

4/16/99

SECTIONAL ANALYSIS OF EXECUTIVE ORDER

Overview.

Prior to the recent amendments to E.O. 12163, section 1-101 of E.O. 12163 delegated to the Director of the International Development Cooperation Agency (IDCA) most functions related to economic assistance that are vested in the President by the Foreign Assistance Act of 1961, and certain other legislation, unless those functions were reserved to the President or delegated to another agency head. The Foreign Affairs Reform and Restructuring Act of 1998 ("the Act") and the President's reorganization plan abolish IDCA. The Act also creates the United States Agency for International Development (USAID) as a statutory agency, with its Administrator under the direct authority and foreign policy guidance of the Secretary of State.

Pursuant to the President's reorganization plan, and in furtherance of the Act, E.O. 12163 is amended by E.O. 13118 to reflect the abolishment of IDCA and the direct line relationship between the Secretary of State and the Administrator of USAID. Under E.O. 12163 as now amended, functions vested in the President as they pertain to economic assistance are delegated to the Secretary of State. As described in the President's reorganization plan, the Secretary has delegated to the Administrator the functions and authorities needed for USAID to carry out its mission. This delegation is reflected in the basic State Department Delegation of Authority 145. Section 2(a)(1) of the Delegation delegates to the USAID Administrator "the functions conferred upon the President by part I of the Act (including chapter 4 of part II of the thereof), together with all those functions contained in the Act that may be necessary or appropriate to carry out such functions". In short, USAID has the same authorities to manage, implement, and administer economic assistance programs as it did prior to the reorganization coming into effect. The primary difference being that instead of those authorities being derived by delegation from the President, they are now derived by delegation from the Secretary of State.

Agreements between the Department of State and USAID on coordination and review procedures can be accommodated within this Executive Order and Delegation of Authority framework and are currently under discussion.

Section 1.

New section 1-100 of the E.O. replaces the existing section 1-101. Subsection (a)(1) delegates to the Secretary of State, exclusive of functions otherwise delegated by the Order or reserved to the President, all functions conferred upon the President by the Foreign Assistance Act of 1961 (the "FAA"). Functions relating to the New Independent States of the Former Soviet Union (chapter 11 of part I of the FAA) and the Enterprise for the Americas Initiative (part IV of the FAA) are the subject of separate Executive Orders, although some modifications to NIS authorities are included in this Executive Order. In addition, a separate Executive Order is being drafted to delegate functions under a new part V of the FAA relating to debt forgiveness for countries with significant tropical forest resources.

Title I of the FAA authorizes the provision of economic assistance programs including Development Assistance, International Disaster Assistance, International Narcotics Assistance, voluntary contributions to international organizations and programs, and assistance for the former Soviet Union.

Title II of the FAA authorizes the provision of assistance for security programs including the Economic Support Fund, International Military Education and Training, Voluntary Peacekeeping programs, and Anti-Terrorism.

Title III of the FAA contains a number of authorities and restrictions on the provision of assistance including provisions that require the President to make certain determinations and others that provide the President with authority to waive provisions of law. This title also contains administrative provisions and the authorizations of appropriations for USAID's operating expenses and for the Trade and Development Agency.

Currently, E.O 12163 makes specific delegations of authority to the Secretary of State with regard to certain programs such as International Narcotics Control and

Peacekeeping Operations. In the amendments made to the Executive Order it is unnecessary to repeat these specific delegations since all functions are vested in the Secretary of State unless otherwise delegated.

New section 1-100(a)(1) delegates functions to the Secretary of State that are identical to functions currently delegated to the Secretary by E.O. 12163 regarding certain military functions.

New section 1-100(a)(2) delegates to the Secretary of State the function under section 1205(b) of the International Development Cooperation Act of 1985 to submit an annual report to Congress on certain economic conditions in Egypt, Portugal, Israel, and Turkey. This is a change from the previous delegation.

New sections 1-100(a)(3) through (5) delegate functions to the Secretary of State that are identical to functions previously delegated to the Secretary by E.O. 12163.

