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# NAVAL VESSEL LOANS

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## HEARING

BEFORE A

### SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON


## H.R. 9526

AN ACT TO AUTHORIZE CERTAIN NAVAL VESSEL LOANS,  
AND FOR OTHER PURPOSES

FEBRUARY 17, 1972

Printed for the use of the Committee on Armed Services

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## NAVAL VESSEL LOANS

THURSDAY, FEBRUARY 17, 1972

U.S. SENATE,  
SUBCOMMITTEE ON GENERAL LEGISLATION,  
OF THE COMMITTEE ON ARMED SERVICES,  
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:10 p.m., in room 224, Old Senate Office Building.

Present: Senators Harry F. Byrd, Jr., of Virginia, chairman (presiding), and Saxbe.

Also present L. R. Garcia, counsel, and Mary E. Keough, clerical assistant.

Senator BYRD. The committee will come to order.

The purpose of this hearing is to undertake consideration of the ship loan bill as proposed by the Department of Defense. The bill seeks authorization for the loan of certain naval vessels to five foreign nations under title 10, section 7307, United States Code.

(H.R. 9526 follows:)

[H.R. 9526, 92d Cong., first sess.]

AN ACT To authorize certain naval vessel loans, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding section 7307 of title 10, United States Code, or any other provision of law, the President may lend five destroyers and two submarines to the Government of Spain; one destroyer and two submarines to the Government of Turkey; two destroyers to the Government of Greece; two destroyers to the Republic of Korea; and two submarines to the Government of Italy in addition to any ships previously authorized to be loaned to these nations, with or without reimbursement and on such terms and under such conditions as the President may deem appropriate. All expenses involved in the activation, rehabilitation, and outfitting (including repairs, alterations, and logistic support) of ships transferred under this Act shall be charged to funds programed for the recipient government as grant military assistance under the provisions of the Foreign Assistance Act of 1961, as amended, or successor legislation, or to funds provided by the recipient government. The authority of the President to lend naval vessels under this section shall terminate on December 31, 1974.

SEC. 2. Loans executed under this Act shall be for periods, not exceeding four years, at the end of which, each ship shall be returned to the United States Navy at a location to be designated by the Secretary of Defense. Loans executed under this Act shall be made subject to the condition that the loan may be terminated by the President if he finds that the armed forces of the borrowing country have engaged at any time after the date of such loan, in acts of warfare against any country which is a party to a mutual defense treaty ratified by the United States. Loans shall be made on the condition that they shall be terminated at an earlier date if the President determines they no longer contribute to the defense requirements of the United States.

SEC. 3. No loan may be made under this Act unless the Secretary of Defense, after consultation with the Joint Chiefs of Staff, determines that such loan is in the best interest of the United States. The Secretary of Defense shall keep the Congress currently advised of all loans made or extended under this Act.

SEC. 4. The President may promulgate such rules and regulations as he deems necessary to carry out the provisions of this Act.

Passed the House of Representatives December 6, 1971.

Attest:

W. PAT JENNINGS,  
Clerk.

Senator BYRD. The bill was passed by the House in early December and seeks authority to loan five destroyers and two submarines to Spain, one destroyer and two submarines to Turkey, two destroyers to Greece, two destroyers to Korea, and two submarines to Italy.

The bill as proposed by the administration was amended in the House and the amendments would change existing law in the following respects:

1. The term of the loan is reduced from 5 to 4 years.
2. The option to extend the loan for an additional 5 years is deleted.
3. It makes it mandatory that the ships be returned to the U.S. Navy at the end of the loan term.
4. It would make it mandatory that the loan be terminated if the President determined that the loans no longer contribute to the defense needs of the United States.

We have with us today Adm. Elmo R. Zumwalt, Jr., Chief of Naval Operations, Department of the Navy, who represents the Department of Defense, and also Mr. Thomas R. Pickering, Deputy Director of the Bureau of Politico-Military Affairs, Department of State.

I note that we have another distinguished person with us, the Under Secretary of Defense from my home State of Virginia, Mr. Warren Nutter.

We are pleased to have you Mr. Nutter.

Mr. NUTTER. I am pleased to be here, Senator.

Senator BYRD. Admiral Zumwalt and Mr. Pickering, if you have prepared statements, you may proceed in your own way.

I might say, if there are classified matters involved, the committee will consider going into executive session. I would not anticipate, however, that there would be classified material. I would hope that we could continue in open session, but if it is essential we can handle any classified matters in that fashion. There may be some questions put to you that you may feel are of a classified nature, in which case we could have a temporary recess to discuss them.

Admiral Zumwalt, you may proceed.

#### STATEMENT OF ADM. ELMO R. ZUMWALT, JR., CHIEF OF NAVAL OPERATIONS

— Admiral ZUMWALT. Mr. Chairman, I am honored to have Dr. Nutter with me representing civilian authority in the Defense Department and I shall be here to present the military side.

I am pleased to have this opportunity to appear before your committee in support of the proposed loans of the U.S. combatant ships to friendly foreign countries.

The bill before you contains permissive legislation requested in order to implement one part of the military assistance program. It proposes new loans of five destroyers and two submarines to Spain, one destroyer and two submarines to Turkey, two destroyers to Greece, two submarines to Italy, and two destroyers to Korea.

The ships involved in this legislation are among those which will be retired from the Navy because of funding limitations.

In the case of each of these proposed loans, the interested government has requested our Government to provide the ships specified. The requests have been supported by the chief of the military assist-

ance advisory group, by our Ambassador; the appropriate unified commander, the Joint Chiefs of Staff, and the Secretaries of Defense and State. The Office of Management and Budget advises that the proposal is in consonance with the objectives of the President.

I would like to add my own strong endorsement.

In the past 10 years the Soviet Navy has developed the undeniable capability to challenge our use of the seas.

This developing situation is of particular concern because it not only limits our foreign policy options, as Mr. Laird and Chairman Tom Moorer have outlined, but gives us pause in consideration of our future ability to assure the flow of oil and strategic materials which are vital to our economic welfare. By 1985 we will have to import perhaps half of the petroleum we need, on the order of 12 million barrels a day. This will require from several hundred to over 1,000 tankers of 70,000 tons displacement, fully committed to deliveries of oil to the United States. The potential for coercion of the United States, with or without allies, inherent in this situation is ominous.

There is yet another aspect of the oceans that must be considered—as technology improves, the sea is certain to become a major source of the world's resources. The value of the sea is increasing; and hence disputes concerning its use are increasing.

The maritime theater is thus acquiring increasing significance. In recognition of this fact, we must, I think, devise ways and means by which we can strengthen our maritime position. The ship loan legislation before you is one step toward that objective. By bolstering the seapower of governments friendly to us, we reinforce our own strength, as the President and the Secretary of Defense have outlined.

From the military standpoint, ship loans are capable of extending the capability of our Navy. In the hands of friendly governments, the ships will contribute to the common defense of sea lines of communications. By increasing the naval strength of our friends, they raise the threshold at which the United States might be required to intervene or assist in minor contingencies. They also improve the technical competency of foreign navies.

From a fiscal standpoint, we are spared the costs of inactivation and storage.

From the political standpoint, the loaned ships manifest our commitment to mutual defense objectives.

There is also a multiplier effect which results from ship loans that contains elements of all of the other advantages that I have mentioned. This stems from common training, common doctrine, common tactics, and common logistic support procedures which evolve as a result of the loans.

The importance of the role of this ship loan legislation in updating the European navies concerned has been commented upon by the principal allied and U.S. commanders in Europe. I will quote but a few of their remarks:

General Goodpaster, Supreme Allied Commander Europe:

The augmentation of the navies concerned is vital to the maintenance of a balance of power which is favorable to the West and to the United States.

Admiral Rivero, Commander in Chief, Allied Forces, Southern Europe:

Modernization of the submarine fleet should have the highest priority for the Turkish Navy: The modernization of the destroyer forces in both Greece and Turkey is a matter of great urgency.

Admiral Bringle, Commander in Chief, U.S. Naval Forces, Europe:

The problem created by the growing Soviet presence in the Mediterranean is not simply one of a tactical or strategic threat. It is also a problem of confidence and political stability for our allies.

and

We must insure that friendly governments have the means and the capability to work with us.

The cardinal point to be made in my estimation is that, by loaning these ships, naval forces remain in being rather than being relegated to inactive status.

All of the loans will be subject to terms of loan agreements to be negotiated between the United States and recipient governments. The ships will be manned and operated by the recipient governments. Title will remain with the United States. The proposed legislation further authorized the President to terminate the loans as you have said, under certain conditions where the interests of the United States are adversely affected.

The administration bill submitted to the House provided that the ships could be loaned for 5 years with authority to renew the loan for an additional 5 years at the decision of the President. The terms of H.R. 9526, the bill before you, provide that the period of the loans shall not exceed 4 years, at the end of which each ship shall be returned to the United States Navy. The administration believes the bill which it originally submitted is sound and provides for an adequate basis on which to loan these vessels. The shortened bill, in many ways, falls short of the objectives for which we loan these vessels and therefore raises a number of additional problems.

Four years is a very brief period on which a friendly state or an ally can base national security plans, and on which to commit funds and manpower to repair and man the vessel.

Our objective is to place in the hands of friendly nations some of the means to defend themselves and to support mutual defense objectives, thereby bolstering our own and our friends' security. I want to make clear to the subcommittee, and to you, Mr. Chairman, my own strong support, and that of the administration, for the bill as originally submitted.

The five destroyers and two submarines recommended for loan to Spain will fulfill commitments made, subject to congressional authorization, in the Agreement of Friendship and Cooperation signed in 1970. This agreement additionally permits the United States to use certain facilities and territory for a 5-year period.

The strategic importance of Spanish bases to the United States, coupled with benefit to be gained from the augmentation of free World seapower at the western entrance to the Mediterranean, is strong reason for the loan of these combatant units to Spain.

Turkey continues to be a staunch NATO ally and one which occupies a critical geographical position.

The Eastern Mediterranean, in addition to providing ingress and egress to the Black Sea and the Suez, is an area where Soviet naval

power has grown most rapidly and poses its most immediate threat, and where local conflict could involve a confrontation between Soviet and U.S. naval forces.

Augmentation of the Turkish naval forces by loan of one destroyer and two submarines add much needed strength to Free World Forces in a critical area.

I might interpose, Mr. Chairman, the reminder that the Turks as a Black Sea State are the only NATO nation which can operate ships on a permanent basis in the Black Sea. That is particularly important in the case of the submarines.

Another staunch ally, Greece, has made its bases available to us repeatedly in time of need. Greece occupies a strategic location. In addition to giving us access to her ports and airfields, Greece has also provided us with sites for command and control facilities vital to 6th Fleet operations.

The Greek Navy is a proud and enthusiastic one, but because of restraints on military assistance to Greece in recent years, its modernization has been lagging. Loan of the two destroyers will do much to alleviate the situation.

Italy has provided the 6th Fleet with access to ports, airfields, and logistic facilities for a quarter of a century. Italy is in an exposed position with an extended coastline, and requires adequate naval power to protect her from attack via the sea, and therefore our bases.

The loan of two submarines as replacements of two others will provide an interim upgrading of the Italian submarine force.

The Korean coastline is vulnerable to infiltration and attack from the north. The two destroyers will provide firepower and endurance in the open ocean. They will also provide command and control facilities for small craft and aircraft operating in the interdiction of enemy coastal traffic in waters off the Republic of Korea.

Implementing funds for the Spanish and Italian transactions will be supplied from their national resources. The Greek transaction will be largely nationally funded, with a small amount additionally provided for crew training from military assistance appropriations. The funding associated with loans of the ships to Turkey and Korea will be provided by using military assistance moneys. No additional funding authority will be requested from the Congress to implement this bill.

Mr. Chairman, this ship loan bill places combatant ships, withdrawn from our Active Forces, in the hands of friendly and strategically located countries. In the context of the Nixon doctrine, such ships are effective extensions of our own naval power.

Accordingly, I strongly recommend your favorable consideration of this important bill and the modifications I have proposed regarding the tenure of loans.

(The complete statement follows:)

Mr. Chairman, I am pleased to have this opportunity to appear before this Committee in support of the proposed loans of U.S. combatant ships to friendly foreign countries.

#### GENERAL

The bill before you contains permissive legislation requested in order to implement one part of the Military Assistance Program. It proposes new loans of 5 destroyers and 2 submarines to Spain, 1 destroyer and 2 submarines to Turkey; 2 destroyers to Greece, 2 submarines to Italy, and 2 destroyers to Korea.

