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The Support for Eastern European Democracy Act of 1989: a Description and Assessment of Its Responsiveness to the Needs of Poland

Howard A. Wolf-Rodda

THE SUPPORT FOR EASTERN EUROPEAN DEMOCRACY ACT OF 1989: A DESCRIPTION AND ASSESSMENT OF ITS RESPONSIVENESS TO THE NEEDS OF POLAND

I. INTRODUCTION

Eastern bloc countries have undergone tremendous upheaval since 1989. These nations are struggling to recast their economies into systems driven by individuals instead of central bureaucracies. At the same time, these countries are developing new, democratic institutions of government. These changes, while highly desirable, are nonetheless disruptive. For example, many of the countries are facing tremendously hard times as they convert their economies. To soften the pain of his country's transition, Lech Walesa, then-leader of Poland's Solidarity trade union, came to the United States in 1989 seeking substantial economic assistance.[1]

The United States responded using a "package approach" to the problem of Eastern European conversion as former Secretary of State James Baker described at a 1991 White House briefing:

> [Y]ou cannot build a market economy by throwing money at a disintegrating command economy, but you can help a market economy develop by establishing the political and legal condi-

1. *Poland, Hungary Aid Launched in 1989*, XLV CONG. Q. ALMANAC 503, 517 (1990) [hereinafter *Poland Aid*].

> tions necessary for markets to flourish and to attract private capital. It is our view that we can help through technical assistance. We can help through know-how, and that's what our package approach is intended to do.[2]

The Support for Eastern European Democracy (SEED) Act of 1989 codified this approach.[3] Faced with crushing budget deficits, there was little U.S. interest in a full-scale recreation of the Marshall Plan.[4] Instead, through SEED, President Bush and the Congress established assistance programs primarily consisting of currency stabilization assistance, development assistance for newly private entities, and technical assistance as a means to support economic and political conversion.[5] Consequently, this initiative resulted in comparatively small amounts of direct financial assistance to the government of Poland.[6] Instead, much of the aid was channeled through multi-lateral institutions and through newly created Enterprise Funds.[7] The implicit message of SEED was that, if fledgling democracies would adopt the ways of the West, then further aid would follow.[8]

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2. *Key Issues at G-7 Summit*, 2 DEP'T ST. DISPATCH. 509, 509 (1991) (remarks by Secretary of State James Baker).

3. Support for East Europe Democracy Act of 1989, Pub. L. No. 101-179, 103 Stat. 1298 (1989) [hereinafter SEED].

4. After a protracted "bidding war," the final version of $938 million was much less than what some Members had sought; nonetheless, the package more than doubled the President's initial proposal. *Poland Aid*, *supra* note 1, at 503. The Marshall Plan, named after Secretary of State George C. Marshall, provided over $12 billion between 1948 and 1952. JOHN SPANIER, AMERICAN FOREIGN POLICY SINCE WORLD WAR II 37 (8th ed. 1980). *See also infra* text accompanying notes 14-19.

5. *See* SEED, *supra* note 3, at tit. I-IV; *see also infra* text at pt. IV (describing SEED's provisions in greater detail).

6. *See id.*; *see also* William C. Stone, Comment, *Poland and Hungary: The SEED Act as a United States Response to Democratic Reform*, 3 HARV. HUM. RTS. J. 167, 175 (1990) (noting concerns that funds "could be misused").

7. Of the total $938 million authorization, the SEED Act directed that $200 million be channelled into the multi-lateral currency stabilization fund created for Poland. SEED, *supra* note 3, § 102(c)(2). The Act further authorized $300 million for the creation of Enterprise Funds for Poland and Hungary. *Id.* § 201(b)(1)-(2). *See also infra* text accompanying notes 114-29.

8. SEED, *supra* note 3, § 801 (directing the President to suspend all assistance in the event that a recipient country violates certain conditions). The House Report accompanying the Act notes that "[t]his bill conditions immediate U.S. assistance on continued steps toward democracy and market-oriented economies through the implementation of comprehensive economic reform in both Poland and Hungary." H.R. REP. No. 278, 101st Cong., 1st Sess., pt. 2, at 2 (1989), *reprinted in* 1989 U.S.C.C.A.N. 744, 745 [hereinafter HOUSE REPORT, pt. 2]. *See also infra* text accompanying notes

This Comment addresses issues raised by SEED's directives and, in particular, the role of assistance mandated by SEED in driving the evolution of political and economic institutions in Poland. To place SEED's mandates in perspective, this Comment briefly reviews the history of U.S. development assistance in the context of objectives articulated in both legislation and executive policy since the advent of the Marshall Plan. This history provides an historical and legal context for the subsequent discussion of development assistance, and specifically the legal and practical effects of such assistance on Poland as mandated by SEED.

