



DEPARTMENT OF STATE
ACTION MEMORANDUM

S/S

March 17, 1979

SECRET/NODIS

TO: P - Mr. Newsom

THRU: T - Lucy Wilson Benson

FROM: L - Herbert J. Hansell

SAO

Pakistan and the Symington Amendment

There is now convincing evidence that Pakistan has received enrichment equipment since August 1977. Section 669 of the Foreign Assistance Act (FAA) (the Symington amendment) prohibits us from providing Pakistan with further assistance of the kinds covered by the amendment. This memorandum describes the assistance programs covered by the Symington amendment, and proposes steps to terminate them in an orderly way.

Affected Assistance

The Symington amendment (Tab A) applies to the use of funds appropriated (i) under the FAA for economic, supporting, or military assistance, or military education and training or (ii) under the Arms Export Control Act for credits or guarantees. The affected programs in Pakistan are development assistance and military training (IMET).

We have interpreted the Symington amendment as prohibiting new obligations, but not as preventing the disbursement of funds already obligated.

Tab B shows A.I.D.'s current portfolio of development assistance projects for Pakistan. Each project has been reviewed in light of the Symington amendment.

Costs for IMET (approximately \$600,000 in FY 79) are obligated on the basis of participation by individual students in courses -- i.e., usually when an armed service issues the invitational travel orders for a particular participant. IMET obligations are incurred pursuant to

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"MAP orders" issued quarterly by DSAA. For the third quarter of FY 79 the allocations for Pakistan are: Army - \$106,879; Air Force - \$152,260; Navy - \$30,560. Thus, through June, \$483,000 of the FY 79 IMET program is covered by MAP orders. An additional \$117,000, of which \$24,000 is yet unprogrammed, had been planned for the fourth quarter.

Policy Context

We have two policy objectives: First, to avoid notice to the Pakistanis or public disclosure that the Symington amendment has been triggered for a few weeks, to buy time to develop a strategy; and, second, to terminate assistance in an orderly manner.

Timing

One agreement for development training has been signed recently by Pakistan and is awaiting signature by us. A.I.D. believes that even if we do not sign that agreement, the Pakistanis are unlikely to raise any questions for at least two weeks and perhaps three to four weeks. Further, A.I.D. can delay the process of entering into new obligations, attributing the delays to administrative problems.

If we stop issuing new travel orders for IMET participants, the Pakistanis will probably notice in about four weeks.

Legal Situation

There is a legal basis for entering into some new obligations in order to terminate development assistance and IMET activities in an orderly way. Section 617 of the FAA permits new obligations to be entered into for eight months after a program has been terminated for the necessary expenses of winding up. By its terms, Section 617 applies to termination pursuant to concurrent resolution, but we have taken the position before that it also applies to terminations required by any provision of the FAA.

This rationale would permit us to obligate new funds, notwithstanding the Symington amendment, when necessary to wind up a project; it would not permit us to fund ~~new~~ projects or projects that can be terminated efficiently without the expenditure of additional funds. *any?*

Resumption of Assistance

The two ways in which assistance could be resumed are a Presidential waiver or a cancellation of the circumstances

which required termination.

The President may waive the Symington amendment's prohibition if he certifies in writing to Congress that (1) such action would have a serious adverse effect on vital U. S. interests, and (2) he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so.

In the absence of a waiver, consistent with our construction of other such statutes that do not indicate a contrary Congressional intent, we may infer from the legislative objective, which is deterrence, authority to resume assistance when the circumstances which have required termination are no longer present. This is to be distinguished from a waiver which could be exercised even though those circumstances continue.

Congressional Consultations

Key members of Congress should be consulted about our plans for implementing the Symington amendment. Proposed talking points are at Tab D.