The ships involved in this legislation are among those which will be retired from the Navy because of funding limitations. We are accepting a degree of risk now in retiring these ships. We are doing it to free funds for future modernization which will be vitally necessary in the mid and late '70's and beyond.

In the case of each of these proposed loans, the interested government has requested our Government to provide the ships specified. The requests have been supported by the Chief of the military assistance advisory group and by our ambassador in each of the countries concerned. Subsequently, the requests were affirmed by the appropriate unified commander, the Joint Chiefs of Staff, and the Secretaries of Defense and State. The Office of Management and Budget advises that the proposal is in consonance with the objectives of the President.

To this imposing list of affirming actions, I would like to add my own strong endorsement.

#### STRATEGIC DESIRABILITY

The United States is in the process of realigning its military posture in keeping with the Nixon Doctrine. We are also reducing our force levels, as national fiscal priorities shift to domestic programs and inflation erodes our buying power. This realignment is occurring at a point in time when a potential adversary is pursuing a naval expansion program of disturbing proportions.

This has caused a decided shift in the naval balance of power. Since the end of World War II, the American Navy was mistress of the seas—unchallenged. As a consequence of our naval supremacy, we could rely upon the free use of the seas as we pursued our economic and foreign policy objectives. In the past 10 years, however, the Soviet Navy has developed the undeniable capability to challenge our use of the seas, particularly in the vicinity of Eurasia.

This developing situation is of particular concern because it not only limits our foreign policy options, but gives us pause in consideration of our future ability to assure the flow of oil and strategic materials which are vital to our economic welfare. The United States faces a growing energy gap because our domestic production is increasingly unable to meet our requirements. The situation was described by Mr. Wilson M. Laird, Director of the Office of Oil and Gas, Interior Department, in a statement to the House Appropriations Committee in March 1971. It was also described by the National Petroleum Council report of July 1971. According to these sources, by 1985, we will have to import perhaps half of the petroleum we need. The quantities imported by sea will be vast—on the order of 12 million barrels a day. This will require from several hundred to over 1000 tankers of 70,000 tons displacement, fully committed to deliveries of oil to the U.S. The potential for coercion of the United States, with or without allies, inherent in this situation is ominous when one considers the measures the Soviets are taking to improve their Navy.

There is yet another aspect of the oceans that must be considered—as technology improves, the sea is certain to become a major source of the world's resources. To its importance as a medium of transportation and a source of food is being added that which stems from the value of what can be pumped or mined from below the sea bed. The value of the sea is increasing; and hence disputes concerning its use are increasing.

The maritime theatre is thus acquiring increasing significance from both the political and economics standpoints. In recognition of this fact, we must devise ways and means by which we can strengthen our maritime position. The ship loan legislation before you is one step toward that objective. By bolstering the seapower of governments friendly to us, we reinforce our own strength.

#### ADVANTAGES TO THE UNITED STATES

There is much to be said in favor of ship loans such as those proposed to you today.

From the military standpoint, ship loans are capable of extending the capability of our Navy. This is not to say that we would exercise control of the ships involved—such would not be the case. But, in the hands of friendly governments, the ships will contribute to the common defense of sea lines of communications and must be taken into account by any potential enemy who might plan to interrupt those routes. By increasing the naval strength of our friends, they raise the threshold at which the United States might be required to intervene or assist in minor contingencies. They also improve the technical competency of foreign navies, as their personnel become familiar with relatively sophisticated systems within the ships. Despite the fact that many of their ships and much of their equipment is

outmoded, these navies have a demonstrated ability to operate effectively within the capabilities of their material. Their effectiveness vis a vis deployed U.S. naval units is enhanced by virtue of their familiarity with local waters and their ability to maintain a continuous presence with smaller numbers of units.

From a fiscal standpoint, we are spared the costs of inactivation and storage. Manning and operational costs are borne by the recipient nation. This is not to say that we will not bear part of the expense; because, in some cases, military assistance funds will be involved in initial crew training. But the ships will be operated in waters remote from our bases, and they will do so at greatly reduced costs than if we deployed U.S. ships from the United States.

From the political standpoint, the loaned ships manifest our commitment to mutual defense objectives. They are visible reminders of friendly alignments. They provide friendly governments—governments that might otherwise be unable to obtain them—with the means to police and defend their coastlines; and so, they contribute to political independence and self-sufficiency.

There is also a multiplier effect which results from ships loans that contains elements of all of the other advantages that I have mentioned. This stems from common training, common doctrine, common tactics and common logistic support procedures which evolve as a result of the loans and the associations connected with them. This effect grows with time and has extensive benefits in strengthening of Free World ties.

The importance of the role of this ship loan legislation in updating the European navies concerned has been commented upon by the principal allied and U.S. commanders in Europe. I will quote but a few of their remarks:

*General Goodpaster, Supreme Allied Commander Europe* . . . "The augmentation of the navies concerned is vital to the maintenance of a balance of power which is favorable to the West and to the United States. . ."

*Admiral Rivero, Commander-in-Chief, Allied Forces, Southern Europe*, ". . . Modernization of the submarine fleet should have the highest priority for the Turkish Navy. Next to this, the modernization of the destroyer forces in both Greece and Turkey is a matter of great urgency. . ."

*Admiral Bringle, Commander-in-Chief, U. S. Naval Forces, Europe*, "The problem created by the growing Soviet presence in the Mediterranean is not simply one of a tactical or strategic threat. It is also a problem of confidence and political stability for our allies. . ." and ". . . we must insure that friendly governments have the means and the capability to work with us. This we cannot do if they have inadequate forces; or forces purchased from other sources, incompatible with our own. . ."

In summation, there are many favorable aspects to the ship loan proposals as we continue to reduce our naval forces. The cardinal point to be made in my estimation is that, by loaning these ships, naval forces remain in being rather than being relegated to inactive status.

#### TERMS OF AGREEMENT

All of the loans will be subject to terms of loan agreements to be negotiated between the U.S. and recipient governments. Under the terms of the loan agreements, ships will be manned and operated by the recipient governments. However, the title will remain with the United States. Possession of the ship cannot be relinquished to a third party without the consent of the U.S. The proposed legislation further authorizes the President to terminate the loans under certain conditions where the interests of the United States are adversely affected. I believe these terms provide this Government with the necessary means to correct a disadvantageous situation should it occur in the future.

The Administration Bill submitted to the House provided that the ships could be loaned for five years with authority to renew the loan for an additional five years at the decision of the President. The terms of HR 9526, the Bill before you, provide that the period of the loans shall not exceed four years, at the end of which each ship shall be returned to the United State Navy. I would be remiss if I did not point out at this point, that the Administration believes the Bill which it originally submitted is sound and provides for an adequate basis on which to loan these vessels. The shortened Bill, in many ways, falls short of the objectives for which we loan these vessels, and therefore raises a number of additional problems.

Four years is a brief period on which a friendly state or an ally can base national security plans, and on which to commit funds and manpower to repair and man the vessel. For example, Spanish authorities have told me of their great difficulties in operating the ships within such limitations.

Our objective is to place in the hands of friendly nations some of the means to defend themselves and to support mutual defense objectives, thereby bolstering our own and our friends' security. To this end, I believe that the terms of the loans contained in the original executive Branch submission foster an ease of execution and permit a more orderly system of defense planning on the part of recipient governments. At the same time, should there be any need to seek the return of the vessels to our own Navy, and such a need has never arisen in the past, the original Bill provides the necessary arrangements. I want to make clear to the Subcommittee, and to you, Mr. Chairman, my own strong support, and that of the Administration, for the Bill as originally submitted.

#### RATIONALE FOR INDIVIDUAL LOANS

In arriving at the ship loan proposals in the legislation before you, the maritime responsibilities and the size, composition and potential of each of the navies concerned were carefully considered, as were the respective levels of technical competence. Following is the rationale for individual loans.

#### SPAIN

The 5 destroyers and two submarines recommended for loan to Spain will fulfill commitments made, subject to Congressional authorization, in the Agreement of Friendship and Cooperation signed in 1970. This agreement additionally permits the U.S. to use certain facilities and territory for a five-year period. Base rights in Spain are important factors in the control of the Mediterranean and hence to the defense of our own and allied interests in the Mediterranean.

Spain's strategic position at the entrance to the Mediterranean dominates the movement of shipping in that sea. It provides the United States with important air and naval bases from which the operations in the western approaches and the western basin can be conducted.

The strategic importance of Spanish bases to the United States, coupled with benefit to be gained from the augmentation of Free World seapower at the western entrance to the Mediterranean, are strong reasons for the loan of these combatant units to Spain.

#### TURKEY

Turkey continues to be a staunch NATO ally and one which occupies a critical geographical position. Turkey's large armed forces and strategic location astride the Dardanelles and the Bosphorus make this nation the keystone of NATO's southern flank.

The Eastern Mediterranean, in addition to providing ingress and egress to the Black Sea and the Suez, is an area where Soviet naval power has grown most rapidly and poses its most immediate threat, and where local conflict could involve a confrontation between Soviet and U.S. naval forces.

Because of the continuous presence of the Soviet Mediterranean Fleet, Turkey and Greece, the most exposed nations of the southern NATO Flank, see themselves potentially being isolated behind the Soviet eastern Mediterranean defense line.

Thus, the strength of their own fleet and the Sixth Fleet are of real concern to them—and to us.

Augmentation of the Turkish naval forces by loan of 1 destroyer and 2 submarines add much needed strength to Free World Forces in a critical area.

#### GREECE

This can also be said of Greece. Another staunch ally, Greece has made its bases available to us repeatedly in time of need. As do Spain and Turkey, Greece occupies a strategic location. Her position on the border of the central and eastern Mediterranean basins is highly important to naval operations in the Mediterranean. Greece is a NATO ally, and the Hellenic Navy has been an active participant in NATO exercises. In addition to giving us access to her ports and airfields, Greece has also provided us with sites for command and control facilities vital to Sixth Fleet Operations. She has also afforded us the privilege of using beaches for amphibious landing exercises.

Greece has continuously supported the United States. The Greek Navy is a proud and enthusiastic one, but because of restraints on military assistance to Greece in recent years, its modernization has been lagging. Loan of the two destroyers will do much to alleviate the situation.

## ITALY

Another NATO ally, Italy has provided the Sixth Fleet with access to ports, airfields and logistic facilities for a quarter of a century. While closer to the central forces of NATO than Greece and Turkey, Italy still is in an exposed position with an extended coastline, and requires adequate naval power to protect her from attack via the sea. Her location is of strategic importance with regard to movement between the western and the eastern and central Mediterranean basins; and between Europe and Africa.

The Italian Navy currently has 5 submarines on loan. These are unmodernized units of World War II vintage. Although Italy is engaged in a submarine construction program, it will be several years before it is completed. Meanwhile, the loan of two submarines as replacements of two others will provide an interim upgrading of the Italian submarine force.

## KOREA

In the western Pacific, the modernization of the Korean armed forces is continuing. The Korean coastline is vulnerable to infiltration and attack from the north. The two destroyers will provide firepower and endurance in the open ocean. They will also provide command and control facilities for small craft and aircraft operating in the interdiction of enemy coastal traffic in waters off the Republic of Korea.

## FUNDING

As the loans are proposed, implementing funds for the Spanish and Italian transactions will be supplied from their national resources. The Greek transaction will be largely nationally funded, with a small amount additionally provided for crew training from military assistance appropriations. The funding associated with loans of the ships to Turkey and Korea will be provided by using military assistance monies. In the case of Turkey, this will amount to approximately \$12.5 million. In the case of Korea, the figure will be about \$7.5 million. No additional funding authority will be requested from the Congress to implement this bill.

## CONCLUSION

Mr. Chairman, this ship loan bill yields solid benefits to the United States at a time when our naval forces are being reduced. It places combatant ships, withdrawn from our active forces, in the hands of friendly and strategically located countries. In the context of the Nixon Doctrine, such ships are effective extensions of our own naval power. While not under our direct control, they contribute to common objectives. The legislation accomplishes this at a modicum of expense, limited exclusively to military assistance funds. Finally, while loaning the combatants, the legislation provides for termination of the loans should circumstances warrant.

Accordingly, I strongly recommend your favorable consideration of this important bill and the modifications I have proposed regarding the tenure of loans.

Admiral ZUMWALT. I am prepared to answer your questions, sir, or to have Mr. Pickering follow me with his formal statement, at your pleasure.