New section 1-100(a)(6) delegates to the Secretary of State the function under the third proviso under the heading "Development Assistance" in title II of the FY 1999 Foreign Operations Appropriations Act (as included in P.L. 105-277). This provision requires that no funds be made available to any organization or program which, as determined by the President, supports or participates in a program of coercive abortion or involuntary sterilization. By Memorandum delegation dated February 16, 1995, the Secretary of State has been delegated this authority with regard to programs administered by the Department of State. This function is delegated by the Secretary to the Administrator of USAID with regard to programs USAID administers by State Department Delegation of Authority 145.

New section 1-100(a)(7) delegates to the Secretary of State the authority contained in section 572 of the Foreign Operations Act for FY 1989 to determine that debt relief for certain countries would be in the national interest of the United States. The USAID Administrator currently exercises this authority. This authority is delegated by the Secretary to the Administrator by State Department Delegation of Authority 145.

New section 1-100(a)(8) delegates to the Secretary of State certain functions under the Foreign Operations Act for FY 1999 (as included in P.L. 105-277) as follows:

- Section 508. The President's functions under this section were previously delegated to the Secretary of State. This section bars assistance to a country whose duly elected head of government is deposed by military coup. Assistance may be resumed if the President determines that a democratically elected government has taken office.
- Section 517. Section 517(a) prohibits assistance to the government of a new independent state if that government directs any action in violation of the territorial integrity of any other new independent state. The President may waive this restriction if he determines it is in the national security interest to do so. Section 517(h) prohibits assistance to the Government of the Russian Federation, 180 days after date of enactment of the Act, and until agreement has been reached that assistance will not be subject to taxation. Notwithstanding this prohibition, assistance may be provided if the President makes a specified determination.
- Section 518. This section prohibits economic assistance to a country or organization if the President certifies that the use by such country or organization would violate any of a number of specified prohibitions relating to abortion and involuntary sterilization. The USAID Administrator currently exercises the authority. This authority, insofar as it pertains to programs administered by USAID, is delegated by the Secretary to the Administrator by State Department Delegation of Authority 145.
- Section 528(a). This section prohibits assistance to any country the government of which has been determined by the President to support international terrorism.
- Section 535. This section prohibits assistance to any country that is not in compliance with United

Nations sanctions against Iraq unless the President makes the specified determination.

- Section 539. This section prohibits the use of any funds to modify or remove any sanction, prohibition or requirement with regard to Serbia-Montenegro unless the President makes the specified certification.
- Section 544. This section permits assistance to be provided notwithstanding earmarks of funds for a base rights or base access country if the President determines that such country has significantly reduced its military or economic cooperation with the United States.
- Section 561. This section restricts assistance to the central government of Haiti unless the President makes the specified report.
- Section 563. This section prohibits a voluntary contribution to the United Nations unless the President certifies that the UN is not engaged in any effort to implement or impose any taxation on United States persons.
- Section 572. This section prohibits assistance to the government of the Russian Federation after 180 days from date of enactment, unless the President determines that the government has not implemented any law or regulation that would have as its principal effect discrimination against religious groups.
- Section 574. This section requires the withholding of 5 percent of the assistance allocated to any country that has been determined by the President to have violated any UN sanction against Libya. The President may waive this limitation if he determines that it is in the national security interest of the United States to do so.
- Section 575. This section prohibits assistance to the central government of the Democratic Republic of Congo until the President makes the specified report to the Congress.

- Section 585. This section requires the President to submit a report on the U.S. Government's assessment of Iraq's nuclear and other weapons of mass destruction.
- Section 594. This section requires the President to notify the Congress before exporting to any specified country any lethal defense article or service in the amount of \$14 million or dollars.

New section 1-100(a)(9) delegates to the Secretary of State, in consultation with the Secretary of the Treasury, the authority contained in section 523 of the Foreign Operations Appropriations Act for FY 1999 to determine that withholding indirect assistance to certain countries is contrary to the national interest of the United States.