Development Assistance

We believe that a reasonable legal argument under Section 617 can be made for entering into further funding obligations for the following projects:

	<u>Proposed FY 79 Obligations under 617 Authority (\$000's)</u>
Village Level Food Processing (Grant)	273
Water Management Research (Grant) (Follow-on of a regional project)	1,000
On-Farm Water Management (Loan/Grant)	750
Agriculture Research (Loan/Grant)	240
Government Administrative Staff Improvement (Grant)	175
Basic Health Services (Loan/Grant)	4,500
	<hr/> 6,938

A breakdown of the impact of the Symington amendment on planned A.I.D. development assistance projects is shown at Tab C.

Authority NND 2947
By R NARA Date 5-7-10

Attachments:

- Tab A - Symington Amendment
- Tab B - A.I.D. Summary of Pending Development Assistance Projects for Pakistan
- Tab C - A.I.D. Summary of the Impact of the Symington Amendment on Pending Development Assistance Projects
- Tab D - Talking Points for Congressional Consultations

Clearances:

OES/NET - LVNosenzo *by RB*
NEA/PAB - JCoon *by RB*
INR/STA - RGallucci *by RB*
PM - DO'Donahue *by RB*
S/P - PKreisberg
S/AS - RKelley (info) *by RB*
AID/GC - KKammerer *by RB*
AID/Asia - JSullivan *by RB*
OES - TPickering *by RB*

POF
L/N: RJBettauer; L: JHMichel; L:LRMarks: 3/16/79
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Sec. 609.⁷⁰² Nuclear Enrichment Transfers.—(a) Except as provided in subsection (b), no funds authorized to be appropriated by this Act or the Arms Export Control Act may be used for the purpose

of providing economic assistance, providing military or security supporting assistance or grant military education and training, or extending military credits or making guarantees, to any country which, on or after the date of enactment of the International Security Assistance Act of 1977, delivers nuclear enrichment equipment, materials, or technology to any other country, or receives such equipment, materials, or technology from any other country, unless before such delivery—

(1) the supplying country and receiving country have reached agreement to place all such equipment, materials, or technology, upon delivery, under multilateral auspices and management when available; and

(2) the recipient country has entered into an agreement with the International Atomic Energy Agency to place all such equipment, materials, technology, and all nuclear fuel and facilities in such country under the safeguards system of such Agency.

(b) (1) Notwithstanding subsection (a) of this section, the President may furnish assistance which would otherwise be prohibited under such subsection if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that—

(A) the termination of such assistance would have a serious adverse effect on vital United States interests; and

(B) he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so.

Such certification shall set forth the reasons supporting such determination in each particular case.

(2) Any joint resolution which would terminate or restrict assistance described in subsection (a) with respect to a country to which the prohibition in such subsection applies shall, if introduced within thirty days after the transmittal of a certification under paragraph (1) of this subsection with respect to such country, be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

⁷⁰² 22 USC 2429. Sec. 609, as added by Sec. 205 of Public Law 94-329, was amended and renumbered by Sec. 12 of the International Security Assistance Act of 1977 (91 Stat. 630).

Pakistan: SUMMARY OF PROJECTS -
(Obligations, \$000's)

Project	FY of Initial Obligation	Cumulative Obligations Thru FY 78	Obligations Planned For FY 79	Future Year Obligations	Year of Project Completion	Planned Qtr./Month of FY 79 Obligation
<u>Agriculture, Rural Development and Nutrition</u>						
Agriculture Research	69	\$ 7,831	240	\$ 7,800	84	June
Dryland Agriculture Development	75	731	-0-	-0-	79	
Vitaminization of Flour	79	-0-	340 b/	1,665	81	
Rural Electrification	79	-0-	15,000	10,000	84	May
Rural Roads	79	-0-	8,700	-0-	83	Apr 11
On-Farm Water Management	75	7,817	750	14,642	82	4th Qtr.
Village Level Food Processing	76	292	273	-0-	80	Apr 11
Improved Crop Estimating	76	110	-0-	-0-	81	
Agriculture Inputs	76	65,000	25,000 b/	-0-	79	
Fauji Fertilizer	79	-0-	40,000 b/	-0-	82	
Rainfed Land and Water Management	79	-0-	7,125	32,875	84	4th Qtr.
Water Management Research	79	-0-	1,000	1,000	83	Apr 11
<u>Population Planning</u>						
Expanded Population Planning	73	5,745	1,000	-0-	80	June
Population Research and Development	79	-0-	500	300	82	Apr 11
<u>Health</u>						
Basic Health Services	77	7,500	4,500	3,000	84	4th Qtr.
Malaria Control	77	20,000	4,000 b/	-0-	80	
Rural Clean Water Supply	79	-0-	8,147	13,353	84	May
<u>Education</u>						
Government Administrative Staff Improvement	69	1,629	-0-	-0-	78	
Development Training	79	-0-	425	1,250	84	March
<u>Selected Development Activities</u>						
Technical Services	76	2,500	-0-	-0-	80	
<u>COUNTRY TOTALS</u>						
		\$119,155	\$117,000 c/	\$85,885		