Senator BYRD. I think it would be desirable if we were to hear from Mr. Pickering at this point.

**STATEMENT OF THOMAS R. PICKERING, DEPUTY DIRECTOR, BUREAU OF POLITICO-MILITARY AFFAIRS, DEPARTMENT OF STATE**

Mr. PICKERING. Thank you, Mr. Chairman.

I would like to begin by thanking you for the opportunity to appear before you and the subcommittee in support of this legislation. I can add very little to the comprehensive statement given by Admiral Zumwalt. I would like to emphasize that the ship loan program is one part of our overall military assistance and that these ships would

otherwise be held in our inactive reserve fleet at our own expense. The program involves comparatively small amounts of money and, as you know, is subject to extensive congressional review.

Seven of the 16 vessels in the bill before you will be loaned to NATO allies and will be used, for the most part, in the strategic Mediterranean area. The seven vessels for Spain are part of a package agreement to guarantee U.S. use of some of the most important bases we have anywhere. This agreement was made, as you know, subject to congressional actions on the question of ship loans. The Spanish loans will also be used heavily in the Mediterranean and will thus increase friendly naval strength there. The two destroyers for Korea will help that ally along toward self-sufficiency and will be important evidence of the firmness of our intentions to fulfill treaty obligation in the East Asian region.

This loan bill is in the interests of the United States because it fulfills part of our agreement with Spain and it will help our treaty allies (Turkey, Greece, Italy, and Korea) to defend themselves and to make a greater contribution to our collective security. If not loaned, the ships in the bill, as has been pointed out, will have to be deactivated and kept in mothballs at U.S. expense.

We are aware that the loan program in general could be placed on a more efficient basis. We are now in the process of examining all vessels on loan to determine which of them are no longer necessary for retention in the reserve fleet. If we can effect transfer through the sale of those vessels unfit for further service in the U.S. fleet, there will be no need for us to introduce renewal legislation. We would, of course, be guided by the desires of the congressional committee concerned with regard to disposing of those vessels subject to congressional approval. We are, in fact, interested in receiving the views of the Members of Congress and particularly of the Senate on our tentative plans. The vessels in the current loan bill, however, will be relatively newer ones which would be retained in our mothballed reserve fleet, if they could not be more advantageously employed in our ship loan program.

Thank you.

This completes my formal statement, Mr. Chairman.

Senator BYRD. Thank you, Mr. Pickering.

Dr. Nutter, do you have anything to add?

Mr. NUTTER. No, Mr. Chairman. I would merely say that Admiral Zumwalt has spoken for the Department of Defense here in his presentation, and I would fully endorse what he has said. If you have any questions, I shall be happy to answer any that you may address to me.

Senator BYRD. Thank you.

Admiral Dick?

Admiral DICK. No, Mr. Chairman.

Senator BYRD. How many ships do we have on loan and to what countries?

Admiral ZUMWALT. We have a total of 73 warships on loan to a total of 17 countries under congressional authorizations, sir. The list of those particular countries is Argentina, Brazil, Chile, Colombia, Germany, Greece, Italy, Japan, Korea, Pakistan, Peru, the Philippines, the Republic of China, Spain, Thailand, Turkey, and the Republic of Vietnam.

I should point out that not all of the ships on loan are of the type that have required congressional authority. Some are on loan as a result of the authority resident in the Secretary of Defense. These latter types are noncombatants—auxiliaries, mine warfare ships and the like.

Senator BYRD. That gives us a broad view.

Senator Saxbe, the question I asked Admiral Zumwalt is how many ships are now on loan and to what countries. You heard him read the list of 27 countries, a total of 73 ships.

Would you put into the record, Admiral, the types of ships and the numbers to each of those countries? Include also the authority, the date of the loan and the expiration date.

Admiral ZUMWALT. Yes, sir.

(Information requested follows:)

SHIPS ON LOAN TO FOREIGN COUNTRIES (MAJOR COMBATANTS UNDER 10 UNITED STATES CODE 7307)

[TIAS: Treaties and other International Acts Series]

Country, number, type, and ships	Authority	Delivery date	Expiration date
<b>Argentina:</b>			
3-DD:			
Heermann, DD 532	Public Law 85-532, TIAS 4653	Aug. 7, 1961	Aug. 7, 1976
Doortch, DD 670	do	Aug. 14, 1961	Aug. 14, 1976
Stembel, DD 644	Public Law 85-532, TIAS 4653, extended Public Law 90-224.	do	Do.
<b>Brazil:</b>			
2-SS:			
Sandance, SS 381	Public Law 85-532, TIAS, 4662	Sept. 7, 1963	<sup>1</sup> Sept. 7, 1973
Plaice, SS 390	Public Law 85-532, TIAS 4662, extended Public Law 90-224.	do	Do. <sup>1</sup>
6-DD:			
Guest, DD 472	Public Law 85-532, TIAS 4437, extended Public Law 88-437, TIAS 6777.	June 5, 1959	June 5, 1974
Bennett, DD 473	do	Dec. 15, 1959	Dec. 15, 1974
Cushing, DD 797	Public Law 85-532, TIAS 5662	July 20, 1961	July 20, 1976
Hailey, DD 556	Public Law 85-532, TIAS 4662, extended Public Law 90-224.	do	Do.
Lewis Hancock, DD 675	Public Law 89-342, TIAS 6278	July 2, 1967	<sup>1</sup> July 2, 1972
Irwin, DD 794	Public Law 89-324, TIAS 6292	May 10, 1968	<sup>1</sup> May 10, 1973
<b>Chile:</b>			
2-SS:			
Springer, SS 414	Public Law 85-532, TIAS 4589	Jan. 23, 1961	<sup>2</sup> Jan. 23, 1971
Spot, SS 413	TIAS 4638, extended Public Law 90-224	Jan. 12, 1962	<sup>2</sup> Jan. 12, 1972
2-DD:			
Wadleigh, DD 689	Public Law 85-532, TIAS 4638	July 26, 1962	<sup>1</sup> July 26, 1972
Rooks, DD 804	Public Law 85-532, TIAS 4638, extended Public Law 90-224.	do	Do. <sup>1</sup>
Colombia: 1-DD: Hale, DD 642	Public Law 85-532, TIAS 4464 and 4568, extended Public Law 90-224.	Jan. 23, 1961	Jan. 23, 1976
<b>Germany:</b>			
5-DD:			
Anthony, DD 515	Public Law 83-188, TIAS 3852, as amended by Public Law 84-948, TIAS 5181, extended Public Law 90-224.	Jan. 17, 1958	<sup>1</sup> Jan. 17, 1973
Ringgold, DD 500	Public Law 85-532, TIAS 4125	July 14, 1959	July 14, 1974
Wadsworth, DD 516	do	Oct. 6, 1959	Oct. 6, 1974
Claxton, DD 571	do	Dec. 16, 1959	Dec. 16, 1974
Dyson, DD 572	Public Law 85-532, TIAS 4125, extended Public Law 88-437, TIAS 6805.	Feb. 23, 1960	Feb. 23, 1975
<b>Greece:</b>			
2-SS:			
Lapon, SS 260	Public Law 83-188 as amended by Public Law 84-948, TIAS 3887, extended Public Law 90-224.	Aug. 10, 1957	<sup>1</sup> Aug. 10, 1972
Scabbardfish, SS 397	Public Law 87-387, TIAS 5042, extended Public Law 91-682.	Feb. 26, 1965	Feb. 26, 1975
6-DD:			
Charrette, DD 581	Public Law 85-532, TIAS 4308	June 16, 1959	June 16, 1974
Aulick, DD 569	do	Aug. 21, 1959	Aug. 21, 1974
Connor, DD 582	do	Oct. 1, 1959	Oct. 1, 1974
Hall, DD 583	Public Law 85-532, TIAS 4308, extended Public Law 88-437.	Feb. 15, 1960	Feb. 15, 1975
Brown, DD 546	Public Law 87-387, TIAS 5042	Sept. 27, 1962	Sept. 27, 1972
Bradford, DD 545	Public Law 87-387, TIAS 5042, extended Public Law 90-224.	do	Do. <sup>1</sup>

See footnote at end of table.

## SHIPS ON LOAN TO FOREIGN COUNTRIES (MAJOR COMBATANTS UNDER 10 UNITED STATES CODE 7307)—Continued

[TIAS: Treaties and other International Acts Series]

Country, number, type, and ships	Authority	Delivery date	Expiration date
<b>Italy:</b>			
5-SS:			
Barb, SS 220.....	Public Law 83-188 as amended by Public Law 84-948, TIAS 3124 and Public Law 86-57, TIAS 4418, extended Public Law 88-437.	Dec. 13, 1954	Dec. 13, 1974
Dace, SS 247.....	Extended Public Law 88-437.	Jan. 31, 1955	Jan. 31, 1975
Lizardfish, SS 373.....	Public Law 85-532, TIAS 4365, extended Public Law 88-437.	Jan. 9, 1960	Jan. 9, 1975
Capitaine, AGSS 336.....	Public Law 89-324, TIAS 5930.....	Mar. 5, 1966	Mar. 5, 1976
Besugo, AGSS 321.....	do.....	Mar. 31, 1966	Mar. 31, 1976
<b>Japan:</b>			
2-DD:			
Edwards, DD 663.....	Public Law 85-532, TIAS 4171, extended Public Law 88-437.	Mar. 10, 1959	Mar. 10, 1974
Leary, DD 664.....	Public Law 85-532, TIAS 5834, extended Public Law 88-437.	do.....	Do.
2-DE:			
Amick, DE 168.....	Public Law 83-188, TIAS 2985, 4355, extended Public Law 88-437.	June 14, 1955	June 14, 1975
Atherton, DE 169.....	do.....	do.....	Do.
<b>Korea:</b>			
3-DD:			
Halsey Powell, DD 686.....	Public Law 90-224, TIAS 6483.....	Apr. 27, 1968	<sup>1</sup> Apr. 27, 1973
Hickox, DD 673.....	do.....	Nov. 15, 1968	<sup>1</sup> Nov. 15, 1973
Erben, DD 631.....	Public Law 87-387, TIAS 5298, extended Public Law 90-224.	May 16, 1963	<sup>1</sup> May 16, 1973
3-DE:			
Muir, DE 770.....	Public Law 83-188, TIAS 3353, 4658, extended Public Law 90-224.	Feb. 2, 1956	Feb. 2, 1976
Sutton, DE 771.....	do.....	do.....	Do.
Holt, DE 706.....	Public Law 87-387, TIAS 5298, extended Public Law 90-224.	June 19, 1963	<sup>1</sup> June 19, 1973
Pakistan: 1-SS: Diabolo, SS 479.....	Public Law 87-387, TIAS 5390, extended Public Law 91-682.	June 30, 1964	<sup>2</sup> June 30, 1969
<b>Peru:</b>			
2-DD:			
Benham, DD 796.....	Public Law 85-532, TIAS 4602, extended Public Law 88-437.	Dec. 15, 1960	<sup>4</sup> Dec. 15, 1970
Isherwood, DD 520.....	Public Law 85-532, TIAS 4724, extended Public Law 90-224.	Oct. 8, 1961	<sup>5</sup> Oct. 8, 1966
Philippines: 1-DE: Booth, DE 170.....	Public Law 89-324, TIAS 6263.....	Dec. 15, 1967	<sup>1</sup> Dec. 15, 1972
<b>Spain:</b>			
1-Helo Carrier: Cabot, AVT 3.....			
1-SS: Kraken, SS 370.....	Public Law 89-324, TIAS 6000.....	Aug. 30, 1967	<sup>1</sup> Aug. 30, 1972
	Public Law 85-532, TIAS 4262, extended Public Law 88-437.	Dec. 24, 1959	Dec. 24, 1974
5-DD:			
Capp, DD 550.....	Public Law 83-188, as amended by Public Law 84-948 and Public Law 87-387, TIAS 3789, 5096, extended Public Law 90-224.	May 15, 1957	<sup>1</sup> May 15, 1972
D. W. Taylor, DD 551.....	Public Law 87-387, TIAS 3789, 5096, extended Public Law 90-224.	do.....	<sup>1</sup> Do.
Converse, DD 509.....	Public Law 85-532, TIAS 4262.....	July 1, 1959	July 1, 1974
Jarvis, DD 799.....	do.....	Nov. 3, 1960	Nov. 3, 1975
McGowan, DD 678.....	Public Law 85-532, TIAS 4582, extended Public Law 88-437.	Dec. 4, 1960	Dec. 4, 1975
<b>Republic of China:</b>			
6-DD:			
Benson, DD 421.....	Public Law 83-188, TIAS 2916 as amended by Public Law 86-57, TIAS 4340.	Feb. 26, 1954	Feb. 26, 1974
H. P. Jones, DD 427.....	Public Law 83-188, TIAS 2916 as amended by Public Law 86-57, TIAS 4340, extended Public Law 88-437.	do.....	Do.
Rodman-DD 456.....	Public Law 83-183, TIAS 3215, 4597 as amended by Public Law 86-482, extended Public Law 88-437.	July 28, 1955	July 28, 1975
Plunkett, DD 431.....	Public Law 85-532, TIAS 4180, extended Public Law 88-437.	Feb. 16, 1959	Feb. 16, 1974
Kimberly, DD 521.....	Public Law 89-398, TIAS 6282.....	June 2, 1967	<sup>1</sup> June 2, 1972
Yarnall, DD 541.....	Public Law 90-224.....	June 18, 1968	<sup>1</sup> June 18, 1973
1-DE: Riley, DE 579.....	Public Law 89-398, TIAS 6411.....	July 10, 1968	<sup>1</sup> July 10, 1973
Thailand: 1-DE: Heminger, DE 746.....	Public Law 85-532, TIAS 4235, extended Public Law 88-437.	July 22, 1959	July 22, 1974
<b>Turkey:</b>			
5-SS:			
Bergall, SS 320.....	Public Law 85-532, TIAS 4117, 6588.....	Oct. 18, 1958	Oct. 18, 1973
Mapiro, SS 376.....	Public Law 85-532, TIAS 4117.....	Mar. 18, 1960	Mar. 18, 1975
Mero, SS 378.....	Public Law 85-532, TIAS 4117, extended Public Law 88-437.	Apr. 20, 1960	Apr. 20, 1975
Pomfret, SS 391.....	Public Law 91-682.....	July 1, 1971	<sup>1</sup> July 1, 1976
Thornback, SS 418.....	do.....	do.....	Do. <sup>1</sup>

