

Agency for International Development  
Washington, D.C. 20523

PD-ABF-263

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ACTION MEMORANDUM FOR THE ACTING DEPUTY ASSISTANT ADMINISTRATOR  
BUREAU FOR EUROPE AND NEAR EAST

FROM: ENE/PDP, Len M. Rogers, Acting Director  
ENE/EUR, Jock Conly, Acting Director

*Len M. Rogers*

SUBJECT: Rule of Law Project (180-0020)  
Request for Authorization

Issue: We request your authorization of up to \$750,000 in grant funds for the East European Regional Rule of Law Project (180-0020) for activities to foster democratic pluralism. We intend to allocate the entire \$750,000 to USIA to assist Central and Eastern European countries in developing and strengthening laws, regulations, legal practices, policies, and legal institutions to further the establishment and enforcement of civil, political, economic, social, cultural, and other human rights and freedoms. This assistance will consist primarily of training and technical assistance as a means to help Central and Eastern European countries protect and guarantee those rights. The Project Assistance Completion Date (PACD) will be three (3) years from the date of this authorization.

Background: The communist tradition of Central and Eastern European countries is marked by an absence of legal rules properly safeguarding individual rights and delineating the limits of government power. For example, these countries have historically lacked an independent judiciary with the power and will to enforce such rules. Unless a society is governed by the rule of law, there can be no guarantee that an individual's basic human rights will be respected. Nor can a democratic system function properly if there are no binding legal rules that limit the authority of a duly elected government. Even where constitutional and legal rules establish valid limits of governmental and individual conduct, such rules are meaningless unless there is a reliable and responsive means of ensuring their enforcement.

Discussion: This project was reviewed and approved by the inter-agency committee on January 4, 1991. The Inter-Agency Agreement with USIA, the Project Memorandum (Green Paper), the minutes of the review meeting, the Project Decision Paper (White Paper), and the Initial Environmental Determination are attached (Attachments A, B, C, D, and E). The project will assist Central and Eastern European countries in developing and strengthening laws, regulations, legal practices, policies, and legal institutions (particularly an independent judiciary). These activities should further the establishment and enforcement of civil, political, economic, social, cultural, and other human rights and freedoms. Guidance in writing or revising constitutional, criminal, and

civil laws protecting human rights and freedoms in Central and Eastern Europe will be provided. Activities may take a number of forms, such as technical assistance in drafting legislation; training (in the U.S. or abroad) for key Central and Eastern European legal reformers and members of the judiciary; legal exchanges; and assistance in the development of judicial administration procedures. The project will chiefly involve work with the governments of Central and Eastern Europe and is intended to respond to the needs and priorities of the countries in that region.

Funds will be allocated to USIA through an inter-agency allocation pursuant to section 632(a) of the Foreign Assistance Act. The Project will be implemented by USIA with the concurrence of the Bureau of Human Rights and Humanitarian Affairs of the U.S. Department of State (BHRHA). USIA will establish a new program to be called the Rule of Law Program. The program would be authorized to engage in Rule of Law activities directly or through grants or contracts. In order to maximize cooperation and coordination among the various agencies with an interest in the Rule of Law Project, an inter-agency working group, including a representative from A.I.D., will be established and will meet regularly to review progress and to set priorities. The working group will be jointly chaired by a representative of USIA and a representative of the Bureau of Human Rights and Humanitarian Affairs and will include representation from the Office of the Special Advisor for Eastern European Assistance, the Department of Justice, and A.I.D.

Implementing Details:

a) Congressional Notification: The CN for the Rule of Law project was submitted on January 18, 1991, and it cleared on February 2, 1991.

b) Host Country Duties/Taxes: A.I.D. will seek to ensure that A.I.D. funds are not used to pay host country duties or taxes. A.I.D. anticipates concluding bilateral agreements in the near future with Central and Eastern European governments which will, inter alia, provide such exemption for A.I.D.-financed goods and services. Until such agreements are in place, however, this matter will be handled on an ad hoc basis.

c) Environmental Determination: This project qualifies for a categorical exclusion because it supports the development of a rule of law in Central and Eastern Europe through education, technical assistance, and training, activities which are generally categorically excluded from environmental examination under 22 CFR 216 Environmental Procedures in Sections 216.2 (c)(1)(i) and 216.2 (c)(2)(i). An Initial Environmental Examination Determination is included as Attachment E.