New section 1-100(a)(10) delegates to the Secretary of State the authority contained in section 551 of the FY 1999 Foreign Operations Appropriations Act to determine, and so report to the Congress, that it is important to the national interest of the United States to provide assistance to a country the government of which has been determined by the Secretary to be a terrorist government.

New section 1-100(a)(11) delegates to the Secretary of State the authority contained in section 591 of the FY 1998 Foreign Operations Appropriations Act to implement, and make certain determinations regarding, the "Development Credit Authority". These functions are delegated by the Secretary to the USAID Administrator by State Department Delegation of Authority 145.

New section 1-100(a)(12) delegates to the Secretary of State the authority contained in section 821(b) of the Western Hemisphere Drug Elimination Act (as contained in P.L. 105-277) to make a determination to allow counternarcotics assistance to be provided to Colombia.

New section 1-100(b) provides that in exercising functions under section 653 of the FAA, to report to the Congress on country allocations of appropriated funds, the Secretary is to consult with the Secretary of Defense insofar as the report relates to functions administered by the Department of Defense.

New section 1-100(c) provides that functions contained in sections 239(f), 620(e), 620(g), 620(j), 620(q), and 620(s) of the FAA are to be exercised in consultation with the Administrator of USAID. Previously, the Executive Order stated that these functions were to be exercised in consultation with the Director of IDCA.

New section 1-100(d) provides that the Secretary (vice the International Communication Agency) will perform all public information functions abroad with respect to the foreign assistance, aid, and development programs of the United States Government, to the extent that these functions are not vested by statute in another officer.

New subsection 1-100(e) provides that the Secretary may redelgate to any officer or agency of the Executive Branch functions delegated to the Secretary by this Order.

Section 2.

New section 1-200 addresses certain authorities and functions of the United States Agency for International Development.

New section 1-100(a) states that USAID is an independent establishment within the Executive Branch. Subsection (a) also states that any reference in law to the "agency primarily responsible for administering part I" of the FAA, or to the Administrator of such agency, will be deemed to be a reference to USAID or to the Administrator of USAID, as appropriate. There are numerous references in the FAA to the "agency primarily responsible for administering" part I, or "this part", of the FAA. At the time of enactment, USAID was not a statutory agency and Congress made reference to USAID in this manner without specifically referring to it by name. It was understood that this language was, in fact, a reference to USAID. With the establishment of USAID as a statutory agency, it is appropriate to clarify the references to the "agency primarily responsible for administering" part I of the FAA.

New subsection (b) states that an Administrator appointed pursuant to section 624(a) of the FAA will head USAID.

New subsection (c) states that the officers provided for in section 624(a) of the FAA are to serve in USAID.

New subsection (d) states that the Office of Small Business provided for in section 602(b) of the FAA is to be in USAID.

New subsection (e) states that, to the extent practicable, the Administrator is to exercise functions relating to Foreign Service personnel in a manner that will assure maximum compatibility among agencies authorized to use the Foreign Service personnel system. To this end, the Administrator is to consult regularly with the Secretary of State.

Section 3.

Section 3 amends Executive Order 12163 by making certain technical changes to section references contained in section 1-301 military assistance functions.

Section 4.

Section 4 amends Executive Order 12163 by revoking part 1-4 of the Order. Part 1-4 established the Institute for Scientific and Technological Cooperation (ISTC) and a related council. ISTC, a component of IDCA, never functioned and the Congress specifically prohibited the use of funds to establish ISTC.

Section 5.

Section 5 amends part 1-5 of E.O. 12163.

Section 1-501(c) of E.O. 12163, is amended by this Order to provide that the Secretary of the Treasury is to consult with the Secretary of State in carrying out functions under section 305 of the FAA to take into account the extent to which an international financial institution is encouraging the integration of women into national economies.

Section 1-504 of E.O. 12163 is revoked effective October 1, 1999.

Section 1-505 of E.O. 12163 is amended by this Order to provide the Director of the Trade and Development Agency with the authority to transmit to Congress an annual report of TDA's operations.

Section 1-505 of E.O. 12163 had established a Development Loan Committee. The DLC, established pursuant to section 122(e) of the FAA, no longer exists and there is no intention of reestablishing it.