See footnote at end of table.

## SHIPS ON LOAN TO FOREIGN COUNTRIES (MAJOR COMBATANTS UNDER 10 UNITED STATES CODE 7307)—Continued

[TIAS: Treaties and other International Acts Series]

Country, number, type, and ships	Authority	Delivery date	Expiration date
3-DD:			
F. Royal, DD 872	Public Law 91-682	Mar. 27, 1971	<sup>1</sup> Mar. 27, 1976
C. K. Bronson, DD 668	Public Law 89-324	Jan. 14, 1977	<sup>1</sup> Jan. 14, 1972
USS Harwood, DD 861	Public Law 91-682	Dec. 17, 1971	<sup>1</sup> Dec. 17, 1976
Vietnam:			
2-DER:			
Camp, DER 251	do	Feb. 13, 1971	<sup>1</sup> Feb. 13, 1976
Forster, DER 334	do	Sept. 25, 1971	Sept. 25, 1976

<sup>1</sup> 5 year extended authority.<sup>2</sup> 5 year extended authority. Public Law 90-224 authorized extension, not yet negotiated by STATE.<sup>3</sup> Public Law 91-682 authorized extension. Reported sunk during India-Pakistan war. STATE has matter under intensive review.<sup>4</sup> Public Law 88-437 authorized extension. Not yet negotiated by STATE because of relations with Peru in light of fisheries dispute.<sup>5</sup> Public Law 90-224 authorized extension with provision agreement will be terminated if Peru seizes U.S. fishing vessels. Peru has not signed the agreement. Not yet negotiated by STATE in light of fisheries dispute.

Senator BYRD. I want to get the broad view as to which countries have been involved in these loans in the past. U.S. ships, when no longer considered feasible for future operational requirements are declared excess and stricken from the Naval Vessel Register; is that correct?

Admiral ZUMWALT. Yes, sir.

Senator BYRD. Is it also true that vessels in this identical category can remain on the register and may also be loaned?

Admiral ZUMWALT. It involves, Mr. Chairman, a determination as to whether or not they continue to have a contingency value. We have felt that the ships in this particular bill were of such potential value that we should keep them available to the United States through the loan procedure.

There are other ships which have been judged to be of lesser materiel readiness which we have felt we could in good conscience strike from the record and actually sell under the authority of the law.

Senator BYRD. Well, how many ships, after being loaned, have been returned to the active U.S. Fleet inventory?

Admiral ZUMWALT. None, sir.

Senator BYRD. None?

Admiral ZUMWALT. No, sir. However, if we were suddenly to get involved in a war, we would, I think, want to recall ships from those nations which, although friendly to us, were not involved in that particular war.

Senator BYRD. But of all of the ship loans that have been made, none of them have been returned?

Admiral ZUMWALT. No, sir.

Senator BYRD. All of them have been kept by the recipient countries, then?

Admiral ZUMWALT. That is correct, sir.

Senator BYRD. What is the average sale price of a destroyer, such as those in this bill, when stricken from the register and sold as surplus or scrap?

Admiral ZUMWALT. A total of 17 ships have been returned or scrapped out of 111 that were authorized, and a total of 90 ships that were actually loaned. I believe, however, that that figure of 17 is almost completely scrap.

Admiral Dick, do you have the picture? Have any actually ever been returned?

Admiral DICK. None of the ships that we have ever loaned have actually been returned. Some have been sold later for scrap.

Admiral ZUMWALT. Seventeen of that nintey that actually were loaned have since been scrapped, and 73 remain outstanding.

Senator BYRD. Well, of the destroyers that you do scrap, what sort of price can you get for them?

Admiral ZUMWALT. They are sold at scrap value.

Do you have the figure there, Admiral?

Admiral DICK. Yes, sir.

In the case of the destroyers, it ranges from \$150,000 to \$225,000. In the case of the submarines, it ranges from \$110,000 to \$150,000.

Senator BYRD. I notice that the U.S.S. *Maccabee*, previously on loan to Argentina, was stricken from the register on September 1, 1971, and sold for \$112,200 on the basis that the sale was advantageous to the United States. Would it not be more advantageous to sell these surplus ships for scrap to the countries that we plan to loan them to?

Admiral ZUMWALT. Yes, sir; in the case of those ships which we feel we would not want to recall under any kind of a wartime contingency, we do think it is better to strike them from the register and sell them for scrap. A significant number of ships have been sold to our allies on this basis.

In the case of those that have more value and which we feel we might want to recall during a crisis, we have preferred to loan.

As Mr. Pickering outlined, we are examining this policy for the future to make a judgment as to whether or not we should be more strict in our interpretation of when a ship is to be designated as unfit for use by the U.S. Navy.

Senator BYRD. I want to get into a little more detail with regard to the ships for Spain and the Spanish agreement, but before doing that I yield to the Senator from Ohio.

Senator SAXBE. Admiral, I think that the practice of loaning these ships to friendly nations has been going on for some years, and has been generally satisfactory. How about the countries where we have ships on loan where they unilaterally extend their limits to 200 miles and use these ships to attack our so-called invaders of that area?

Admiral ZUMWALT. Sir, if I can answer the military part of that, then I shall pass the political part to my associate from the State Department.

With regard to military considerations, I feel that, being part of a maritime alliance, as we are, we should accept both the advantages and the disadvantages of such an alliance. American foreign policy does not include a Brezhnev doctrine, as the other side does, where they go in and ruthlessly get done what they feel needs to be done. From a military standpoint, I feel that the benefits of the loan of the ships to the 15 or 16 of those 17 nations that have not caused us any problems outweighs the disadvantages that may occur in the cases of

one or two nations which have had ships loaned to them, but have used them to our embarrassment or disadvantage. With regard to the political part of it, Mr. Pickering will answer.

Mr. PICKERING. I think, Senator Saxbe, I should point out that with respect to the countries where we have had those differences, and those have mainly resolved themselves around the question of fishing, fishing rights and seizures of fishing boats, we have not in recent years, when that has become a serious problem, made loans under this kind of legislation to those countries.

In addition, we have found it terribly hard to devise a formula to resolve the fishing dispute questions by the use of sanctions, such as the withholding of military assistance or the withholding of foreign military sales credit. Nevertheless, we have done this in the case of one of those countries, Ecuador, where the ship-seizure problem became serious and we had to carry out the law, which required the Executive to take steps in that action.

We find that the serious differences of opinion on both sides of this fishing issue have really made it terribly difficult for us to see a way to solution other than through the process of trying to negotiate an agreement with the countries concerned. This we have been trying to do on a continual basis, trying to reach some arrangement which will permit us to continue to exercise the rights that we regard as inherent in fishing on the high seas and, at the same time, carry on amicable relations with those countries.

I cannot say at this point that we see our way clear in the near future to any possible solution; nevertheless, this is an ongoing subject and one in which we are continuing to make efforts to reach agreements.

Senator SAXBE. Well, could we ask Ecuador, for instance, to return these destroyers?

Mr. PICKERING. We have in the case of Ecuador a number of ships on loan. As far as I know, there are no destroyers involved in that particular case. We have decided that in terms of a negotiated solution and our feeling that sanctions such as the return of the ships in question are not an effective way to try to get an agreement. Rather, an effective way is to try and sit down with them and negotiate our differences without the use of threats, or sanctions. So we have taken that decision.

Now, the legal aspects of the case, I think, would, in accordance with my understanding of the bill, permit us to ask for the return if that were the case.

Senator SAXBE. Well, as I understand it, at the present time, when they seize an American boat, and some of them have actually bought licenses, even though they do not recognize the 200-mile limit when they seize a boat, then they levy a fine on it and we pay the fine. Is that correct?

Mr. PICKERING. That is right. Under the Fishermen's Protection Act, a fisherman whose vessel is seized fishing in an area beyond 12 miles, if he is forced to pay a fine or is forced to buy a license, or both, has the right under the act to come to the executive branch and seek reimbursement of the funds. The executive branch then reimburses the funds.

Senator SAXBE. In other words, at the present time, we are so afraid of making Ecuador mad at us that we are willing to tell our people not to buy a license and if you get caught we'll pay the fine, and then we buy the fish from this boat or it goes into world trade. It seems to me that this is the kind of attitude that creates enemies rather than creates friends, because we have another half dozen countries eying this 200-mile limit at the present time. It seems to me that if we want to bid off all of the countries, at least on the West Coast of South America, from adopting this 200-mile limit, we have to take some sanctions against Ecuador and one of the easiest ways is to demand our ships back. Whether we get them or not, that is something else.

Mr. PICKERING. I might mention, sir, that we have taken some sanctions against Ecuador as part of the process. We have cut them off from all foreign military sales in accordance with the law, as I explained earlier. In addition, we are looking toward the Law of the Sea Conference, which we hope will take place in 1973, as a major basis for the resolution of these differences.

So part of the process in following a negotiating route is to reach a decision on the primary problem, which is the strong difference of views on the matter of territorial seas. I think Admiral Zumwalt would agree that if 200-mile claims are allowed to prevail, they would strongly affect our freedom of the seas and therefore our national security. This difference of view, we believe, is best settled through the negotiating process and through discussion rather than through the question of the application of broad unilateral sanctions.

Senator SAXBE. Well, suppose we sent an escort down there with the fishing fleet and said, now, if you are going to impound these boats, you are going to have to sink your destroyer?

Mr. PICKERING. I think that there are varying views on the value of what might be called gunboat diplomacy in terms of its ability to get what is a lasting and useful solution to a problem. We have not only our relations with Ecuador to consider, but the broad range of our interests in fishing rights, freedom of the seas and our relations with all of the Latin American continent. The whole effort of the President's policy in this area has been one of partnership and cooperation. The exercise of force is a serious measure in international affairs which has with it not only benefits, but certain wider consequences as well. I think we are making a serious effort to resolve this particular dispute.

Senator SAXBE. I would consider gunboat diplomacy as when we impose on a country something on their territorial rights. Here we say you have no territorial right to this, and our Navy was originated shortly after the Revolution and the prime concern at that time was to establish freedom of the seas so that American ships could go wherever they pleased as long as they stayed free of these territorial waters. Suppose they extended their territorial rights to 1,000 miles or some other ridiculous thing?

I am just saying what I hear from the average American today who does not understand the State Department's attitude, that is, where they say, do not buy a license; if you get caught, we will pay the fine. I know that you are probably not making this policy, but I think I express an attitude of bewilderment by the average American

who says, here we give them ships or we lend them to them, then they use these ships to harass legitimate fishermen to whom we say, do not buy a license.