d) Source/Origin/Nationality: Pursuant to the 632(a) inter-agency allocation to USIA, USIA will follow its established

procurement regulations. And, where possible, USIA shall procure or obtain goods and services whose source, origin, or nationality is the United States, or as shall be otherwise designated by A.I.D.

e) Evaluation: This project will be evaluated directly by USIA in accordance with the terms of the inter-agency allocation (Attachment A), by the Office of the Special Advisor for Eastern European Assistance to the Deputy Secretary of State, by A.I.D. or by independent evaluators selected by A.I.D. The entire project will be formally reviewed by an inter-agency group no less than once each fiscal year.

f) Audit: The inter-agency allocation to USIA contains a clause which provides that the A.I.D. Inspector General will ensure that the project is audited in full compliance with the provisions of the Inspector General Act of 1978.

g) Reports: USIA will submit to A.I.D. monthly financial and semi-annual narrative program reports on the progress of project activities as specified in the inter-agency allocation.

h) Monitoring: ENE/TR/HR/DPI will monitor project progress through review of project reports, periodic meetings with USIA, and the formal inter-agency review meeting mentioned under the evaluation section above.

Authority: Chapter 1, Part I of the Foreign Assistance Act of 1961, as amended, and Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991.

Recommendation: That you a) authorize up to \$750,000 to fund the subject project with a PACD of three years from the date of this authorization under the terms and conditions described herein and in Attachments hereto and b) approve the Initial Environmental Examination at Attachment E.

Approved: 

Disapproved: \_\_\_\_\_

Date: 3-28-91

**Attachments:**

- A. Draft Inter-Agency Agreement with USIA
- B. Project Memorandum (Green Paper)
- ~~C. Minutes of the Inter Agency Review Meeting~~
- ~~D. Project Decision Paper (White Paper)~~
- ~~E. Initial Environmental Examination Determination~~

Clearances:

|                         |                        |      |                |
|-------------------------|------------------------|------|----------------|
| SA/AA/ENE: L.Cheney     |                        | Date |                |
| ENE/TR/DPI: G.Hyman     | <i>Arnold Hyman</i>    | Date | <i>3/24/91</i> |
| ST/HA: A.Schwartz       | <i>Arnold Schwartz</i> | Date | <i>3/24/91</i> |
| ST/D/EEA: J.Curtin      | (draft)                | Date | <i>3/22</i>    |
| GC/ENE: R.Sarkar        | (draft)                | Date | <i>3/22</i>    |
| ENE/PDP/F: L.Rogers     | (draft)                | Date | <i>3/22</i>    |
| ENE/EUR: D.Larson       | <i>BSL</i>             | Date | <i>3/24/91</i> |
| ENE/TR/ENV: R.Greenberg | (draft)                | Date | <i>3/22</i>    |
| ENE/PD/EUR: R.Redman    | (draft)                | Date | <i>3/14</i>    |
| PPC/PB/C:S.Merrill      | (info)                 | Date |                |

ENE/TR/DPI:D.Beck:2/25/91:docWP

*H*

**ATTACHMENT A**

INTER-AGENCY ALLOCATION BETWEEN  
THE AGENCY FOR INTERNATIONAL DEVELOPMENT  
AND  
UNITED STATES INFORMATION AGENCY

**SUBJECT:** Allocation to the U.S. Information Agency (USIA) for the Implementation of the Rule of Law Project in Central and Eastern Europe.

**Project Title:** Eastern European Regional Rule of Law

**Project Number:** 180-0020

**I. PURPOSE**

The purpose of this Inter-Agency Allocation (IAA) between the United States Information Agency (USIA) and the Agency for International Development (A.I.D.) is to define the procedures under which A.I.D. shall allocate funds to USIA for the purpose of implementing the Rule of Law Project in Central and Eastern Europe.

**II. AUTHORITY AND USES OF FUNDS**

Pursuant to Public Law 101-513, ("Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991), Title II under the heading Assistance to Eastern Europe, Section (a)(4), and Section 632(a) of the Foreign Assistance Act of 1961, as amended, A.I.D. shall allocate \$750,000 to USIA for implementing the Rule of Law Project (the "Project") in Central and Eastern Europe. It is understood that these funds will be used in a manner consistent with the purposes of the Project and in accordance with the laws and regulations governing the Project. The Rule of Law Project will provide assistance in developing and revising constitutional, criminal, and civil laws and governmental structures protecting human rights and freedoms in Central and Eastern Europe. The Project will consist of various Activities (the "Activities") which may take a number of forms such as technical assistance in drafting legislation, training (in the U.S. or abroad) for key Central and East European legal reformers and members of the judiciary, legal exchanges, and assistance in the development of judicial administration procedures. The project is further described in the Project Memorandum at Attachment B.