Section 1-506 of E.O. 12163 is revoked by this Order. Section 1-506 established the Development Coordination Committee. The DCC, established pursuant to section 640B of the FAA, for some time has not been a functioning entity.

Section 6.

Section 6 amends part 1-6 of E.O. 12163.

Section 1-602 of E.O. 12163 is amended by this Order by deleting a reference to the Director of IDCA and inserting reference to the Secretary of State in lieu thereof. The amendment would provide to the Secretary, vice the Director, authorities under section 625(d)(1) to permit non-foreign affairs agencies to use the Foreign Service personnel system.

Section 1-604 of E.O. 12163 is amended by this Order by deleting reference to ISTC and to a repealed provision of law.

Section 7.

Section 7 amends part 1-7 of E.O. 12163. Part 1-7 deals with the functions and authorities reserved to the President.

Section 1-701(a) of E.O. 12163 is amended by this Order by:

- (1) Deleting reference to FAA section 662(a). This section has been repealed; and
- (2) Inserting FAA section 493, conforming the Executive Order to the current practice of having the President designate an international disaster assistance coordinator.

Section 1-701(b) is revoked. This deletes outdated reservations of authority with regard to ISTC.

Section 1-701(c) (as redesignated by this Order):

- (1) Inserts reference to section 209(d) of the FAA. By making this change, the authority to use FAA part I funds (including Development Assistance, Disaster Assistance, Narcotics assistance, International Organizations and Programs assistance, ESF and Treasury Technical Advisors funds) to capitalize Multilateral Development Banks would be reserved to the President.
- (2) Deletes reference to section 481 and inserts in lieu thereof section 490 of the FAA. This provides authority to the President to make determinations regarding a country's cooperation with the United States on narcotics control issues. This change is necessary to reflect amendments made to the FAA and has no substantive impact.
- (3) Deletes reference to sections 669(b)(1), 670(a), 670(b)(2), and 670(b)(3) of the FAA. These provisions, the so-called Glenn-Symington amendments, were deleted from the FAA and similar provisions were included as sections 101 and 102 of the Arms Export Control Act.
- (4) Deletes reference to section 131 of the International Security and Development Cooperation Act of 1985. This function has been performed and requires no further action by the Executive Branch.

Section 1-702 is amended by striking references to the Director of IDCA and IDCA and inserting in lieu thereof the Secretary of State and the Department of State. This section, as amended, provides that functions conferred upon the President by subsequent amendments to the FAA are delegated to the Secretary only insofar as they do not related directly and necessarily to the conduct of programs that either the President or an agency other than the Department of State is authorized to administer pursuant to express reservation or delegation of authority contained in this or another Executive Order.

New section 1-703 is included to restate and clarify the role of OMB with regard to budget and policy coordination functions.

Section 8.

Section 8 amends part 1-8 of E.O. 12163. Part 1-8 deals with the apportionment of funds made available to carry out the provisions of the FAA.

E.O. 12163 is amended by adding a new section 1-800 in lieu of the existing sections 1-801 and 1-802. Under section 1-801, the Director of IDCA received allocations (i.e., apportionments from OMB) of all funds appropriated to carry out the FAA, including funds appropriated for the Economic Support Fund, except funds appropriated for—

- (1) narcotics assistance, voluntary peacekeeping, and anti-terrorism assistance which are allocated (apportioned) to the Secretary of State, and
- (2) international military education and training (IMET) and Military Assistance Program (MAP) assistance which are allocated (apportioned) to the Secretary of Defense.

Under the new section 1-800, except for IMET and MAP, the Secretary of State is to receive allocations (i.e., apportionments) of all funds appropriated to carry out the provisions of the FAA and the Support for Eastern Europe (SEED) Act. This also includes funds appropriated under the heading "Nonproliferation, Anti-Terrorism, Demining, and Related Programs" contained in annual and other appropriations acts. IMET and MAP appropriations are allocated to the Secretary of Defense. The FY 1999 foreign assistance appropriations act amended the FAA to add a new section 129 authorizing the Secretary of the Treasury to provide technical assistance overseas. Funds appropriated for this purpose are allocated to the Secretary of the Treasury. The Secretary of State, the Secretary of Defense, and the Secretary of the Treasury may allocate these funds to the heads of other agencies.