II. U.S. Development Policy: Historical and Legal Bases

Countries have been giving and receiving assistance to each other throughout much of recorded history.[9] Early forms of assistance included the transfer of expertise for the construction of palaces, drainage systems, and ships.[10] Later, in the nineteenth century, governments in Europe raised funds to construct utilities and industrial plants in countries such as Russia, Japan, Greece, Turkey, and other areas around the globe that were newly open to external contact.[11] Much of this assistance was financed either privately or from duties levied on goods in the recipient countries or territories.[12] However, there were no massive government-led international development efforts until the mid-1940s following World War II.[13]

The end of World War II found the United States in a pre-eminent position of global power, prestige and economic strength in which the U.S. economy was vibrant and flush with resources and wealth. Europe, on the other hand, was floundering.[14] The war years destroyed the continent's economic infrastructure, and many U.S. officials feared a power vacuum between the United States and the Soviet Union caused

166-67.

9. *See* Maurice Domergue, Technical Assistance: Theory, Practice, and Policies 1-3 (1968).

10. *Id.* at 2.

11. *Id.*

12. Percy S. Mistry, *Financing Development in the 1990s*, *in* Cooperation for International Development 98 (Robert J. Berg & David F. Gordon eds., 1989).

13. Domergue, *supra* note 9, at 3.

14. Much of what Europe needed for its recovery could only be purchased from the United States. At the same time, the U.S. economy possessed such sufficient quantities of goods that it did not need to purchase much from Europe. This created what came to be known as the "dollar gap." Spanier, *supra* note 4, at 35.

by Europe's devastation.[15] The reconstruction of Europe, therefore, became an important national priority.[16]

This priority led to the formulation of what later became known as the Marshall Plan. Officially referred to as The Foreign Assistance Act of 1948,[17] the initiative established the Economic Cooperation Agency which was given responsibility for coordinating the distribution of vast quantities of loan and grant assistance for Europe's recovery.[18] The Plan quickly proved to be a successful technique for economic development.[19]

The early and dramatic achievements of the Marshall Plan led the Truman Administration to formulate a new program to promote development in the newly independent former European colonies.[20] Truman announced his policy, the so-called "Point Four" program, in his 1949 inaugural address.[21] Truman captured the optimism of the times when he issued his call:

> [W]e must embark on a bold new program for making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas.
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> . . . .
>
> For the first time in history humanity possesses the knowledge and the skill to relieve the suffering of these people.

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15. *Id.*

16. *Id.*

17. Foreign Assistance Act of 1948, ch. 169, 1948 U.S.C.C.S. 145 (1948).

18. *Id.* at tit. I; *see* H.R. REP. NO. 1585, 80th Cong., 2d Sess. 1 (1948), *reprinted in* 1948 U.S.C.C.S. 1349.

19. Among the successes cited by one author:

> By 1950 . . . Europe was already exceeding its prewar production by 25 percent; two years later, this figure was 200 percent higher. English exports were doing well, the French inflation was being slowed down, and German production had reached Germany's 1936 level. The dollar gap had been reduced from $12 billion to $2 billion. The Marshall Plan had been a massive success, and at a cost that represented only a tiny fraction of the U.S. national income over the same four-year period; it was, indeed, smaller than America's liquor bill for these same years!

SPANIER, *supra* note 4, at 38.

20. *See* NICHOLAS EBERSTADT, FOREIGN AID AND AMERICAN PURPOSE 25-26 (1988). In fact, Eberstadt suggests that European successes may have misled supporters of foreign aid into believing that such assistance "*naturally* wedded" frequently disparate "strategic, economic, and humanitarian objectives." *Id.* at 24.

21. *See* Harry S Truman, Inaugural Address (Jan. 20, 1949), *in* 1949 PUB. PAPERS 112 (1964).