a/ - Does not include new projects proposed for FY 1980.

b/ - Already obligated in FY 1979.

c/ - Includes \$77 million in FY 1977 authorizations which could not be obligated until FY 1979. FY 1979 budget level is only \$40 million.

Pakistan: Summary of Projects a/
(Obligations, \$000's)

	FY of Initial Obligation	Cumulative Obligations Thru FY 78	Obligations Originally Planned for FY 79	Proposed FY 79 Obligations Under 617 Authority	Estimated Year of Project Completion
<u>I. Planned New Starts Not to be Undertaken</u>					
Rural Electrification (L/G)	79	-0-	15,000	-0-	-
Rural Roads (L)	79	-0-	8,700	-0-	-
Rainfed Land & Water Management (L/G)	79	-0-	7,125	-0-	-
Population Research and Development (G)	79	-0-	500	-0-	-
Rural Clean Water Supply (L/G)	79	-0-	8,147	-0-	-
Development Training (G)	79	-0-	425	-0-	-
Vitaminization of Flour (Atta) (G)	79	-0-	340 <u>b/</u>	-0-	-
<u>II. Projects Which will be Completed with Existing Funding <u>c/</u></u>					
Dryland Agriculture Development (G)	75	731	-0-	-0-	79
Improved Crop Estimating (G)	76	110	-0-	-0-	81
Agriculture Inputs (L)	76	65,000	25,000 <u>d/</u>	-0-	79
Fauji Fertilizer (L)	79	-0-	40,000 <u>d/</u>	-0-	82
Expanded Population Planning (G)	73	5,745	1,000	-0-	80
Malaria Control (L)	77	20,000	4,000 <u>d/</u>	-0-	80
Technical Services (L)	76	2,500	-0-	-0-	80
<u>III. Current Projects not Fully Funded Which Require Additional Funding for Orderly Completion</u>					
Village Level Food Processing (G)	76	292	273	273	80
Water Management Research (G) (Follow-on of a regional project)	68	5,629	1,000	1,000	81
On-Farm Water Management (L/G)	75	7,817	750	750	81
Agriculture Research (L/G)	69	7,831	240	240	81
Government Administrative Staff Improvement (G)	69	1,629	-0-	175 <u>e/</u>	80
Basic Health Services (L/G)	77	7,500	4,500	4,500	81
<u>TOTALS</u>			<u>117,000</u>	<u>6,938</u>	

NOTE: L=Loan G=Grant

a/ - The Mission has not been consulted on any of the revisions contained in this table. It is likely the Mission will require additional funds for some projects for orderly close-out. We have not included some centrally-funded projects as the information is not yet available; these will be small projects.

b/ - Already obligated in FY 1979. We do not believe that sufficient work has been done on project to justify continuation, and we propose to inform GOP we will terminate under our cancellation rights.

c/ - No additional funds required.

d/ - Prior year authorizations which were obligated in FY 1979.

e/ - Pakistani participants are currently in training in the US under this project. Failure to provide additional funding would result in termination of training and loss of effectiveness of money already spent.