The Secretary has delegated this function insofar as it applies to Development Assistance, ESF, International Disaster Assistance, NIS, SEED, and USAID and USAID/IG operating expenses to the USAID Administrator by State Department Delegation of Authority 145. The authority to seek and receive apportionments for International

Organizations and Programs, previously vested in IDCA/USAID, is retained by the Secretary.

Section 9.

Part 1-9 of E.O. 12163 is amended by revoking sections 1-903(c) and 1-903(d) which contain references to IDCA and ISTC functions.

Section 10.

Section 10 of E.O. 13118 contains amendments to other Executive Orders that delegate functions to the International Development Cooperation Agency.

E.O. 12884 is amended to delete reference to IDCA and insert in lieu thereof the Secretary of State. As amended, the E.O. would delegate to the Secretary the authority to provide assistance under section 498 of the FAA to the former Soviet Union, notify the Congress if funds made available for program purposes are transferred for use as USAID operating expenses, and to submit reports to Congress on the obligation and expenditure of such assistance funds. Authorities USAID currently exercises are redelegated by the Secretary of State to the Administrator of USAID by State Department Delegation of Authority 145.

E.O. 12703 is amended to delegate to the Secretary of State (vice USAID) the authority to designate Enterprise Funds in Eastern and Central Europe.

E.O. 12599 is revoked. This Executive Order established an inter-agency coordinating committee for sub-Saharan Africa with the USAID Administrator as the chair.

E.O. 12293 is amended to delete reference to IDCA and to insert in lieu thereof USAID. This Executive Order delegates certain authorities under the Foreign Service Act and provides for participation on the Board of the Foreign Service. USAID would be represented vice IDCA.

E.O. 12301 is amended to delete reference to IDCA and to insert in lieu thereof USAID. This Executive Order provides for the participation of agencies on an interagency Council on Integrity and Efficiency in Federal programs. USAID would be represented vice IDCA.

E.O. 12188 is amended to delete reference to IDCA and to insert in lieu thereof USAID. This Executive Order provides for the participation of agencies on an interagency Trade Policy Committee. USAID would be represented vice IDCA.

E.O. 12188 is amended by substituting USAID for IDCA on the Trade Policy Committee.

E.O. 12260 is amended to delete reference to IDCA and to insert in lieu thereof USAID. This Executive Order designates the agencies to which the General Agreement on Government Procurement (GATT, 1979) applies.

E.O. 11958 is amended to delete reference to IDCA and to insert in lieu thereof USAID. This Executive Order delegates functions under the Arms Export Control Act and requires consultation with specified agency heads. USAID would be substituted for IDCA and would be consulted on matters pertaining to its area of responsibility.

E.O. 11269 is amended to delete reference to IDCA and to insert in lieu thereof USAID and the Department of State, as appropriate. Section 1(b) of the Executive Order is amended to substitute USAID for IDCA as a member of the National Advisory Council on International Monetary and Financial Policies. Sections 4 and 7 of the Executive Order are amended to delegate to the Secretary of State the function of advising the Secretary of the Treasury and the U.S. representatives to international financial institutions on development aspects of matters relating to those institutions and their activities. These functions have been delegated to USAID Administrator by State Department Delegation of Authority 145.

E.O. 11223 is amended to delete reference to IDCA and to insert in lieu thereof USAID. This Executive Order permits the amendment of contracts with or without consideration.

The Memorandum delegation to the Secretary to submit a windup plan for enterprise funds pursuant to section 577 of the FY 1999 Foreign Operations Appropriations Act is amended to delegate this authority with regard to all enterprise funds, not only those in the former Soviet Union and Eastern Europe. The authority to submit such a plan with regard to Development Assistance-funded (including Development Fund for Africa) money is delegated to the

Administrator of USAID by State Department Delegation of
Authority 145.