> The United States is preeminent among nations in the development of industrial and scientific techniques. The material resources which we can afford to use for the assistance of other peoples are limited. But our imponderable resources in technical knowledge are constantly growing and are inexhaustible.
>
> I believe that we should make available to peace-loving peoples the benefits of our store of technical knowledge in order to help them realize their aspirations for a better life. And, in cooperation with other nations, we should foster capital investment in areas needing development.[22]

The Point Four program consisted almost exclusively of technical assistance for the recipient countries.[23] The Technical Cooperation Administration (TCA) was organized in 1950 to implement the program.[24] The TCA coordinated assistance efforts provided by government agencies and funded contracts with Private Voluntary Organizations (PVOs) to provide services to recipient countries.[25] Initially, the Point Four program did not overtly focus its assistance on the basis of political imperatives. However, a commission headed by Nelson Rockefeller in 1953 recommended that U.S. assistance be linked to security concerns.[26] Thus, the locus of U.S. efforts was consciously shifted to the needs of the less developed world with an emphasis on those countries in areas of special security concern to the United States.[27]

In the mid-1950s, at a time when there were substantial food surpluses in the United States, Congress enacted the Agricultural Trade Development and Assistance Act of 1954.[28] This legislation created the food aid programs collectively known as "P.L. 480" or "Food for Peace."[29] There are three major components to the P.L. 480 program: concessional government-to-government sales of food surpluses with very lenient repayment terms; food donations to support school feeding

22. *Id.* at 114.

23. E. BOYD WENNERGREN ET AL., THE UNITED STATES AND WORLD POVERTY 35 (1989).

24. BRIAN H. SMITH, MORE THAN ALTRUISM: THE POLITICS OF PRIVATE FOREIGN AID 50 (1990).

25. *Id.*

26. WENNERGREN, *supra* note 23, at 35-36.

27. *Id.* at 36.

28. Agricultural Trade Development and Assistance Act of 1954, Pub. L. No. 83-480, 68 Stat. 454 (1954). *See also* EBERSTADT, *supra* note 20, at 28-30.

29. WENNERGREN, *supra* note 23, at 41.

or food-for-work programs; and concessional sales with debt forgiveness where proceeds from the sale of the food are used for approved development projects.[30] The broad policy objectives include providing markets for United States farmers, encouraging development in recipient countries, providing humanitarian assistance, and furthering United States foreign policy interests.[31]

The next major development initiative came with the passage of the Foreign Assistance Act of 1961 (FAA).[32] The FAA created the Agency for International Development (AID) which continues to be the principal agency responsible for the administration of U.S. foreign assistance programs.[33] The forms of aid primarily consist of economic assistance, food aid, and security assistance.[34] Economic assistance encompasses grants, loans, and technical assistance.[35] AID also jointly administers, along with the U.S. Department of Agriculture (USDA), food aid under the P.L. 480 program.[36] Security assistance, allocated largely on the basis of U.S. security interests, includes aid programs such as Foreign Military Sales (FMS), the Military Assistance Program (MAP), and the Economic Support Fund (ESF).[37]

Since AID's inception, there have been some substantial shifts in its objectives and congressional involvement. Until 1973, AID programs were largely geared towards supporting economic growth initia-

30. *Issues Related to the Reauthorization of Food for Peace and Agricultural Export Promotion Programs: Hearings and Markup before the Comm. on Foreign Affairs and its Subcomm. on International Economic Policy and Trade of the House of Representatives*, 101st Cong., 2d Sess. 26 (1990) (testimony of Allan I. Mendelowitz).

31. *Id.* at 25-26.

32. Foreign Assistance Act of 1961, Pub. L. No. 87-195, 1961 Stat. 470 (1961) (codified as amended in scattered sections of 22 U.S.C.).

33. *Id.*

34. WENNERGREN, *supra* note 23, at 43.

35. *Id.* at 43-44.

36. *Id.* at 41.