I do not expect you to answer that.

I thank the Chairman.

Senator BYRD. Thank you, Senator Saxbe.

What about Chile? Are there any ships on loan to Chile?

Admiral ZUMWALT. Yes, sir.

Senator BYRD. That is along the line of Senator Saxbe's question. Here Chile has expropriated American property. Have we done anything in regard to the American ships that we have loaned or, in effect, given to Chile?

Admiral ZUMWALT. No; we have not, sir. We have loaned two destroyers and two submarines to the Chileans. One of those, to my recollection, is now in such a deteriorated condition that the Chileans have asked us for the opportunity to procure it for its spare parts value. That is currently being staffed within the government.

Our relations with the Chilean military remain very cordial. It is my view that they desire to maintain these relationships and would be very reluctant to see themselves driven toward the acquisition of equipment from the other bloc.

We have here a problem which is a complex one. After a great deal of study, I believe that it is proper for us to maintain a balance—to continue our business and maintain our cordial relationship with the Chilean military. That requires that we not make any attempts to recall these ships.

Senator BYRD. What you are saying is that another country wants to expropriate American property, we do not want to get exercised about it, we do not want to do anything to cause unfriendly relations, we just let them expropriate the property and let it go at that. That is what you are saying.

Admiral ZUMWALT. Well, sir, I believe the proper course is for the negotiation effort to continue. Under the umbrella of that negotiation, we should maintain our military ties. I am speaking, of course, just from the military viewpoint and Dr. Nutter may want to enlarge upon this from the defense policy viewpoint.

Mr. NUTTER. Mr. Chairman, I might say a word about this problem. It is a very serious one. The State Department can speak to the question of the continuing efforts we are making on the question of expropriation. Our recourses have not been closed by any means.

But we do have a serious dilemma in the question of the long-term military relationships that we maintain with a number of countries and have maintained over a long period of years. These relations have been mutually beneficial and therefore constitute a continuing tie despite what happens from time to time in the short run. We have to weigh whether we would disturb a long-term relationship in order to achieve an immediate goal that might better be achieved through other means.

That is part of the problem we have here in the question of Chile. We have been able to maintain our fairly close relationship with the military forces, and we believe that is very important for continuity of relationship with that country if the present political situation should change.

Mr. PICKERING. I might add only, Mr. Chairman, that I think both Admiral Zumwalt and Dr. Nutter have very well articulated the

question of the fine balance in this point. There is no question at all that we are deeply disturbed by the process of expropriation. On the other hand, we have a balancing long-term interest in maintaining a relationship with Chile which is important, I think, particularly in the area where these ships are loaned to the Chilean Navy.

Senator BYRD. Were any of the ships lost by Pakistan loaned to them by the United States?

Admiral ZUMWALT. Yes, sir, there was a submarine which was apparently sunk which was an ex-U.S. Navy sub on loan to Pakistan.

Senator BYRD. How do we recoup for that?

Admiral ZUMWALT. Well, sir, the agreement upon which the loan is based had words to the effect that there must be a settlement. The question of whether or not that is to be done is something that remains to be adjudicated.

Senator BYRD. What do you mean adjudicated? I thought it was part of the agreement.

Admiral ZUMWALT. The agreement states that reasonable compensation for damage or loss will be required "unless the loss or damage arises out of enemy action while in use in accordance with the provisions of the Mutual Defense Assistance Agreement of 1954."

Senator BYRD. That is not the case; is it?

Admiral ZUMWALT. Our Judge Advocate General's informal opinion is that the loss of this submarine, the ex-Diablo, can be considered as resulting from use in its defense and therefore compensation will not be required.

Senator BYRD. In other words, our Government does not intend to seek from Pakistan any remuneration for this loss of the American ship that was sunk?

Admiral ZUMWALT. The final decision on that will be made by the Department of State. I was just giving you what my informal legal advice is within the Department of Navy. I should turn it over now to Mr. Pickering.

Mr. PICKERING. This is a subject that we are looking at now, Senator Byrd. The informal legal opinion which Admiral Zumwalt has given you parallels as well as an informal legal opinion of the Department of State. That is that under the terms of the agreement under which the vessel was loaned, we do not have sufficient cause to seek restitution or compensation for its loss.

Senator BYRD. While there is probably not a great deal of money involved, it seems to me there might be an important principle involved for these new loans that we are considering.

Would you mind reading again, Admiral, the terms of the agreement if the vessel were lost with regard to enemy action under the military assistance program?

Mr. PICKERING. Yes, sir.

Senator BYRD. Read that again, would you?

Mr. PICKERING. The provision in the loan agreement with Pakistan requires reasonable compensation for damage or loss unless the damage or loss arises out of enemy action while in use in accordance with the principles of the Mutual Defense Assistance Agreement of 1954.

Senator BYRD. Was that ship in use as a part of the Mutual Defense Assistance Agreement?

Mr. PICKERING. I would read you, Senator Byrd, the terms of the Mutual Defense Assistance Agreement under which, as I say, these preliminary opinions have been given. The Mutual Defense Assistance Agreement says that the Government of Pakistan "will use this assistance exclusively to maintain its internal security, its legitimate self defense, or to permit it to participate in the defense of the area or United Nations collective security arrangements and measures."

So it would cover the question of legitimate self defense.

Senator BYRD. So, in the Department's judgment, the Pakistanis were using this vessel under the Mutual Defense Agreement Act and as a result, it was sunk?

Mr. PICKERING. If I might, Senator Byrd, let me state it this way: On the basis of a preliminary opinion—not the Department of State view yet, which has not been reached—predicated on the terms under which the submarine was loaned to Pakistan, we have reached the tentative opinion that it is not appropriate for us to seek restitution in this case since it would appear that it was being used in accordance with the terms of the Mutual Defense Assistance Agreement.

Senator BYRD. Let's take Greece or Spain or Italy or any of those, Turkey. Suppose Spain and Greece get in a fight with one another, or any of those two countries for some reason or another, and our ships are sunk. Is there anything in the pending legislation that that would give us compensation?

Admiral ZUMWALT. I think it would really depend on the specific wording of the agreement. If it were an agreement similar to that we signed with Pakistan, my interpretation would be that there would be no restitution.

Senator BYRD. Though we are normally told that these ship loans or extension of ship loans are at no cost to the U.S. Government, is it not correct that the initial refurbishing of these ships and the periodic overhauling every 2 years is funded by the American taxpayer through the military assistance budget? Is that correct?

Admiral ZUMWALT. In some cases, there is a funding required.

Senator BYRD. Let's just confine it then, if you will, to the cases in question; that is, the legislation we are now considering.

Admiral ZUMWALT. All right, sir.

Senator BYRD. We will not worry about the past.

Admiral ZUMWALT. Admiral Dick can speak to the details of that.

Admiral DICK. In the case of the ships for Spain and for Italy, there will be no military assistance funds involved. The funding for any overhauls or associated training programs will come from their national resources.

In the case of Greece, there may be a small sum in training of the crews that will operate these ships, but there are no funds planned or programed for overhaul of the ships we have planned for in this bill for Greece.

In the case of Turkey and Korea, the ships involved there will be, we anticipate, funded under the military assistance program funds for the overhaul as well as the training. In the case of Korea, we estimate that this could be as high as \$7.5 million for the two destroyers. In the case of Turkey, it could be as high as \$12.5 million for the two submarines and the one destroyer. However, these figures are only estimates, because we have not identified the specific ships yet. Once

this bill is approved, as we hope it will be, we will then identify the specific ships. They will be inspected by the recipient countries after they are offered, and then after that inspection, they will determine the extent of the overhaul and modernization that they might wish to undertake.

Again, the availability of MAP funds will come into question here and may limit the amount that is spent for that purpose.

Senator BYRD. Are there funds in the 1972 budget for overhauling such ships?

Admiral ZUMWALT. Yes, sir. No additional funds would be required as a result of this ship loan bill. The recipient countries would have to live with the funds already available to them in order to accomplish these repairs that Admiral Dick has discussed.

Mr. NUTTER. These come, Mr. Chairman, within the MAP programs for those two countries and depending on the appropriations that we receive from the Congress, this money would be expended as part of that program depending on what happens to the total funds that we have asked for. So we cannot predict whether these overhauls would be of high enough priority given the cuts that we anticipate to be actually expended. In any event, they have already been calculated in the programs for fiscal 1972 under military assistance.

Senator BYRD. Well, we have in effect before us two proposals. One is the proposal which you originally submitted to the House of Representatives and the other is the proposal as passed by the House of Representatives. As I understand it, you are not favorably inclined toward the House proposal?

Admiral ZUMWALT. No, sir; from a military standpoint, if I were offered the option of a ship for 4 years with a mandatory requirement that it be returned, I would be very reluctant to spend my money or any money available to me under military assistance for the refurbishing of that ship. By the time I completed that, got the training done, and then began to phase my people out to return the ship, I would have lost so much time that I would not consider it any real bargain and my money would be better used in other ways than that.

Senator BYRD. But, your country would be getting expensive vessels at virtually no cost, would they not?

Admiral ZUMWALT. With only a very short period of time to use them I think, sir. It would be something under 3 years that they really could count on having them. I believe that they would feel that it is a very poor deal and not a particularly forthcoming act on our part. I certainly would feel that way, sir, as Chief of the Navy.

Senator BYRD. There is a vote on the floor, but let me ask you this question, and then with Senator Saxbe's approval, I will recess the committee so that we can answer a rolcall and come back immediately thereafter. But what is really involved, is it not, is that the House proposal differs to a considerable extent from the executive agreement with Spain?

Admiral ZUMWALT. Well, sir, that is a significant factor with regard to the Spanish; the executive agreement did say that subject to congressional authorization, the United States would undertake to get a loan for the five destroyers and the two submarines, and clearly, the Spanish assumed that that would be under the normal terms that had been approved in previous ship loans, such terms would have closely paralleled those in the executive agreement for

use of the Spanish bases. These called for a 5-year agreement and then a 5-year extension subject to agreement on both sides.

So it is clear that the Spanish feel that as part of the deal, they could have counted on a 5-and-5 arrangement and it's also clear that the executive agreement specified that this was subject to congressional approval. My personal hope is that we will get the congressional approval.

Senator BYRD. The agreement must specify the terms? Does not the agreement specify that?

Admiral ZUMWALT. No, sir; the agreement does not. The agreement merely says that the United States will, subject to congressional approval, undertake to arrange for a loan of five destroyers and two submarines. However, it is clear that at the time, both our side and the Spanish Government assumed that there was a strong probability of getting the same kind of authorization that has been achievable in the past 5 years with an automatic renewal of 5 more years.

Again, from a military standpoint, it is a cheaper thing for us to do than to decommission these ships and mothball them. They would not deteriorate as fast.

Senator BYRD. Speaking just as one member of the committee, I am inclined to favor the ship loans. But the real point at issue, as I see it, is whether what the House of Representatives did should prevail or whether the administration's proposal should prevail.

Admiral ZUMWALT. Yes, sir. It would be my strong recommendation on military grounds that the original proposal of the executive department be endorsed by the Senate.

Senator BYRD. Outline if you will just where they differ.

Admiral ZUMWALT. Yes, sir. The bill before you requires that the loans be only for a period of 4 years.

Senator BYRD. Where you want 5 years?

Admiral ZUMWALT. Yes, sir; and that there must be a mandatory return of the ships at the end of the 4 years. Whereas past loans and the original administration proposal have provided for an automatic 5-year extension if both sides agree to it.

Senator BYRD. That would be done by the President, by executive action?

Admiral ZUMWALT. Yes, sir; the executive heads of both governments.

Senator BYRD. In other words, the Congress does not come into it, the extension?

Admiral ZUMWALT. That is correct, sir. And it gives the recipient navy and government, then, the rather strong possibility of being able to count on it for a 10-year period, if relations remain amicable, rather than the 4 years.

Senator BYRD. What is to prevent the executive branch coming back to the Congress at the end of 3½ or 3 years and saying, we would like to extend these loans for 4 more years?

Admiral ZUMWALT. This certainly is a feasible proposition. From the standpoint of both our Navy and the recipient navy, I believe that it is much less favorable an arrangement than would be the 5-and-5, sir.

With regard to the policy issue, Dr. Nutter can answer that.

