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CASE/ZABLOCKI ACT

A. Summary Background - The Law

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The Case Act (Tab A) requires transmittal of international agreements (determined by Department of State) either to the Congress or with respect to those whose public disclosure would be prejudicial to the national security (determined by the President), to the foreign affairs committees of both Houses "under an appropriate injunction of secrecy" imposed and removable only by the President.

B. Senate

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Pursuant to Presidential direction two intelligence, international agreements have been reported by the Department of State to the Senate Foreign Relations Committee under a letter of conditions and understandings (Tab B) which applies an "appropriate injunction of secrecy," including:

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1.  classified transmittal of the agreements to the Chairman of the Senate Foreign Relations Committee;

25X1

2.  review by the Chairman, the Ranking Minority Member and the Chief of Staff of the full Committee;

25X1

3.  identifying the Senate Select Committee on Intelligence as the secure repository for the agreements;

25X1

4.  notification of all Senate Foreign Relations Committee Members (16 in number) of receipt of the agreements under an injunction of secrecy and the availability of the Chief of Staff to brief the Committee Members on it; and

25X1

5.  an understanding that any access to the information to members not on the Committee would require relief from the conditions imposed by the State Department letter, referred to above.

State Department review completed

OGC Has Reviewed

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C. House

25X1 [ ] Comparable procedures have not been achieved in the House so far. The President has directed continued discussion by representatives of the DCI and State to establish them. Failure to conclude satisfactory arrangements would clearly require a report back to the President because the consequences involve Presidential judgment either under the Case Act or under constitutional prerogatives. Consequently, it would be completely inappropriate to execute an agreement which must be reported to the Department of State 20 days after signature and to the Congress or specified committees 60 days after entering into force before either being assured that the security of the House procedures meet the Presidential standards or, if that is not possible, the President is advised of that fact so that he can exercise his options.

D. Approach to the House

25X1 [ ] Although the leadership of the House International Relations Committee is amenable to working out secure arrangements, pressure from Members of the full Committee restricts the leadership's ability to conclude an arrangement comparable to that worked out with the Senate, and reaching an accommodation via negotiations may require, the support of the Speaker. The case could be put to the Speaker in the first instance by the DCI and the Secretary of State, or his designee. The case would stress that the law provides the President with authority to be assured of the secure handling of such sensitive information, the wishes of the Executive Branch to report the information and the need for a clear understanding with the House leadership of how the material is to be handled before it is reported. The recommendation on the secure procedures to be followed would parallel those already established with the Senate Foreign Relations Committee. Should it be necessary, the matter could be elevated for discussions between the President and the Speaker.

25X1 E. [ ] Complications/Opportunities because of the existence of both a cover and classified agreement:

25X1 [ ] Option 1 - Report neither agreement under the theory that the driving agreement is the classified agreement which is itself unreportable because it preexisted

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the Case Act (a very weak case from a legal standpoint and could cause consternation as the new cover agreement will be a matter of public knowledge abroad).

25X1  Option 2 - Transmit the unclassified portion of the agreement to both Houses. Inform the chairmen of both foreign affairs committees of the underlying agreement which preexisted the Case Act, that it involves sensitive matters, that we wanted to let them know that and what it is, but this is not a legal requirement under the Case Act. (Probably assailable on legal grounds because the classified agreement makes reference to the unclassified agreement. Moreover, it could cause consternations as establishing precedent for the Executive to report only cover agreements, not classified agreements, when the two exist.)

25X1  Option 3 - Transmit the cover agreement to both Houses and transmit the classified agreement to the Senate Foreign Relations Committee under current procedures. Inform the Chairman and Ranking Minority Member of the House International Relations Committee of the existence of the classified agreement and the desire to transmit it but only after secure procedures have been arranged, including the possibility of limiting the briefings to less than the full (37) membership of the Committee.

25X1  Option 4 - Transmit the cover agreement to both Houses and the classified agreement to both Committees under comparably secure procedures.

25X1  The pending international agreement is the first instance where both a cover and a classified international agreement are involved. On the one hand, this raises the question of the obligation of witting Members of the Congress and the Executive Branch to inform an inquiring Member of the existence of the classified agreement. On the other hand, the Case Act itself authorizes restricted reporting to the Congress where the President determines the nation's national security would be prejudiced and by providing the President with the authority to impose an "appropriate" injunction of secrecy, the Act appears to empower the President to distinguish between members of the foreign affairs committees and other Members of Congress. In either event, the Speaker and the President Pro Tem, who would be the addressee recipients of the cover agreement, should be informed of at least the existence of the underlying classified agreement. These two congressional officers should also be advised, and hopefully will assent, to the procedures to be followed within their respective bodies.



Public Law 92-403  
92nd Congress, S. 596  
August 22, 1972

### An Act

86 STAT. 619

To require that international agreements other than treaties, hereafter entered into by the United States, be transmitted to the Congress within sixty days after the execution thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 1, United States Code, is amended by inserting after section 112a the following new section:

“§ 112b. United States international agreements; transmission to Congress

“The Secretary of State shall transmit to the Congress the text of any international agreement, other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President.”

Sec. 2. The analysis of chapter 2 of title 1, United States Code, is amended by inserting immediately between items 112a and 113 the following:

“112b. United States international agreement; transmission to Congress.”

Approved August 22, 1972.

U. S. international agreements other than treaties. Transmittal to Congress. 64 Stat. 980.

#### LEGISLATIVE HISTORY:

HOUSE REPORT No. 92-1301 (Comm. on Foreign Affairs).  
SENATE REPORT No. 92-591 (Comm. on Foreign Relations).  
CONGRESSIONAL RECORD, Vol. 118 (1972):  
Feb. 15, considered and passed Senate.  
Aug. 14, considered and passed House.



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FROM TOP SECRET ATTACHMENTS  
DEPARTMENT OF STATE

Approved For Release 2004/01/20 : CIA-RDP90-00610R000200080042-2

Washington, D.C. 20520

September 14, 1977

*All attachments  
a green*

Dear Mr. Chairman:

The accompanying copies of two agreements between CIA and foreign governments, effected by memoranda dated 1 April 1974 and 5 December 1974, are transmitted to you under an injunction of secrecy pursuant to 1 U.S.C. 112b concerning transmittal of international agreements to Congress. That section provides that

" . . . any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President."

Pursuant to arrangements worked out with Mr. Norvill Jones, Staff Director of your Committee, it is understood that the procedures set forth below for handling the enclosed documents will constitute the appropriate injunction of secrecy as mentioned above:

1. The documents will be reviewed by you and Senator Case, the Ranking Minority Member. Staff access to these documents and information will be limited to Mr. Jones, Staff Director.

The Honorable

John J. Sparkman, Chairman,  
Committee on Foreign Relations,  
United States Senate.

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2. The documents will then be transmitted immediately to the Senate Select Committee on Intelligence. The Senate Select Committee on Intelligence will be the custodian of the documents in accordance with procedures agreed to by the Director of Central Intelligence for the handling of sensitive intelligence information.

3. A notice will then be sent by you to all members of the Foreign Relations Committee stating that the Committee has received two sensitive agreements pursuant to the requirements of the above referenced law and if any member so desires, he may be briefed thereon by the Staff Director, Mr. Jones.

Sincerely,



Douglas J. Bennet, Jr.  
Assistant Secretary for  
Congressional Relations

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