern me can be dealt with in Conference, so I think we should agree to resist any further restrictive amendments on the floor.
4. With regard to the Conference, I will have my staff give you a detailed list of my remaining concerns, but I want to mention a few of special significance:
 - I oppose the \$9 billion arms ceiling in the House bill.
 - I also oppose the assistance cutoff based on a finding of "discrimination" in the Senate version (I prefer House version).

-- I cannot accept the concurrent resolution section in the House bill providing an aid cutoff based on alleged Human Rights violations.

-- Two new provisions also give me concern: The House ceiling on Korean assistance and the Symington amendment on Nuclear Transfers. I strongly object to both.

5. Are there any particular issues you want to raise with me? I would like to work with you and if we can achieve an acceptable bill, everyone will be able to claim credit for this important legislation.
6. (If the TQ issue is raised.) I have been reviewing the issue of Israel's needs very carefully. If the Conference produces an authorization bill I can sign, I will want to work with you in finding a way to avoid another confrontation on the Appropriation bill without exceeding my budget request levels.
7. I deeply appreciate the progress made so far and want to continue in this same spirit.

THE WHITE HOUSE
WASHINGTON

May 18, 1976

Mr. Marsh — FYI
OMB (Ogelvie)
agree with
Max F.
Tandy F

MEMORANDUM FOR: JIM CONNOR
FROM: MAX FRIEDERSDORF *MF*
SUBJECT: Brent Scowcroft memo 5/18/76 re
Revised Security Assistance Legislation

I strongly object to talking point No. 3 in recommended telephone call to Morgan & Humphrey.

House Minority members, including Ed Derwinski, plan to make strong Floor fights on objectionable provisions of new bill, including Korea restrictions. Derwinski has filed strong minority views tracking with Administration objections.

President should not state that remaining issues can be dealt with in conference.

Broomfield, Derwinski and Morgan should be advised of our very strong objections to restrictions in bill and Republicans urged to oppose bill on final passage if not improved.

Strong House vote in opposition needed for conference leverage, coupled with veto threat.

?? { Armstrong / HUD / Downtown
Francis Hotel / Project
Senior Citizens / Approved by R.N.

Passman wants renegotiation

FY 76 - no way

FY 77 - SFRC {

TQ - what we want. 300
split down middle 200/100
Egypt/Israel

not over
300 to
include
Jordan

May 24, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF
FROM: JACK MARSH

The President wants to be kept advised on the foreign aid authorization bill.


Also, Cheney wants a list of the Republican Members of the House and the Senate by state.

JOM/dl



THE WHITE HOUSE
WASHINGTON

SEP 11 1976



September 11, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: MAX FRIEDERSDORF *mf*

SUBJECT: Rep. George Mahon

Chairman Mahon phoned today to request the President call Rep. Phil Crane (R-Ill.) to urge Crane not to offer a motion to instruct the House conferees when the House considers the foreign aid appropriations bill next week.

Crane wants to instruct the conferees not to include any money for Mozambique.

An impasse on the bill was broken in the Senate this week when Senator Allen withdrew his filibuster, reportedly after Secretary Kissinger orally agreed on no funds for Mozambique.

I have discussed the matter with Brent Scowcroft and we agreed that I would contact Crane this weekend and try to resolve the problem.

If unsuccessful, we would discuss the matter with the President prior to House floor action concerning a possible Presidential call.

I wanted the President to be aware of Chairman Mahon's call. The Chairman said he wanted the President to be personally aware that he considers the matter of utmost importance to the fate of the foreign aid bill.

bcc: ~~Marsh~~
Cheney
Scowcroft