**III. TERMS AND CONDITIONS**

This Allocation is made under the following terms and conditions:

1. Execution of this IAA does not constitute an obligation of funds by either party. USIA shall receive the allocation as a Treasury Department Non-Expenditure Transfer Authorization (SF-1151), and ensure that these funds are not commingled with funds received by USIA from other sources. USIA shall keep full and complete records and accounts with respect to said funds in accordance with generally accepted U.S. Government accounting principles.

2. It is understood that the completion date for this Project shall be three years from the date of this Allocation, unless the Project is completed at an earlier date. "Completion date" for this purpose refers to the last day for performance of services (and the last day for the delivery of commodities) in Central and Eastern Europe. If the completion date for any Activities under this Project shall exceed three years, USIA shall obtain prior, written concurrence from A.I.D. before an agreement for any such Activity is entered into.

3. All funds allocated pursuant to this IAA must be obligated by September 30, 1991. Any funds not obligated by September 30, 1991, will be available for obligation in the following fiscal year when USIA is notified in writing by the A.I.D. Office of Financial Management that an apportionment and operating year budget (OYB) level have been approved. USIA shall expend funds allocated hereby and accepts responsibility for ensuring compliance with all applicable statutory restrictions on such expenditures. Further, all funds not expended by USIA upon completion of the Project shall be promptly returned to A.I.D. Moreover, A.I.D. reserves the right to seek the recovery of funds if, and to the extent that, such funds may have been expended for purposes or activities not authorized by this IAA.

4. USIA hereby agrees to use the funds allocated pursuant to this IAA to cover the administration and related costs of the Project, and the award of grants and contracts. Further, USIA shall expend the funds allocated hereby with the concurrence of the State Department Bureau of Human Rights and Humanitarian Affairs (BHRHA) within four years from the date of the initial obligation, and shall administer such funds (including procurement actions, monitoring, and follow-up) in accordance with USIA procedures. And, where possible, USIA shall procure or obtain goods and services whose source, origin or nationality is the United States, or as shall be otherwise designated by A.I.D. USIA shall ensure that all such statutory restrictions on such expenditures are fully complied with.

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5. USIA shall provide a monthly report on Budget Execution (SF-133) in accordance with the Office of Management and Budget Circular A-34 to the following A.I.D. offices: (a) Office of Financial Management (FM/CARD Room 603 SA-2), Agency for International Development, Washington D.C. 20523); (b) Office of European Affairs, Bureau for Europe and Near East (ENE/EUR 6923 NS), Agency for International Development, Washington, D.C. 20523; and (c) Office of Technical Resources (ENE/TR/HR/DPI), Agency for International Development, Washington, D.C. 20523-0053. USIA further agrees to provide a certification (TFS-2108) at each fiscal year end stating that such reports concerning obligations and disbursement are correct, and that the allocated funds were expended for the purposes of the Project. USIA shall also provide these A.I.D. offices with semi-annual reporting of a narrative nature on the progress of Project Activities and problems, if any.

6. USIA hereby agrees to provide A.I.D. with copies of all evaluation (or other) reports generated by federal or outside sources, and such other information as A.I.D. may, from time to time, request concerning the progress, impact, or success of the Project.

7. An inter-agency working group, co-chaired by USIA's East European Initiatives Office (D/EE) and BHRHA, will be established to oversee Project priorities. The inter-agency working group will also include representation from the Office of the Special Advisor for Eastern European Assistance to the Deputy Secretary of State, the Department of Justice, A.I.D., and the USIA Bureau of Programs.

8. Audit and inspection requirements as set forth in the Inspector General Act of 1978, as amended, shall apply hereto, and the Office of the Inspector General for A.I.D. shall ensure full compliance with all applicable provisions thereof.