Senator BYRD. I would certainly agree it is a lot more convenient if the Defense Department and the President can make the decision

on their own. That is what it provides for when you say that the President can extend for another 5 years. But you are getting a good bit away from the legislative process. I cannot quite see what the objection is. You are coming to the Congress in the original instance. What is the objection to coming back to the Congress for the extension?

Mr. NUTTER. If I might speak to this, Mr. Chairman, in the context of our international security assistance program as a whole, I feel it is very important that these countries we are trying to help defend themselves be able to plan sufficiently far ahead so that they can build a meaningful military force that will fit in with our own force plans. Our force plans have to be designed for as far as 10 or 15 years ahead. To offer them something for such a short period of time, would therefor not be advantageous to the international security assistance program as a whole.

Senator BYRD. If you gentlemen will excuse me, we must recess temporarily to vote.

(Recess)

Senator BYRD. Gentlemen, I apologize for the delay. After the vote, I was held up temporarily. I might point out that 3,261 cars left the city of Richmond this morning, according to State police count, and each car had three or four persons in it, making almost 10,000 persons, who drove from Richmond to Washington today to focus attention on the grave problem facing the people of Richmond, Henrico, and Chesterfield, in regard to forced, compulsory busing for the purpose of achieving a racial balance. Their leaders, some 150 of them, went to the House of Representatives and met, small groups of them met with various Members of the Congress, trying to acquaint the Members of the House with the very grave problem facing the people of that area. I want to take judicial note in the Senate today that those 10,000 Virginians did come here. They were restrained in their statements, they were dignified, they presented their case in a quiet, reasonable way; it seems to me that that was democracy in action and I wanted to make those few comments on the floor and I apologize to each of you for holding you up.

Now, let me ask this question: is the periodic overhaul of some of these vessels paid for by the United States?

Admiral ZUMWALT. Sir, the initial overhaul is in some cases and the periodic overhaul in some cases. Admiral Dick has outlined the ones applicable to the initial overhaul, which, as I recall, are just two countries; and it is true that periodically, some of the recipient nations do use MAP funds for their overhauls in their own country.

Senator BYRD. When U.S. funds are used, when the overhaul is paid for out of U.S. funds, is it done in U.S. shipyards?

Admiral ZUMWALT. The initial overhaul only, sir. The periodic overhauls are done in the region normally within the country of the recipient navy.

Senator BYRD. Do you think if U.S. funds are used that the overhaul should be done in this country?

Admiral ZUMWALT. If I could just add one point to the previous question, sir. In the case of the Vietnamese ships, there have been two overhauls at our ship repair facility at Guam.

With regard to your last question, Mr. Chairman, I believe that it would be, again, an unacceptable loss of time dedicated to the mission of the ships for them to have to come all the way back over here and

add the transit time both ways, and it would be an additional expense to these nations whose navies are very austere funded. This again would debilitate rather than contribute to our collective strength.

Senator BYRD. If the Congress approves this legislation, does it not add 16 ships to the 73 already on loan over which the Congress no longer has any control?

Admiral ZUMWALT. Sir, I believe that under the provisions of the bill as the administration would recommend it, Congress would have control at the end of the 5-year period and the optional 5-year extension. It would again take legislation in order for the ships legitimately to remain under the control of the recipient nations beyond that period of time.

Senator BYRD. Beyond the 5-year period?

Admiral ZUMWALT. Beyond the 5-year plus the 5-year extension if both sides agree to that, sir.

Senator BYRD. In other words, beyond the 10-year period?

Admiral ZUMWALT. Yes, sir.

Senator BYRD. Let's get back to what seems to me is the key point. The question at issue is between your proposal and the House proposal. Did the Defense Department and the State Department present these same views to the House committee?

Admiral ZUMWALT. I was not called up before the House committee.

Admiral Dick, can you answer that question?

Admiral DICK. We did not discuss this in detail, no, sir. The amendment came at the conclusion of our statements and the follow-on testimony. An amendment was offered by one of the members of the committee and there was no discussion, as I recall, even among the committee before it was voted on.

Mr. PICKERING. That is right. Admiral Dick and I were both there and this occurred in the other body after the testimony of witnesses on our side. Obviously, our views were all expressed in terms of the administration's bill, in full support of the administration's bill.

Senator BYRD. To get back to the Spanish bases—and I want to say first I have been to each of those bases in Spain and I think they are of importance to the United States. But it seems to me that what you are really concerned about, in wanting to use the administration's version of the bill rather than the House version, is the conflict with the agreement with Spain.

Admiral ZUMWALT. Sir, if I may speak from a military point of view—I am concerned about a broader question that is relevant not only to this agreement, but also to the problems that the other prospective recipients face. From a military standpoint, I have been told by the President and the Secretary of Defense that as a planning precept, we must seek to maintain military superiority over the Soviet Union through increased allied contribution. Therefore, to me, it is absolutely vital that the allies have significant strength in their navies.

Senator BYRD. Let me interrupt you there. Spain is not a member of NATO. Do you advocate Spain becoming a member of NATO?

Admiral ZUMWALT. From a military point of view, I would favor it, yes, sir. From a political point of view, I would defer to Mr. Nutter and Mr. Pickering.

Senator BYRD. Let me ask the political adviser. Do you favor it?

Mr. PICKERING. Yes, we favor the admission of Spain to NATO.

Oviously, this involves questions of the other NATO partners and their views. I do not think it would be helpful for me to go into all of that here. I can simply say our position has been made clear on this.

Senator BYRD. But the State Department favors Spain becoming a member of NATO?

Mr. PICKERING. That is right.

Senator BYRD. And the Defense Department favors Spain becoming a member of NATO?

Mr. NUTTER. Yes, sir, we have made that position clear to our partners in NATO.

Senator BYRD. Have any steps been taken to implement that?

Mr. NUTTER. We have said to our allies in NATO, Mr. Chairman, that, for the good of the defense of the Atlantic community, we should work toward Spain's becoming a member of that alliance.

We have also had informal discussions with the Spanish on some of the concerns of NATO, but they have been purely informal discussions. They have not involved anything other than informing on the activities of NATO. We have hoped to bring Spain and NATO closer together in various ways over time. We have recognized that this is a problem of time and that there is a history involved, but our position has firmly been that, because of the strategic importance of Spain and because of its commitment to the West and to the Atlantic area, it should be a member of NATO.

Senator BYRD. And it could probably permit a reduction of U.S. troops if Spain were a member of NATO?

Mr. NUTTER. Yes, sir. There are serious problems connected with the entrance of Spain into NATO, as you must be aware, in terms of the attitudes of our allies. We think, though, that with time Spain and NATO will come closer and closer together.

Senator BYRD. One of the key questions, it seems to me, is this: When did the executive branch inform Congress that the Spanish agreement calls for loans for 5 years with a 5-year renewal option?

Admiral ZUMWALT. Sir, the agreement does not call for the 5-and-5.

Senator BYRD. The written agreement technically does not, but the 5 years must have been involved in the discussions.

Admiral ZUMWALT. I do not believe that has been the case.

Mr. PICKERING. No, I think to try to clarify this, it is my understanding of the negotiations that the negotiations were carried on against the backdrop of the fact that, first, all loans in the past had been made on the basis of 5 years with a 5-year renewal clause; secondly, as Admiral Zumwalt pointed out earlier, the agreement itself, I think, involved, on the basis of coincidence rather than anything else, a similar period of effect. I do not think from my knowledge of the negotiations that there was any explicit discussion of the 5—

Senator BYRD. You mean General Burchinal did not explicitly state a 5-year—

Mr. PICKERING. General Burchinal did not conduct the negotiations.

Senator BYRD. Who did conduct them?

Mr. PICKERING. They were conducted in the State Department here in Washington.

Senator BYRD. And there was no explicit offer of 5 years with a 5-year extension option?

Mr. PICKERING. That was my understanding, that the discussion of the ships subject to congressional legislation was in the context of the existing bills for ship loans, which provided for the initial 5-year period together with 5-year renewal option.

Senator BYRD. But the U.S. Government, then, did not explicitly offer in regard to this agreement to make loans for 5 years with a 5-year renewal.

Mr. PICKERING. The U.S. Government could not do that, Senator Byrd, because that was subject really to congressional action which had not taken place. So the whole tenor of the agreement, in fact, the explicit statement in the agreement, is that the Government of the United States intends to loan to the Government of Spain the following vessels subject, where necessary, to obtaining authorizing legislation. That is the statement that the agreement contains, the explicit statement on this subject.

Senator BYRD. I understood Admiral Zumwalt to say earlier—and I am not sure of the exact phraseology but the Admiral can correct me—but it was along the line that the Spanish negotiators had a right or had reason to feel that we would follow the same procedures as we followed in the past.

Admiral ZUMWALT. Mr. Chairman, my belief is that they assumed during the negotiations that a commitment to seek ship loan legislation would give them an arrangement similar to that which had been passed by the Congress in the past. But I do not believe that there was ever any specific discussion of the time length, because the Spanish always assumed it would be for 5-and-5.

Senator BYRD. Was anyone in the Congress informed that that is what the Spanish assumed, that it be 5-and-5? Was the chairman of either of the Armed Services Committees informed, or the chairman of the Foreign Relations Committee or the Foreign Affairs Committee?

Mr. PICKERING. The question never became one of any issue. The Congress was consulted on the agreements on at least six separate occasions before the agreements were reached.

Senator BYRD. Let's pursue that a moment. You say the Congress was consulted. How was the Congress consulted?

Mr. PICKERING. In the main, these consultations involved on the one hand discussions with members of and the Senate Foreign Relations Committee, and on the other hand, it involved letters which respond to congressional inquiries on the agreement. To my knowledge, neither the inquiries nor the discussions ever addressed this specific point. It had not become a point of issue since the House had not yet taken the action which it now has taken on the bill. I think the point at which this became a question at issue, if I may call it that, is the point at which the House took the action and amended the bill that the administration had submitted.

Senator BYRD. Then, is not the basic difference between the House action and your requested action that the House action gives Congress control at the end of 4 years to determine whether or not to renew, while what you want is an automatic renewal at the end of 5 years?

Admiral ZUMWALT. I believe your formulation of the issue is accurate, sir. From a military point of view, I strongly urge the 5-and-5, because I just do not think that we are making a reasonable offer to good friends and allies on a 4-year basis for ships which they then will only be really able to use for less than three.

Senator BYRD. Does the extension require congressional approval?

Admiral ZUMWALT. No, sir, the normal form of the extension has been subject to the agreement on an executive basis between two Governments.

Senator BYRD. Except for a 1-year differential, 4 years compared to 5, how does it give any greater degree of certainty to a particular government that they will get a 5-year renewal?

Admiral ZUMWALT. Well, sir, they know that it is subject only to a single veto instead of a double veto, and they have the precedent in the past of the fact that relations continuing friendly, the Executive has, on the part of the United States, gone along with a 5-year extension.

Senator BYRD. Some of us in the Congress, though, are concerned, and I am not speaking of any particular administration, that the Congress has given to the administration or the executive branch too much authority in the past and that the Congress should reassert its own responsibility in some of these fields. That is what I visualize what the House was trying to do; it was along that line, to reassert congressional authority in a field which it seems to me is clearly a field for congressional authority.

Mr. NUTTER. Yes, sir. May I speak to that a moment, Mr. Chairman?

I fully appreciate your concern and I think it is a legitimate one. No department of the Government would be quicker to affirm that the legislative and executive branches are coequal than the Department of Defense, since our Secretary served so long in Congress. He has emphasized the coequal status on many occasions.

Senator BYRD. An excellent Congressman and an excellent Secretary, both.

Mr. NUTTER. We appreciate this point and understand your concern. What we would ask you to consider is whether you would want to exercise control over the length of time for which we grant the use of a vessel in support of our own defense plans.

In other words, we are saying that this situation is the same as our international security assistance program, in which the Congress in its wisdom makes many decisions on the granting of equipment, and the extending of loans for the purchase of equipment, that resides in the hands of other countries for prolonged periods of time. We say that this is the same kind of case recognizing that Congress should very carefully scrutinize the transfer of any military resources from this country to any other country. We would plead as a necessity for sound military planning that the time period would have to be longer than 4 years.

Senator BYRD. Mr. Secretary, does not the Congress fund the military assistance annually?

Mr. NUTTER. Yes, sir.

Senator BYRD. It does not say we will appropriate  $x$  dollars for 5 years.