37. *Id.* at 44. Foreign Military Sales (FMS) are authorized to foreign governments when such sales are consistent with U.S. foreign policy interests, foreign assistance goals, the purchasing country's military needs, its economic condition, and the prevention of arms races. *See* 22 U.S.C.A. § 2751(a) (1990 & Supp. 1993); *see also* 22 U.S.C.A. §§ 2761-2770 (1990 & Supp. 1993) (setting forth FMS procedures and rules). The Economic Support Fund (ESF) provides financial assistance under "special economic, political, or security conditions" to countries when such assistance may not be justifiable under the development assistance provisions of the Foreign Assistance Act. 22 U.S.C. § 2346(a) (1988 & Supp. 1991). Military assistance in the form of grants or loans is authorized "to any friendly country or international organization, the assisting of which the President finds will strengthen the security of the United States . . . ." 22 U.S.C. § 2311(a) (1988).

tives including large capital intensive projects that, according to Congress' findings, failed to meet the needs of the poorest of the world's poor.[38] Based on these conclusions, Congress mandated that AID shift its programmatic emphasis following the so-called "New Directions" initiative.[39] Consequently, AID was required to begin selecting countries and programs that would meet basic human needs including "food production; rural development and nutrition; population planning and health; and education, public administration, and human resource development."[40]

The Carter Administration implemented these priorities while also placing considerable emphasis on human rights and human needs as a predicate for the provision of aid.[41] The Reagan Administration, however, fundamentally changed the direction and rationale for its assistance policies. While the basic needs criteria remained in place, the Reagan Administration reasserted the dominant role of security concerns over humanitarian and economic concerns.[42] This policy stressed market economies, structural reform for recipients, and greater reliance on private sources of aid.[43] Permeating the Reagan approach was an overtly ideological and geopolitical rationale for assistance decisions in which security assistance programs greatly exceeded appropriations for economic assistance.[44]

The Reagan Administration also saw the rise of the notion of "policy dialogue,"[45] an AID term for the process of driving recipient country economic policies through the structuring of assistance packages.[46]

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38. H.R. REP. NO. 388, 93d Cong., 1st Sess. (1973), *reprinted in* 1973 U.S.C.C.A.N. 2806, 2816.

39. ELIZABETH MORRISON & RANDALL B. PURCELL, PLAYERS & ISSUES IN U.S. FOREIGN AID 7 (1988).

40. Foreign Assistance Act of 1973, Pub. L. No. 93-189, § 102(b)(2), 87 Stat. 714 (1973), *reprinted in* 1973 U.S.C.C.A.N. 781, 782.

41. MORRISON & PURCELL, *supra* note 39, at 8.

42. *Id.*

43. EBERSTADT, *supra* note 20, at 49-50.

44. MORRISON & PURCELL, *supra* note 39, at 8. For example, security assistance represented 45% of foreign aid in FY 1980. It grew to 62% in the administration's FY 1987 budget request. *Id.* One commentator observed that, despite this proportionate expansion of security assistance, Reagan's promise to realign assistance priorities with ideological objectives rang hollow: "If the rhetoric of the Carter commissions . . . had been carefully airbrushed out of AID's public statements in the 1984 election year, such thinking was still clearly acceptable in the inner recesses of the Reagan administration's development apparatus." EBERSTADT, *supra* note 20, at 57.

45. Lynne D. Finney, *Development Assistance: A Tool of Foreign Policy*, 15 CASE W. RES. J. INT'L L. 213, 242-43 (1983).

46. *Id.*

This notion has brought about considerable controversy.[47] One view suggests that the United States should not impose its economic policies upon a country in need.[48] The other view argues that common sense should dictate that a donor of assistance bears the responsibility to ensure that the recipient uses the assistance in a manner that will ensure its success.[49] One commentator, however, suggests that realities will prevent the United States from imposing a particular approach on a country:

> Identity comes first; economic choices follow. Designing effective development strategies will never be an act of pure economic technique and rationality. They must embody hopes, enhance identity, and inspire the spirit to 'compel belief,' gain support, and affect reality. The single-recipe approach is doomed to failure in an increasingly self-conscious world. Differentiating the U.S. approach to development strategies rather than standardizing it is an essential element for U.S. development cooperation to succeed in the 1990s.[50]

The Bush Administration's posture on the broad goals of U.S. foreign assistance was premised on a "tradition of humanitarian concern . . . combined with an active promotion of our national interests."[51] The provision of foreign assistance was guided by six principles:

- Support for free markets and broadbased economic growth;
- Concern for individuals and the development of their economic and social well-being;
- Support for democracy;
- Encouragement of responsible environmental policies and prudent management of natural resources;
- Support for lasting solutions to transnational problems; and

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47. *Id.*

48. *Id.*

49. *Id.*

50. Colin I. Bradford, *Shaping a U.S. Approach to the 1990s: "Reading Reality Right," in* COOPERATION FOR INTERNATIONAL DEVELOPMENT, *supra* note 12, at 203, 209.

