



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 05 2017

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice ("the Department") on the amendment in the nature of a substitute to H.R. 1644, the "Korean Interdiction and Modernization of Sanctions Act." The bill raises several constitutional issues.

Several provisions of the bill purport to require the President to disclose to the Congress information that may include national security information or the content of diplomatic communications, including:

- Section 104 would require the President to submit a report to the Congress identifying the operators of foreign sea ports and airports that have knowingly engaged in certain activities related to North Korea; describing the extent to which certain UN Security Council resolutions ("UNSCRs") have been implemented by other countries; describing Iran's compliance with sanctions set out in certain UNSCRs; identifying vessels, aircraft, and conveyances owned or controlled by the Reconnaissance General Bureau of the Workers' Part of Korea; and describing the President's diplomatic and enforcement efforts to ensure full implementation of certain UNSCRs.
- Section 106 would require the President to report to the Congress on the cooperation between Iran and North Korea on certain weapons programs, the names of any Iranian or North Korean persons that have been involved in such programs, and a determination whether these activities violate UNSCR 2231.
- Section 108 would require the President to provide briefings to the Congress that include a list of each person or foreign government that the President has identified that provides specialized financial messaging services to North Korean financial institutions designated under an UNSCR; and a detailed assessment of the status of the efforts of the Secretary of the Treasury to work with relevant authorities in the home jurisdictions of such specialized financial messaging providers to end such provision.

The Honorable Bob Corker

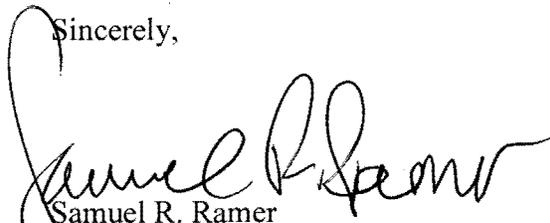
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These provisions potentially intrude upon the President's constitutional authority to maintain the confidentiality of diplomatic communications or national security information. See *Whistleblower Protections for Classified Disclosures*, 22 Op. O.L.C. 92, 94-95 (1998) ("Indeed, Presidents since George Washington have determined on occasion, albeit very rarely, that it was necessary to withhold from Congress, if only for a limited period of time, extremely sensitive information with respect to national defense and foreign affairs."); Memorandum from John R. Stevenson, Legal Adviser, Department of State, and William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: The President's Executive Privilege To Withhold Foreign Policy and National Security Information* at 7 (Dec. 8, 1969) ("It is therefore concluded that the President has the power to withhold from the Senate information in the field of foreign relations or national security if in his judgment disclosure would be incompatible with the public interest."). Although, in practice, presidents have tried whenever possible to provide information to the Congress that will assist it in the performance of its legislative duties, they have consistently reserved the right not to disclose national security information and diplomatic communications outside the Executive Branch, and the Congress has historically acknowledged this right.

We do not recommend that the reporting requirements be deleted or amended, because they are constitutional on their face and we believe that decisions to withhold particular national security or diplomatic information from the Congress are best made through case-by-case accommodation. Were H.R. 1644 to become law, we would construe these reporting requirements consistently with the President's constitutional authority to protect the confidentiality of sensitive national security information and diplomatic communications.

Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,



Samuel R. Ramer
Acting Assistant Attorney General

cc: The Honorable Benjamin L. Cardin
Ranking Member