Mr. NUTTER. No, sir; and we fully agree with the principle that the appropriation should be annual. But the appropriation is then used in large part to transfer equipment that has a long life, that goes to another country in the form of tanks or ships or whatever it might be and remains in the possession of that country for as long as it is

not misused. In the case of ship loans, we conceive of the same kind of decision on the part of Congress, a decision that is made at a point in time but that affects some period in the future.

We fully agree that such decisions reside here in Congress, but we would ask that the Congress think in terms of a longer timespan, just as it does in the annual appropriations for our own defense budget and for the international security assistance program.

Senator BYRD. As a matter of curiosity, how was the 5-year figure arrived at originally? Does anybody know?

Admiral ZUMWALT. I do not think we have anything in the files to prove this, Mr. Chairman; but my very strong belief would be that it was because the 5-year period is almost the bare minimum in which one can make any really intelligent plan with regard to a naval ship which has to be completely refurbished, into which personnel have to be phased, trained, and worked up, and then out of which they would have to be moved in time to return the ship at the end of the period.

Senator BYRD. I might say that I am basically sympathetic with the loan program. I can see that it has a great deal of merit to it. But the problem that has arisen now, as I see it, is how much authority the Congress wants to give away or give to the executive branch. The House feels that at the end of 4 years, the appropriate thing to do would be to come back to Congress and let the Congress extend the loan if that is the desire of the Defense Department and Congress concurs, or the other proposal would be just to give the President the right automatically to renew.

Admiral ZUMWALT. My plea, sir, would be that the subcommittee would give consideration to the fact that we have reduced our own naval strength by a third. We need strength in our allies and our friends if we are to handle the threat. And we need loan terms which permit our allies and friends to make plans and commit resources in an orderly manner. The 5-year interval is about the minimum for programing. It is the interval which has been adopted by our own Defense Department.

Senator BYRD. You have used the word "allies" several times. That applies to Spain?

Admiral ZUMWALT. Of course, sir; we have differing degrees of association with each of these nations. As you know we are linked by the very tight NATO alliance to all but two. We have a bilateral relationship with the Republic of Korea. With regard to Spain, our association is not that of an alliance but we have clearly mutual interests with regard to our position in the free world.

Senator BYRD. So in essence, leaving out maybe the very technical aspect, Spain would be an ally?

Admiral ZUMWALT. Well, sir, I suppose I really should ask the State representative or Mr. Nutter to answer this.

Mr. PICKERING. No, sir, I do not think we can distinguish between degrees here. We have traditionally used the word "ally" to describe those countries with which we have a particular type of treaty arrangement. We do not have that type of treaty arrangement with Spain. We have used the phrase "friends and allies" to describe the countries that are recipients, prospective recipients of this ship loan legislation. I think we would prefer to use that sort of relationship to make the distinction here. Spain, as we have said, is not a member of NATO, therefore does not qualify under the NATO agreement, which is that kind of treaty.

Senator BYRD. We have no treaty arrangements with Spain?

Mr. PICKERING. That is right, sir.

Senator BYRD. But you in effect have made a treaty with Spain but you have done it by executive agreement?

Mr. PICKERING. We have made an agreement which extended certain relationships in force which we call an Agreement of Friendship and Cooperation, which covers a broad range of fields in which we have mutual interests with Spain.

Senator BYRD. You are extending it—we have to begin it. You began it in 1954. And that was done by executive agreement.

Mr. PICKERING. That was after consultation with Congress at that particular time. It was decided between the two branches after consultation that the proper form to follow was an executive agreement at that particular time and that proper form was continued on. But there was extensive consultation with Congress in the period leading up to this latest agreement with Spain.

Senator BYRD. I am still not clear on what you mean by consultation with Congress. That is the point that I do not understand.

Mr. PICKERING. Maybe I could just outline what has gone on in general terms.

Senator BYRD. Let me ask you this question first: Why did you not submit it as a treaty instead of an executive agreement?

Mr. PICKERING. This is a question which I would like to take an initial effort at making an answer. I have brought one of the Assistant Legal Advisers from the State Department. If we get into that realm, I would want to disqualify myself as a witness.

But we have continued in effect executive arrangements because they did not involve a commitment on the part of the United States to Spain of the kind that normally is incorporated in advice and consent treaties. This in my understanding is the essential reason why we chose the executive agreement form to cover the agreement of friendship and cooperation with Spain.

If I might answer the first part of your question on consultation, if you would like me to go on to that—

Senator BYRD. Yes, please.

Mr. PICKERING. There were, as I said earlier, a number of consultations, particularly with the Foreign Relations Committee, before the agreement was signed. In accordance with the record that I have, there were at least six separate occasions when the negotiations with Spain were discussed or on which the administration addressed letters to Senators, including the chairman of the Senate Foreign Relations Committee, before the actual signature of the executive agreement took place.

There were, I think to my knowledge, at least five or six major points made by the Congress to us which were incorporated in the negotiating process or in the agreements themselves. One of these was the insistence of the Congress that there be congressional approval for the military assistance arrangements as part of the Agreement on Friendship and Cooperation.

Then following the signature, as you know, there were lengthy discussions as well concerning the agreement with the Department of State and the Congress, and the Department sent again a number of letters explaining the agreement and responding to questions of Members of the Congress.

Senator BYRD. Let me ask you this: Section E of article 40 of the United States-Spain agreement indicates that the Government of the United States is prepared to relinquish to Spain the Rota-Zaragoza pipeline. Can that be done without congressional approval?

Mr. PICKERING. Section E of article 40?

Senator BYRD. Yes. My point basically is can the executive branch relinquish to Spain the Rota-Zaragoza pipeline without congressional approval? That is part of the agreement, I would assume. So I assume that you could do that.

Mr. PICKERING. I think that is part of the letters of intent which follow the agreement. I would, prior to answering that question, like to ask the Assistant Legal Adviser of the State Department for Treaty Affairs whether this is within the competence of the executive branch. I think this goes beyond my competence to answer it. Perhaps Dr. Nutter has an answer.

Senator BYRD. You may just supply that for the record, if you will?

Mr. PICKERING. We will if that is agreeable to you.

(The information requested follows:)

FEBRUARY 23, 1972.

MEMORANDUM OF LAW

Subject: Authority for Relinquishment to the Government of Spain of the Rota-Zaragoza Pipeline.

The Senate Foreign Relations Committee has requested a memorandum setting forth the legal basis for the transfer to the Government of Spain of the operational control of the Rota-Zaragoza pipeline in connection with the Agreement of Friendship and Cooperation of August 6, 1970.

The Rota-Zaragoza POL Pipeline was constructed pursuant to the Defense Agreement between the United States and Spain of September 26, 1953 (TIAS 2850). That agreement provided (Article IV):

*"The Government of Spain will acquire, free of all charge and servitude, the land which may be necessary for all military purposes and shall retain the ownership of the ground and of the permanent structures which may be constructed thereon. The United States Government reserves the right to remove all other constructions and facilities established at its own expense when it is deemed convenient by the Government of the United States or upon the termination of this Agreement; in both cases the Spanish Government may acquire them, after previous assessment, whenever they are not installations of a classified nature.*

*"The Spanish state will be responsible for all claims made against the United States Government by a third party, in all cases referring to the ownership and utilization of the above-mentioned land."* (Emphasis added).

The Technical Agreement concluded the same day, implementing various provisions of the Defense Agreement, further provided that, upon termination of the Agreement, the two Governments would determine by agreement the residual value of the facilities installed by the United States, and that Spain would pay such residual value to the United States.

With respect to "permanent structures" (including the pipeline), the Technical Agreement was arguably inconsistent with Article IV of the Defense Agreement since the Defense Agreement clearly provided that such permanent structures become the property of the Government of Spain. The government of Spain consistently argued that the residual value provisions of the Technical Agreement applied only to non-permanent construction; the United States never acquiesced in this interpretation.

Accordingly, in the course of negotiation of the 1970 Agreement of Friendship and Cooperation, it was agreed to resolve this controversy by specifically providing in the Exchange of Notes relating to military assistance (TIAS 6924, page 38, item f) that the United States relinquished its claims for the residual value of permanent structures. While the Government of Spain did not thereby recognize the validity of the United States claim under the Technical Agreement, the United States, by waiving the claim, succeeded in resolving the issue and considered such waiver an important quid pro quo for the bases under the Agreement.

Since the claim for residual value of permanent structures, to the extent it was a valid one under the Technical Agreement, was created by an executive agreement, it was legally proper for the executive to waive it by a similar agreement.

It should be noted in this connection that the United States never acquired title to the pipeline facility, since under Article IV of the 1953 Defense Agreement the facility was clearly the property of the Government of Spain. The special provision of the Exchange of Notes relating to military assistance (item 3) relinquishing the pipeline to Spain subject to the terms of a procedural annex relates solely to the operation and management of the pipeline (including the right to receive revenue from commercial use of the pipeline), which prior to 1970 had been operated by the United States Air Force. Under the terms of Procedural Annex XI to the Agreement in Implementation of Chapter VIII of the Agreement of Friendship and Cooperation (TIAS 6977, page 98), management of the pipeline was transferred in three phases to CAMPSA, the Spanish state petroleum monopoly. Agreements relating to the operation of defense-related facilities in foreign countries are made by the President pursuant to his power as Commander-in-Chief.

Senator BYRD. Now, let me ask you this: Do you think that matters of this type—I am speaking of the agreement with Spain—do you think that should be submitted to the Senate as a treaty, or do you think you should continue the executive agreement line?

Mr. PICKERING. I think that on the particular matter that is covered by the agreement of friendship and cooperation with Spain, the administration view is very clear, that it should continue to have the right to carry out negotiations and conclude executive agreements on that basis.

Senator BYRD. Carry out negotiations. You are the only one who can carry out negotiations. Congress can't do anything about negotiations.

Mr. PICKERING. And conclude executive agreements of that sort.

Senator BYRD. I was speaking of when the final product should be submitted to the Congress.

Mr. PICKERING. I would be glad to submit for the record a legal memorandum of the Department of State which points up the process through which we go in order to establish whether a particular set of negotiations should lead to an executive agreement or to a treaty. It points out the criteria we use to judge whether a particular agreement ought to be an executive agreement or a treaty. I think the memorandum would set forth in more detail certainly than I could, with more competence than I can, the whole process and the nature of the material that is used in making the decision, what the criteria actually are, whether we continue a commitment or establish a new commitment, that sort of thing.

(Information requested follows:)

#### MEMORANDUM OF LAW REGARDING CONCLUSION OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS

This memorandum describes the general practice of the Department of State in determining whether an agreement should be a treaty or an executive agreement and the standards which we apply in making such determinations.

Both treaties and executive agreements have long been recognized as necessary and proper in the conduct of the foreign relations of the United States. The Department of State has a procedure, known as the Circular 175 procedure, which requires that the authorization of the Secretary of State be obtained before an international agreement may be negotiated or concluded. One of the purposes of the Circular 175 procedure is to make a determination as to the proper form of the agreement—treaty or executive agreement.

The regulations of the Department of State provide that an executive agreement may be entered into only if it falls within one or more of the following categories:

1. Agreements which are made pursuant to or in accordance with existing legislation or a treaty in force with respect to the United States;

2. Agreements which are made subject to Congressional approval or implementation;

3. Agreements which are made under and in accordance with the President's Constitutional powers.

The Legal Adviser's office is required to review all requests to the Secretary of State for authorization to negotiate or to sign any international agreement.

The Legal Adviser's office examines the proposed agreement and the legal and constitutional authority for entering into it and specifically is required to show:

#### I.—IN THE CASE OF A TREATY

(a) Whether or not the subject matter is within traditional limits;

(b) Whether or not the treaty will be self-executing, in whole or in part;

(c) If not self-executing, the part or parts which may require legislation and the plans contemplated with respect to formulation and presentation of proposed legislation;

(d) The extent, if any, to which the treaty is intended to prevail over existing Federal or State law and information as to groups in opposition to or in support of the contemplated change.

#### II.—IN THE CASE OF AN EXECUTIVE AGREEMENT

(a) An extract copy of the pertinent legislative or treaty provisions, if any, constituting authority for the making of an Executive Agreement on the subject.

(b) If no antecedent legislative or treaty authority exists whether or not the agreement is to be made subject to legislation by the Congress.

(c) The Constitutional powers of the President relied upon.