51. *Overview of Foreign Assistance: Hearings before the Subcomm. on International Economic Policy, Trade, Oceans, and Environment; African Affairs; and East Asian and Pacific Affairs of the Senate Comm. on Foreign Relations*, 102d Cong., 1st Sess. 7-8 (1991) [hereinafter *Foreign Assistance Hearings*] (testimony of Ronald W. Roskens, Administrator, AID).

• Provision of humanitarian assistance to those who suffer from natural or man-made disasters.[52]

As it sought to implement these principles, AID began to place greater significance on "sound economic policies and improved governance in developing countries as a critical basis for sustained, broadbased growth."[53]

Simultaneous with the evolution of these policies under successive administrations, Congress increasingly has expanded its control over foreign assistance by imposing rigorous reporting requirements and by "earmarking" funds for specific programs.[54] Earmarking restricts funds to specific countries and projects, and, in 1989, almost half of development assistance funds were earmarked pursuant to Congressional directive.[55] The reporting burdens are astounding: "In 1985 alone, USAID provided 849 congressional notifications totaling 1,700 pages. The agency estimates that it devotes more than 200 person-years per year to its interaction with the Congress."[56] Such restrictions and requirements have been a subject of great irritation to AID and State Department officials.[57] The Bush Administration, for example, took the position that reporting requirements and congressional earmarks imposed considerable burdens and tied up funds, despite the fact that conditions could change quickly.[58]

The dramatic changes in Eastern Europe shocked this policymaking structure, forcing Congress and the executive agencies to respond quickly in an extremely fluid policy milieu.[59] Turf rivalries between the

52. *Id.* at 8.

53. *Id.* at 7.

54. Bruce W. Jentleson, *American Diplomacy: Around the World and Along Pennsylvania Avenue*, *in* A QUESTION OF BALANCE: THE PRESIDENT, THE CONGRESS, AND FOREIGN POLICY 146, 172 (Thomas E. Mann ed., 1990).

55. *Id.* at 173. Security assistance was almost completely earmarked: "98 percent of the economic support fund and 92 percent of military aid was earmarked." *Id.* Jentleson describes earmarking as "the foreign aid equivalent of domestic entitlements." *Id.* at 172.

56. Allan Hoben, *USAID: Organizational and Institutional Issues and Effectiveness*, *in* COOPERATION FOR INTERNATIONAL DEVELOPMENT, *supra* note 12, at 253, 273. "Only the Department of Defense has more [reporting requirements], yet it has a budget fifty times greater." Jentleson, *supra* note 54, at 174 (citing Lee H. Hamilton, *To Make Foreign Aid Work*, WASH. POST, Apr. 2, 1989, at C7).

57. *Id.*

58. *Id.*

59. *Poland Aid*, *supra* note 1, at 506. Congressman David Obey observed that "[t]his is the time to move as quickly as possible in providing the kind of assistance to Poland that can in fact give those political reforms the breathing room they need to

executive and legislative branches exerted great influence over the design and implementation of U.S. efforts to assist the newly emerging democracies of Eastern Europe.[60]

III. EASTERN EUROPE'S SITUATION: THE EXAMPLE OF POLAND

"Making eggs out of an omelet" is how one official described the situation currently facing Eastern Europe.[61] The economic, social, and political problems facing the newly emerging democracies of Central and Eastern Europe have never before been encountered. The challenges in Poland, the largest of the Eastern European countries,[62] typified the circumstances in the entire region. Under communist rule since 1947, an opposition coalition led by the Solidarity labor union formed a government headed by non-communists in 1989.[63] Citizens voted in free local elections in May 1990, and in the following December, they chose Lech Walesa to be the first President ever elected by the people.[64] Walesa succeeded General Wojciech Jaruzelski,[65] who had imposed martial law and jailed many of Solidarity's leaders during the course of the union's decade-long challenge to communist authority.[66]

A combination of forces led to the dismantling of the communist regime in Poland. Vast numbers of Poles followed Solidarity's bold leadership to "openly challeng[e] Poland's entire political, economic

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succeed." *Id.*

60. The process of crafting the aid package for Poland was described as a "bidding war" between Congress, the administration and the two parties. *Id.* at 503. Frustrations and anxieties over the situation among Members of Congress were high at times, prompting Congressman Lee Hamilton to say, "[t]here is a real difference in my assessment of the problem and the administration's assessment . . . . I feel a sense of urgency here. The administration seems relaxed about this." *Id.* at 512.

