

VE TO—S. 2662

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT APPROVAL THE BILL (S. 2662) ENTITLED AN ACT
TO AMEND THE FOREIGN ASSISTANCE ACT OF 1961 AND
THE FOREIGN MILITARY SALES ACT, AND FOR OTHER
PURPOSES



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To the Senate of the United States:

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

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

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

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

Constitutional Objections

With regard to the Constitutional issues posed by S. 2662, this bill contains an array of objectionable requirements whereby virtually all significant arms transfer decisions would be subjected on a case-by-case basis to a period of delay for Congressional review and possible disapproval by concurrent resolution of the Congress. These provisions are incompatible with the express provision in the Constitution that a resolution having the force and effect of law must be presented to the President and, if disapproved, repassed by a two-

thirds majority in the Senate and the House of Representatives. They extend to the Congress the power to prohibit specific transactions authorized by law without changing the law—and without following the constitutional process such a change would require. Moreover, they would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers. Congress can, by duly adopted legislation, authorize or prohibit such actions as the execution of contracts or the issuance of export licenses, but Congress cannot itself participate in the Executive functions of deciding whether to enter into a lawful contract or issue a lawful license, either directly or through the disapproval procedures contemplated in this bill.

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

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

Annual Ceiling on Arms Sales

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

Discrimination and Human Rights

This bill also contains well-intended but misguided provisions to require the termination of military cooperation with countries which engage in practices that discriminate against United States citizens or practices constituting a consistent pattern of gross human rights violations. This Administration is fully committed to a policy of not only actively opposing but also seeking the elimination of discrimination by foreign governments against United States citizens on the basis of their race, religion, national origin or sex, just as the Ad-

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

Trade With Vietnam

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

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

Termination of Grant Military Assistance and Advisory Groups

The legislation would terminate grant military assistance and military assistance advisory groups after fiscal year 1977 except where specifically authorized by Congress, thus creating a presumption against such programs and missions. Such a step would have a severe impact on our relations with other nations whose security and well-being are important to our own national interests. In the case of grant assistance, it would limit our flexibility to assist countries whose national security is important to us but which are not themselves able to bear the full cost of their own defense. In the case of advisory groups, termination of missions by legislative fiat would impair close and long-standing mili-

tary relationships with important allies. Moreover, such termination is inconsistent with increasing Congressional demands for the kinds of information about and control over arms sales which these groups now provide. Such provisions would insert Congress deeply into the details of specific country programs, a role which Congress has neither the information nor the organizational structure to play.

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

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

Accordingly, I must veto the bill.

GERALD R. FORD.

THE WHITE HOUSE, *May 7, 1976.*