The Department has other detailed standards which are followed in determining whether an international agreement should be concluded as a treaty. Under these standards, the treaty form is used:

a. When the subject matter and treatment thereof is traditionally handled by a treaty. This is not necessarily controlling in all instances but requires careful consideration before any departure therefrom.

b. When the subject matter and treatment thereof is not wholly within the delegated powers of the Congress and is not solely within the Constitutional authority of the President.

c. When the agreement itself is to have the force of law without legislative action by the Congress, and the action contemplated is not solely within the President's constitutional authority.

d. When the agreement involves important commitments affecting the nation as a whole.

e. When it is desired to give the utmost formality to the commitment with a view to requiring similar formality on the part of the other government concerned, in the interest of long continued respect for its terms.

Of course, it is not always possible to determine ahead of time the exact extent of the commitments that may be reached and it is sometimes necessary to await the outcome of the negotiations before making the final determination whether the new arrangement shall be a treaty to be submitted for the advice and consent of the Senate or an executive agreement for which there exists an adequate legal basis or for which legislative approval should be sought.

Senator BYRD. Let's get down to this. How much harm would be done if the Senate were to take the House bill?

Admiral ZUMWALT. From a military standpoint, sir, I believe it would be quite a setback both to our own and the recipient nations military preparedness. I believe that they would feel constrained to spend very modest amounts of money, if indeed they decided they could take the ships.

Senator BYRD. Well, let's put it this way. Suppose the House bill were changed to make it 5 years instead of 4 years?

Admiral ZUMWALT. Well, sir, any lengthening of the process would certainly be most helpful.

Senator BYRD. In other words, if we make it 5 years instead of the 4 years that the House added, then that gives them the certainty for 5 years, the same certainty that they have under your proposal.

Now, is it just a question of degree as to the certainty or lack of certainty between the two proposals for the second 5 years? Congress is just as likely to extend for 5 years, probably, as the executive branch would be to extend for 5 years. Maybe if certain candidates were elected President, Congress would be more likely to extend for 5 years.

Admiral ZUMWALT. Yes, sir. The fundamental difference, Mr. Chairman, would be the fact that the mandatory return provision means that they would have to start planning for that. It would be a constraint on their operations, they would have to start moving people off and that sort of thing, whereas under the administration's proposal, they can continue to hold on the the ship while the renewal negotiations proceed. It is the mandatory return as well as the 4-year limit that I think causes appreciably greater problems for the recipient nations.

Mr. NUTTER. If I might suggest, Mr. Chairman, it would be very difficult for us to provide substitute language at the table that on careful reflection would be satisfactory from the point of view of the bill. Perhaps we could supply this to you, a statement as to what we might consider to be a satisfactory alternative.

I would underline the fact that one of the concerns about a specific 4-year period—the 4 years in and of itself, as Admiral Zumwalt has suggested—is that it might simply bring an end to the ship loan program. We might find that no countries would wish to participate, so that we would be confronted with putting these ships into mothballs rather than into use elsewhere.

Senator BYRD. When they are getting something for virtually nothing, I doubt if they are going to refuse it.

Mr. NUTTER. Well, it is a very big expense on their part, Mr. Chairman, to refurbish these ships.

Senator BYRD. But some of these are not paying for it. The United States is paying for two of them.

Mr. NUTTER. Some of them are not. There are two cases in the present bill.

Senator BYRD. One is \$7.5 million and the other is \$12.5 million.

Mr. NUTTER. In the case of those that receive military assistance in the form of grant aid, ship loans would remain part of the military assistance program. I doubt that other countries would request ship loans.

Mr. PICKERING. I would like, if I may, just to second what Dr. Nutter said. I think it would be very helpful if we could provide you with administration language on what we thought would be acceptable on our side in terms of the military effectiveness for ship loans, maximizing if we can to the degree that we can, your specific concern, the one we share, about maintaining the congressional interest and control in legislation. I am not sure but hope that there are things we could come back to you with that might provide that.

Senator BYRD. I think that is fine.

Mr. PICKERING. Maybe we are trying to square the circle. I do not know.

(The information requested follows:)

It is considered that an amendment providing that no extension of these loans could be made until after Congress has been notified and a period of time has elapsed without passage of an adverse resolution, would provide a proper degree of congressional control. Set forth below is a recommended amendment which would provide for such notification and restore the five year period for the original loan.

PROPOSED AMENDMENT TO H.R. 9526

On page 2, beginning on line 11, strike out the first sentence of Section 2 and insert in place thereof the following:

"Loans executed under this Act shall be for periods not exceeding five years, but the President may in his discretion extend such loans for an additional period of not more than five years; Provided, That, no extension may be made unless—

"(1) notice of the proposed extension is sent to Congress;

"(2) a period of thirty days has elapsed while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days); and

"(3) during that 30-day period Congress does not pass a concurrent resolution stating in substance that it does not favor the proposed extension."

[H.R. 9526, 92d Cong., first sess.]

AN ACT To authorize certain naval vessel loans, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding section 7307 of title 10, United States Code, or any other provision of law, the President may lend five destroyers and two submarines to the Government of Spain; one destroyer and two submarines to the Government of Turkey; two destroyers to the Government of Greece; two destroyers to the Republic of Korea; and two submarines to the Government of Italy in addition to any ships previously authorized to be loaned to these nations, with or without reimbursement and on such terms and under such conditions as the President may deem appropriate. All expenses involved in the activation, rehabilitation, and outfitting (including repairs, alterations, and logistic support) of ships transferred under this Act shall be charged to funds programed for the recipient government as grant military assistance under the provisions of the Foreign Assistance Act of 1961, as amended, or successor legislation, or to funds provided by the recipient government. The authority of the President to lend naval vessels under this section shall terminate on December 31, 1974.

SEC. 2. Loans executed under this Act shall be for periods, not exceeding four years, at the end of which, each ship shall be returned to the United States Navy at a location to be designated by the Secretary of Defense. Loans executed under this Act shall be made subject to the condition that the loan may be terminated by the President if he finds that the armed forces of the borrowing country have engaged at any time after the date of such loan, in acts of warfare against any country which is a party to a mutual defense treaty ratified by the United States. Loans shall be made on the condition that they shall be terminated at an earlier date if the President determines they no longer contribute to the defense requirements of the United States.

SEC. 3. No loan may be made under this Act unless the Secretary of Defense, after consultation with the Joint Chiefs of Staff, determines that such loan is in the best interest of the United States. The Secretary of Defense shall keep the Congress currently advised of all loans made or extended under this Act.

SEC. 4. The President may promulgate such rules and regulations as he deems necessary to carry out the provisions of this Act.

Passed the House of Representatives December 6, 1971.

Attest:

W. PAT JENNINGS,  
Clerk.

Senator BYRD. When you say you share the desire for congressional control, I would say that you are probably in a minority among your colleagues in that view, I do not know.

Admiral ZUMWALT. Well, from a military point of view, Mr. Chairman, as an example, if the 5-year period and the right for a 5-year

extension could be subject to consultation with the chairmen of the cognizant committees, that would, I think, be a perfectly reasonable planning basis for the two navies to proceed on.

Senator BYRD. Why not just let the chairmen make all the decisions, and make this basic decision right here as to whether or not we can loan them in the first place. I do not think much of that. Maybe if I were chairman, I would think differently, but I do not think much of that.

Admiral ZUMWALT. I apologize for getting into the committee's business, Mr. Chairman.

Senator BYRD. I do not think I would be very much inclined toward that proposal. I think either the Congress should approve it or not approve it. If we want to give away our authority to the President, we have a right to do it, but I am not much inclined to give it away. I think we have given away too much, and I am not speaking of President Nixon, as all of you know; I am not speaking of any individual. I am speaking of the principle.

I am thoroughly sympathetic with the ship loan program, I think it has a lot of logic to it. But I am somewhat inclined toward the House position in having the Department come back to the Congress for renewal—I am not wedded to 4 years or 5 years, whatever it might be. But just to say that we are going to give you this program for 5 years and then, if you want to, you can just go ahead and continue it for another 5 years without getting congressional approval, I must say I am not too keen on that approach. But I am in favor of the program. We will try to work something out that will be helpful to everybody. But the Congress is a little bit more inclined now—I do not know how much more, not enough, to my way of thinking—but a little bit more inclined to assert what I regard as its own responsibilities. I gather that is what the House was doing in this particular case.

Are there any additional comments?

Admiral ZUMWALT. Very respectfully, Mr. Chairman, I would just come back one final time to the fact that we lack the military strength to stand up to the Soviet Union in a crisis without the assistance of our allies. Mr. Laird has outlined the concept of a total force approach to the threat, consisting of our Active Forces, our Reserve Forces and our allies.

Senator BYRD. I am in thorough agreement with you and with the Secretary. That is not the basic problem. The basic problem is whether 4 years or 5 years from now, the administration will have the right to do do something on its own or whether it will have to come and submit recommendations to the Congress.

There is no disagreement on my part as to your position on defense and Secretary Laird's position. I think we have to have a strong national defense and I am going to do what little I can along that line. But this is just a question of procedure, whether you proceed through the Chief Executive or whether you proceed through the Congress for that extension.

Well, is there anything additional?

Mr. NUTTER. I hesitate to get into the realm of treaties and agreements and all that, Mr. Chairman, but I would like to comment on one concern shared by the Defense Department, the State Department, and the entire executive branch in connection with the Spanish

agreement. We are all concerned that there be no indication that anything more is there than is really there. In particular, it must be clear that there is no defense commitment involved. Putting that particular agreement in the form of a treaty would carry the implication that it did involve such a commitment. While avoiding this implication, the executive agreement still reserves the authority of Congress. Throughout the agreement there is reserved the right—the necessity, in fact—for Congress to implement the agreement through the process that we are now addressing.

Senator BYRD. Yes; that makes that clear through the authorization process. Our discussion today does clear up one point which concerned me as to whether I could vote against the bill submitted by the administration. As I understand it, no commitments have been made through that agreement for 5 years, for a 5-year period.

Mr. NUTTER. That is entirely correct.

Senator BYRD. So if there are no commitments in that agreement, then we have no obligation to take a 5-year period, have we?

Admiral ZUMWALT. It is my belief, Mr. Chairman, that retroactively, we have learned that the Spanish assumed that the ship loan bill would be in the form that it had always been in the previous enactments.

Senator BYRD. Well, Admiral, it is just utterly inconceivable to me that whoever negotiated this, the negotiators, never mentioned the term 5 years. That just seems to me inconceivable.

Admiral ZUMWALT. Well, sir, I was not there.

Senator BYRD. I realize none of you negotiated it.

Mr. PICKERING. That is my understanding of the negotiation. But I would say here there is no obligation of a legal character. The only thing was that the negotiations went forward in a certain context. If there is anything, I suppose there is a moral commitment in terms of the context in which they went forward, but to my knowledge, there was no explicit understanding.

Senator BYRD. Was the Congress ever informed of the moral context?

Mr. PICKERING. I do not believe that it was, there was just an assumption, perhaps a mistaken assumption if you like, on the part of the executive branch that we would go forward with that kind of legislation. We have come forward with that legislation.

Admiral ZUMWALT. We had 20 years of precedent for the 5-and-5. I think the honest circumstance is that no one thought of the possibility that it would change. Also the terms of the base rights portion if the agreement provided for a 5-year lease with an option to renew.

Senator BYRD. Just assumed it; yes. I can see that.

But you do state that there is no legal obligation.

Admiral ZUMWALT. That is right.

Mr. PICKERING. That is right, sir.

Senator BYRD. And there is nothing in the agreement which commits the United States to 5 years?

Mr. NUTTER. No, sir.

I think we do run the risk, Mr. Chairman, that, whereas the basic agreement is in effect, our relations with the Spanish would be very difficult and continuation of any agreement in the future would be

jeopardized if the customary term for ship loans were changed. But from the legal point of view, there is no requirement to maintain that term.

Senator BYRD. The agreement with Spain, as I see it, is beneficial to both parties. I think it is beneficial to the United States. I have been to each of those bases and I think they are important bases, but it is also beneficial to Spain. Spain is getting a great deal out of this.

As a matter of fact, I think the Spanish economy has been helped tremendously by this, as well as their military. So I think it is a two-way street and I think each of us is getting our money's worth, so to speak.

Thank you, gentlemen, very much.

The committee will take it under advisement.

Admiral ZUMWALT. It is a pleasure to have appeared.

(Whereupon, at 5:30 p.m. the hearing was adjourned.)

(Note: The subcommittee reported to the full committee on February 25, 1972. The full committee voted to accept the recommendations of the subcommittee and H.R. 9526 was reported to the Senate on the same date with an amendment extending the term of the loan from 4 to 5 years. (S. Rept. 92-644).)