61. Robert L. Barry, *Priorities of US Assistance to Central and Eastern Europe: Statement Before the Subcommittee on Foreign Operations of the Senate Appropriations Committee, Washington, D.C., April 16, 1991*, 2 DEP'T ST. DISPATCH. 286, 288 (1991).

62. Poland encompasses an area of about 120,725 square miles (312,680 square kilometers) and has a population of 37.8 million. *Country Profile: Poland*, 2 DEP'T ST. DISPATCH. 208, 208 (1991) [hereinafter *Country Profile*]. The other countries of Eastern Europe include the former Czechoslovakia, Hungary, Romania, and Bulgaria. U.S. GEN'L ACCOUNTING OFFICE, EASTERN EUROPE DONOR ASSISTANCE AND REFORM EFFORTS, PUB. NO. GAO/NSIAD-91-21, at 9-10 (1990) [hereinafter DONOR ASSISTANCE].

63. *Country Profile*, *supra* note 62, at 208.

64. *Id.*

65. *Id.*

66. Abraham Brumberg, *Poland: The Demise of Communism*, 69 FOREIGN AFFAIRS: AMERICA & THE WORLD 1990, at 70, 75 (1990).

and social system."[67] The Polish government responded by imposing martial law in December of 1981.[68] Over the course of the decade, the government's ability to constrain the aspirations of the people ebbed and flowed.[69] Ultimately, popular support rallied behind Solidarity, leading to the call for elections and the "roundtable" negotiation in 1989 between the government and opposition leaders.[70] At the same time, Jaruzelski's government was receiving less support from the Soviets under Mikhail Gorbachev.[71] Gorbachev's policies, known collectively as *perestroika*, called for substantial restructuring of economic organization.[72] This restructuring, combined with the rise of *glasnost*, or openness, created great instability in the Soviet regime making it less able to shore up allies who had relied on it for over forty years.[73] Consequently, a political and military power vacuum forced the Jaruzelski government to negotiate power sharing arrangements with Solidarity that eventually resulted in the ouster of the communist party.[74] The new government quickly revised the constitution, boldly set out to dismantle and privatize the state-owned enterprises, and began the painful process of converting to a market economy.[75]

The transition could not have been more dramatic. While under communist rule, enterprises were operated as large, centrally-controlled monopolies.[76] Production decisions were made in Warsaw and transmitted to plant managers based on what central planners felt was needed.[77] Planners, rather than the market, set prices.[78] Increases in production were achieved through infusions of labor rather than greater efficiency.[79] For example, one Polish steel plant required 30,000 workers to manufacture the same amount of steel as a U.S. plant employing 7,000 workers.[80]

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67. *Id.*

68. *Id.*

69. *Id.* at 73-74.

70. *Id.* at 79.

71. Michael Howard, *The Springtime of Nations*, 69 FOREIGN AFFAIRS: AMERICA & THE WORLD 1990, at 17, 22 (1990).

72. Marshall I. Goldman, *Gorbachev the Economist*, 69 FOREIGN AFFAIRS, Spring 1990, at 28, 28 (1990).

73. *Id.*

74. *See* Brumberg, *supra* note 66, at 79.

75. *Country Profile*, *supra* note 62, at 208.

76. DONOR ASSISTANCE, *supra* note 62, at 27.

77. *Id.* at 28.

78. *Id.*

79. *Id.* at 27.

80. *Id.* at 29.

