

SENATE UNIT ACTS ON SECRECY ISSUE

JUL 30 1971

Fulbright Group Invokes '61 Act to Obtain Pentagon's Long-Range Aid Plans

JUL 29 1971

By JOHN W. FINNEY

Special to The New York Times

WASHINGTON, July 29 —

The Senate Foreign Relations Committee, countering what it considers secrecy in the executive branch, has moved to suspend all foreign military aid unless the Defense Department supplies its five-year plans for the military assistance program.

In effect, the Senate committee is challenging the right of the Defense Department or any other executive agency to withhold documents on any ground short of a claim of executive privilege by the President.

The result could be the clearest test of the executive branch's right to withhold information from Congress since the Eisenhower Administration refused to supply information demanded by Senator Joseph R. McCarthy.

By a vote of 15 to 0, the committee invoked a little-noticed provision in the 1961 Foreign Assistance Act to force the confrontation with the Government over the right of the executive branch to withhold information from Congress.

The provision in the 1961 act, which is the basic authority for military and economic aid programs, specifies that spending for a foreign aid activity will be suspended if within 35 days the executive branch has not

Continued From Page 1, Col. 5

supplied a document requested by a Congressional committee or the General Accounting Office.

The cutoff of funds does not go into effect if, during that period, the President forbids the documents to be furnished to a Congressional committee and gives his reason for so ordering.

Senator J. W. Fulbright, chairman of the Foreign Relations Committee, sent a letter to Secretary of Defense Melvin R. Laird notifying him that the committee was formally requesting the five-year plans and was invoking the 35-day cutoff provision in the foreign aid act.

In more than two years of repeated requests by the Senate committee and the General Accounting Office — the investigating watchdog agency of Congress — the Defense Department has refused to supply the five-year plans on the ground that they were regarded as a "tentative planning document."

The committee decided yesterday to force the issue. It withheld a disclosure of its action until the Fulbright letter could reach Mr. Laird today.

According to committee members, the unanimous vote included the ballot of Senator Hugh Scott, the Senate Republican leader. The action reflected the frustration within the committee over what its members regard as the excessive secrecy of the executive branch.

Issue Began in Mid-1969

Since the issue began to develop in the middle of 1969, the Defense Department has refused to supply the committee with such documents as the Pentagon study on the Vietnam war, a command-and-con-

trol study on the Tonkin Gulf incident and the five-year plan for the military assistance program.

At no point has the Defense Department invoked the concept of executive privilege in refusing to supply the documents. Rather it has said that the documents were "privileged" or would be "inappropriate" or "contrary to the national interest."

The Defense Department now appears faced with a choice of either providing the documents within 35 days or facing a cutoff of funds for its billion-dollar military aid program.

The President could avert the choice by certifying that he has forbidden the documents to be furnished. But in so doing he would be relying upon the concept of executive privilege, which he has assured Congress would be "very narrowly construed" by his Government. Furthermore, in relying upon executive privilege, he would tend to vitiate other reasons that have been used by executive agencies for refusing to supply information to Congress.

Testimony on Secrecy Bill

Meanwhile, former Secretary of State Dean Rusk and a former Assistant Secretary of State, William P. Bundy, expressed reservations about an antisecrecy bill proposed by Senator Fulbright as another approach to compel the executive branch to provide information to Congress.

The bill would require an official, when summoned, to appear before a committee and to testify unless the President forbade him to do so on the basis of executive privilege. Senator Fulbright is also proposing to cut off funds for any agency if an agency official does not appear before a committee within 60 days, either to testify or to invoke executive privilege.

Testifying before a Senate judiciary subcommittee, Mr. Rusk said the Fulbright approach could lead to a Constitutional impasse. He asserted the "Government could freeze up overnight" if Congress started using the policy of cutting funds to force testimony.

The problem of communications, he said, is one that should be handled on "the basis of comity and cooperation."

Mr. Bundy acknowledged that Congress "does not obtain nearly as much information as it should" and that members of the executive branch were relying upon executive privilege in "an unjustified manner." But he questioned the desirability of legislation that could force Presidential advisers to appear before a committee or compel the disclosure of staff-level deliberations.

W. Averell Harriman, former ambassador, told the subcommittee that "congress is entitled to more information than it has sometimes received." But he added:

"Clearly the President does have the right, indeed the duty, to protect his constitutional responsibility by withholding information from Congress which he considers may impair the functioning of the executive or the interests of our nation.

"Striking a balance between these two conflicting requirements is difficult, and I do not see how it can be done by definitive rules."

Continued on Page 3, Column 1