9. This IAA may be modified or cancelled upon the mutual, written consent of both parties.



Robert W. Nachtrieb  
Acting Deputy Assistant  
Administrator  
Bureau for Europe and Near East  
Agency for International  
Development



Eugene P. Kopp  
Deputy Director  
United States Information Agency

Dated: APRIL 3, 1991

Dated: April 5, 1991

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USIA : m/c ~~§~~ 4/5/91

GC 9715 4/5/91

**ATTACHMENT B**

**GREEN COPY**  
**PROJECT MEMORANDUM**  
**RULE OF LAW**  
**IN**  
**CENTRAL AND EASTERN EUROPE**  
**MARCH 20, 1991**

**Team Leader: Gerald Hyman, A.I.D.**

**DeAndra Beck**

**ENE/TR/HR/DPI**  
**(202) 647-9229**

PROJECT MEMORANDUM

Project: Rule of Law

Project

- Purpose:
- 1) To develop and strengthen laws, regulations, legal practices, policies, and legal institutions (particularly the development of an independent judiciary) in order to encourage the establishment and enforcement of civil, political, economic, social, cultural rights and other human rights and fundamental freedoms.
  - 2) To provide training and technical assistance (including legislative consultation) as a means to help Central and Eastern European countries protect and guarantee the effective exercise and the progressive realization of these rights and freedoms.

Project

Rationale: Unless a society is governed by the rule of law, there can be no guarantee that an individual's basic human rights will be respected. Nor can a democratic system function properly if there are no binding legal rules that limit the authority of the duly elected government. Even where constitutional and legal rules establish valid limits on governmental and individual conduct, such rules are meaningless unless there is a reliable and responsible means of ensuring their enforcement.

The communist tradition of the Central and Eastern European countries is marked by the absence of the legal rules properly safeguarding individual rights and delineating the limits of government power. In addition, these countries have historically lacked an independent judiciary with the power and will to enforce such rules. Stable democracies cannot exist until these conditions are changed.

Project:

Description: The project will provide assistance in developing and revising constitutional, criminal, and civil laws protecting human rights and freedoms. The project would not encompass efforts focused

## Rule of Law Project

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primarily on the development of commercial law, for which other funding mechanisms are available. Activities in this Project may take a number of forms such as technical assistance in drafting legislation, training (in the U.S. or abroad) for key Central and Eastern European legal reformers, and legal exchanges.

The project will also provide assistance in the development of an independent judiciary in the Central and Eastern European countries, particularly judicial training and potentially including development of judicial administration procedures.

Because of the nature of the project goals, the project will chiefly involve work with the governments of Central and Eastern Europe, and to a large extent, is intended to respond to the needs and priorities of those governments. Although circumstances will vary from country to country, the project is anticipated to be focused primarily on technical assistance to governments and on work in developing and strengthening the independence of the judiciary in the Central and Eastern European countries. Because of the intent to work closely with the Central and Eastern European governments, a large measure of flexibility has been built into Project design in order to maximize the degree in which the project can respond to needs as they are identified.

Proposed  
Mechanism:

Funds will be allocated to USIA through an inter-agency allocation under section 632(a) of the Foreign Assistance Act. The Project will be implemented by USIA with the concurrence of the Bureau of Human Rights and Humanitarian Affairs of the U.S. Department of State.

USIA will establish a new program to be called the Rule of Law Program. The program would be authorized to engage in Rule of Law Activities directly or through grants or contracts. Individual Activities could be modeled after existing USIA programs (such as AMPARTS or

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International Visitors) but need not be. (Thus, for example, there would not be a presumption that individuals traveling to provide technical assistance would need to stay for a particular length of time.)

In order to maximize cooperation and coordination among the various agencies with an interest in this Project, a small working group will be established and will meet regularly to review progress and to set priorities. The inter-agency working group will be jointly chaired by a representative of USIA's Office of the Coordinator for Eastern Europe and a representative of the Bureau of Human Rights and Humanitarian Affairs and will include representation from the Deputy Secretary of State's Office of the Special Adviser for Eastern European Assistance, from the Department of Justice, from A.I.D, and from USIA's Bureau of Programs.

### Risk

Assessment: 1) Quality assistance may be difficult to identify; moreover regional diversity may impose constraints on the definition of the rule of law and on widespread access to training.