Central ownership of economic enterprises also meant that nations like Poland did not have institutions that many in the West take for granted. For example, during the communist tenure there were no stock or commodities exchanges; banking was a state function.[81] As a result, there were no existing institutions through which to channel private investment. Even more stultifying was that the Polish simply did not have experience with the basics of owning property, negotiating contracts, or making economic choices based on a system of pricing that reflected costs, supplies and demand rather than bureaucratic fiat.[82]

Exacerbating the inefficiencies of central control was the isolation of Poland and the other Eastern European economies. All were members of the Council for Mutual Economic Assistance (Comecon),[83] the Soviet dominated trade body of the communist bloc nations, which managed a system of arrangements among its members that provided for the transfer of capital, commodities and other products.[84] These arrangements effectively placed the member nations outside of the international trading system except when purchasing goods unavailable within Comecon.[85] Poland's limited dealings with the West, nonetheless, led to a crushing debt burden due to the lack of a convertible currency.[86] Isolation insulated the economy from international competition, reduced access to consumer goods, and exacerbated the already low incentive to produce quality products.[87]

The painful process of converting and reintegrating the Polish economy began in 1989 under the newly elected Polish government led by Prime Minister Tadeusz Mazowiecki.[88] The "Balcerowicz Plan," named for Deputy Prime Minister Leszek Balcerowicz, charted the

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81. *Id.* at 31.

82. *See generally* Jeffrey Sachs & David Lipton, *Poland's Economic Reform*, 69 FOREIGN AFFAIRS, Summer 1990, at 47 (1990).

83. DONOR ASSISTANCE, *supra* note 62, at 30.

84. *Id.*

85. *Id.*

86. *Id.* Poland's external debt was over $46 billion as of 1989-1990. In 1989 debt service payments exceeded $5 billion, more than half of the hard currency value of Poland's exports. Poland's creditor governments (known collectively as the Paris Club) restructured Poland's debt schedule on numerous occasions and have agreed to excuse at least 50% of Poland's debt to them. *Country Profile*, *supra* note 62, at 209.

87. Sachs & Lipton, *supra* note 82, at 49. In addition, almost all imports and exports had to be centrally approved. Frequently, the importing that did occur was conducted by a centralized enterprise preventing individual firms from establishing contacts with firms in more advanced countries. This effectively cut the vast majority of the economy off from the benefits of technology transfer. *Id.* at 49-50.

88. *Id.* at 48.

course for economic reform.[89] The plan lifted price controls, eliminated rationing of consumer goods and services, and initiated the process of privatization.[90] Some referred to the plan as a form of "shock therapy."[91] The lifting of controls caused a tremendous increase in prices—inflation exceeded an annual rate of 2000% during the second half of 1989.[92] Yet, other aspects of the plan have comparatively calmed inflation to the point that it is expected to be roughly 40% in 1993.[93]

The Polish Parliament began constructing a new legal framework for a market economy that included converting the banking system.[94] The Polish National Bank was restructured into a Western style "two tiered" system in which the central bank regulates privately owned banks engaging in traditional commercial bank activity such as maintaining accounts and issuing loans.[95]

Poland began privatization efforts by selling shares in a small number of enterprises on a newly created stock exchange.[96] Other initiatives led to the transfer of shops, wholesale and retail enterprises, and other smaller firms.[97] Despite these transfers, most of Poland's domestic output continues to be generated by state-run enterprises.[98] Several proposals for accelerated privatization are pending.[99]

To facilitate this entire transition, Polish leaders requested assistance from the international community, specifically seeking substantial reductions in Poland's external debt, assistance to promote convert-

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89. *Id.*

90. *Id.* at 55.

91. Jim McNitt, *Poland's Bold Leap, in Poland: A New Era of Opportunity*, NEWSWEEK, Sept. 30, 1991, at special advertising sec. following 16.

92. *Id.*

93. Coopers & Lybrand, *Eastern European Business & Investment Guide: Poland*, Jan. 28, 1993, § 1, *available in* LEXIS, Europe Library, Poland File [hereinafter Coopers & Lybrand].

94. *Id.* § 3.4.

95. Jim McNitt, *Building Commercial Banking in Poland: A New Era of Opportunity*, NEWSWEEK, Sept. 30, 1991, at special advertising sec. following 16.

96. Coopers & Lybrand, *supra* note 93, § 3.4. The exchange is housed symbolically on the top floor of the old communist party headquarters. Jim McNitt, *Milestones of Polish History, Science & Culture, in Poland: A New Era of Opportunity*, NEWSWEEK, Sept. 30, 1991, at special advertising sec. following 16.