Pakistan Nuclear Problem: Congressional Consultation

There have recently been a number of new developments related to Pakistan's nuclear explosive program, with disturbing implications for US bilateral relations with Pakistan and overall regional stability. It is important that we continue our consultations with those key Congressional leaders who have been patient and supportive of our non-proliferation efforts over the past three years.

The purpose of these consultations is three-fold:

(1) We need to bring these leaders up-to-date on the Pakistan problem and acquaint them with the acute policy dilemma that we face, (2) discourage pre-mature publicity which could be detrimental to our effort, and (3) obtain their acquiescence to our proposals to implement

the Symington Amendment in an orderly and non-confrontational manner.

The following talking points are proposed for use in confidential briefings with Senators Church, Glenn, Percy, and Javits and Congressmen Zablocki, Bingham, Broomfield and Findley.

-- You will recall that when we discussed with you the cessation of French participation in the construction of Pakistan's nuclear reprocessing plant, we indicated continuing concern over Pakistan's intentions and activities in the nuclear field.

-- Subsequent intelligence clearly suggests that Pakistan is making significant efforts to develop nuclear explosive capability including work in the field of centrifuge enrichment. We estimate, however, that it will take Pakistan another two to four years, and perhaps longer, before it can explode a nuclear device.

-- We have been actively engaged with this problem. We have been in close touch with a number of supplier or potential supplier countries seeking to prevent the export of any material or equipment related to the enrichment effort. The suppliers have been cooperative and we believe we can significantly slow down the Pakistani program.

-- We have also continued discussions directly with the Pakistanis on a highly confidential basis, but so far they have not been willing to provide credible assurances or other evidence of their peaceful intentions. The issue was most recently raised during Deputy Secretary Christopher's visit in Islamabad on March 1-2, and the Pakistani response was unsatisfactory.

-- It is clear that a nuclear-armed Pakistan would introduce a new and dangerous element of instability. We remain absolutely committed to the objective of preventing Pakistan from acquiring nuclear capability. It would set off a nuclear arms race on the subcontinent and add a new and highly dangerous dimension to the Middle East problem.

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-- We are faced with a very real and serious dilemma. In the present context in the Persian Gulf region, Pakistan is important to us, especially given the chaotic situation in Iran and Soviet penetration in Afghanistan. Politically, Pakistan is among the more moderate states in the Moslem world and contributes to stability in the region. To virtually cut our ties with Pakistan at this time would be highly disturbing to other Moslem moderates including Saudi Arabia and the states of the Persian Gulf.

-- It is quite clear our bilateral leverage in terms of aid is insufficient to deflect Pakistan from its present course. We are very intensively studying further moves, bilateral and multilateral, to discourage Pakistan from its nuclear program. We believe our diplomacy in this highly sensitive area could be undercut by public condemnation of Pakistan at this time.

-- It is our view that the Symington Amendment now requires that we not move ahead with any new development assistance projects in Pakistan. At this stage, however, we plan no public announcement of the interruption of aid and believe that our non-proliferation objectives will be better served by avoiding ^{public} confrontation with Pakistan at this time. We also believe it important in terms of our bilateral relations to windup our assistance programs in a orderly manner."

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-- Consistent interpretation and practice makes clear that the termination of assistance under the Symington Amendment only applies to entering into new obligations, not to the expenditure of funds that are in the pipeline.

-- Section 617 of the Foreign Assistance Act further authorizes an orderly winding up of assistance when a section of that Act requires termination.

-- Thus, the law authorizes us to enter into a limited number of new obligations in the process of terminating assistance.

-- To allow for an orderly windup of assistance, we plan to enter into obligations for approximately \$7 million for village level food processing, water management research, on-farm water management, agricultural research, government administrative staff improvement and basic health services.

-- Our plans for IMET is not to issue the "MAP orders" for the fourth quarter, but to phase out the program in the third quarter. This will involve continuing to obligate third quarter funds. This section is justifiable under Section 617 since the planning of this part of the program, the course selection and the student selection is well under way.

-- We will continue to keep you fully informed and we seek your counsel as we face the dilemma we have described.