The working group shall establish procedures that will provide clear criteria for assessing particular Activities to be funded under this Project. These criteria will include such considerations as: (1) significance of the need to be addressed by the Activity -- i.e., potential for contributing to advancement of the Rule of Law; (2) degree to which the Activity would serve that need; (3) availability of funding and/or Activities from other sources (such as the private sector or other SEED appropriations) to address the need; (4) quality of the plan for the Activity, including quality of key personnel; and (5) budget and cost effectiveness.

These criteria could be applied to USIA Rule of Law Activities, to contracts, and to solicited and/or unsolicited grants. The flexibility inherent in the Project design will permit a range of Rule of Law approaches that can be tailored to individual country needs. Because of the varied circumstances in Central and Eastern

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Rule of Law Project

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Europe and the resources already available to address the needs in some countries, it is foreseeable that application of these criteria will result in an uneven distribution of Activities among the Central and Eastern European countries eligible for assistance.

- 2) Grant awards and inter-agency allocations will limit A.I.D.'s influence over Project management and content, yet A.I.D. will remain accountable for the efficacy of the entire assistance program.

The allocation will be made because USIA possesses an exclusive or predominant capability to provide appropriate assistance. The inter-agency working group with A.I.D. representation will establish procedures that will guide the actions of USIA and the Bureau of Human Rights and Humanitarian Affairs in making program decisions. USIA will be subject to certain requirements, including requirements for reporting and for making grant and contract awards under its own rules.

- 3) The flexibility to award contracts and unsolicited grants may be subject to criticism as less than fully competitive.

As described above, the project design intentionally incorporated a high measure of flexibility in order to maximize the ability to respond to the needs of the Central and Eastern European governments and address certain known needs as expeditiously as possible.

Although a large proportion of the funding would be handled competitively, the flexibility to make non-competed awards in compliance with applicable legal restrictions is essential in order to carry out the purposes of the Project.

|                         |           |
|-------------------------|-----------|
| <u>FY 1991 Funds</u>    |           |
| <u>To Be Obligated:</u> | \$750,000 |
| <u>Anticipated</u>      | \$750,000 |
| <u>Life of Project:</u> |           |
| (one year)              |           |

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Implementing  
Details:

Funds will be allocated to USIA under section 632(a) of the Foreign Assistance Act. The Project will be implemented by USIA with the concurrence of the Bureau of Human Rights and Humanitarian Affairs of the Department of State. The administration of funds by USIA will be contingent upon the quality of the Project proposal and an evaluation of previous experiences in similar Projects as determined by the procedures established by the inter-agency working group.

**Audits.** The audit and inspection requirements of the Inspector General Act of 1978, as amended, shall apply hereto, and the Office of the Inspector General, Agency for International Development, shall ensure full compliance with all the applicable provisions thereof.

**Reports.** USIA will submit to A.I.D. monthly financial reports and semi-annual narrative program reports on the progress of the Project Activities.

**Monitoring.** ENE/TR/HR/DPI will monitor project progress through review of the project reports, periodic meetings with grantees, and the formal inter-agency review meeting mentioned under evaluation section below.

**Host Country Duties/Taxes.** Provisions will be made to ensure that funds are not used to pay host country duties/taxes. A.I.D. anticipates concluding bilateral agreements in the near future with these East European countries that will, inter alia, provide such exemption for A.I.D.-financed goods and services. Until such agreements are in place, however, this matter will be handled on an ad hoc basis.

**Source/Origin/Nationality.** With regard to provisions contained in the 632(a) allocation, eligible source/origin/nationality for goods and services procured under individual grants to U.S. institutions will follow established USIA procurement regulations. And, where possible, USIA shall procure or obtain goods and services whose source, origin or nationality is the United States, or as shall be otherwise designated by A.I.D.

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Environmental Determination. This project qualifies for a categorical exclusion because it supports the development of judicial and legal systems in Central and Eastern Europe through technical assistance and training. A.I.D. assistance for education, technical assistance, or training activities are generally categorically excluded from environmental examinations under 22 C.F.R. 216 Environmental Procedures in sections 216.2 (c)(1)(i), and 216.2 (c)(2)(i).

Evaluation: Evaluation. The Project will be subject to the evaluation procedures of USIA and to evaluation by the Office of the Special Advisor on Eastern European Assistance to the Deputy Secretary of State, by A.I.D., or by independent evaluators chosen by A.I.D.

The entire project will be subject to a formal inter-agency review at least once during the fiscal year.

Drafted by:ASchwartz:3/8/91:3671A  
Revised by DBeck:3/14/91:3765F

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