97. Coopers & Lybrand, *supra* note 93, § 3.3.

98. *Id.* § 3.7 (The private sector accounts for 22-23% of Gross Domestic Product).

99. Sachs & Lipton, *supra* note 82, at 61. This is proving to be an extraordinarily difficult issue for the Polish government since there is little consensus over who truly owns existing enterprises and who should own them in the future. *Id.*

ibility of Poland's currency, the *zloty*, and assistance in the form of grants, loans, and technical assistance to ease market conversion and to promote the modernization of Poland's economic infrastructure.[100]

IV. PROVISIONS OF THE SEED ACT

Following a dramatic visit by Lech Walesa,[101] Congress passed the Support for East European Democracy (SEED) Act of 1989,[102] authorizing an extensive package of assistance designed to aid the conversion of the Polish and Hungarian economies to a free market system. The legislation called for programs that would facilitate structural adjustment, private sector development, trade and investment, cultural and educational exchanges, and the development of democratic institutions.[103] The final Act was an amended version of an alternative package proposed by fifty-eight House members in October of 1989.[104] The House Committee on Foreign Affairs reported that the final package combined provisions of a package proposed by President Bush and several other proposals passed earlier by the House.[105]

A. Legislative Objectives

SEED mandated that "the United States shall implement . . . a concerted Program of Support for East European Democracy . . . . The SEED program shall be . . . designed to provide cost-effective assistance to those countries of Eastern Europe that have taken substantive steps toward institutionalizing political democracy and economic pluralism."[106] The Act called upon the President to ensure that the assistance achieve objectives among three broad categories.[107] First, assistance was intended to promote the expansion of democracy characterized by representative governments that are freely elected.[108] Included in this was a recognition of the importance of free speech, the operation of a free press, and the establishment of independent judici-

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100. *See id.* at 64.

101. 135 CONG. REC. H8,632-35 (daily ed. Nov. 15, 1989) (address by Solidarnosc Chairman Lech Walesa to joint meeting of the House and Senate).

102. SEED, *supra* note 3.

103. H.R. REP. No. 278, 101st Cong., 1st Sess., pt. 1, at 3 (1989), *reprinted in* 1989 U.S.C.C.A.N. 739, 739-40 [hereinafter HOUSE REPORT, pt. 1].

104. HOUSE REPORT, pt. 2, *supra* note 8, at 4, 1989 U.S.C.C.A.N. at 746.

105. *Id.*, 1989 U.S.C.C.A.N. at 746-47.

106. SEED, *supra* note 3, § 2(a), 103 Stat. at 1299.

107. *Id.* § 2(b)(1)-(3), 103 Stat. at 1299-1300.

108. *Id.* § 2(b)(1), 103 Stat. at 1299.

ary and military structures.[109]

The second broad goal called for assistance to promote the development of open markets.[110] These markets were to embrace notions of private property in which privatized enterprises traded with each other freely, both domestically and internationally.[111] The capital markets were to be privately operated, and businesses to be freed from undue regulatory barriers.[112]

Finally, the Act mandated that assistance not provide support to political parties that lacked commitment to democratic ideals—specifically the Communist Party.[113] Assistance also was specifically prohibited from providing benefits to the military forces of Warsaw Pact nations.[114]

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109. *Id.*

110. *Id.* § 2(b)(2), 103 Stat. at 1299-1300.

111. *Id.*

112. *Id.*

113. *Id.* § 2(b)(3), 103 Stat. at 1300.

114. *Id.* § 2(b)(3)(B), 103 Stat. at 1300. The legislative objectives are set forth as follows:

(1) to contribute to the development of democratic institutions and political pluralism characterized by—

(A) the establishment of fully democratic and representative political systems based on free and fair elections,

(B) effective recognition of fundamental liberties and individual freedoms, including freedom of speech, religion and association,

(C) termination of all laws and regulations which impede the operation of a free press and the formation of political parties,

(D) creation of an independent judiciary, and

(E) establishment of non-partisan military, security, and police forces;

(2) to promote the development of a free market economic system characterized by—

(A) privatization of economic entities,

(B) establishment of full rights to acquire and hold private property, including land and the benefits of contractual relations,

(C) simplification of regulatory controls regarding the establishment and operation of businesses,

(D) dismantlement of all wage and price controls,

(E) removal of trade restrictions, including on both imports and exports,

(F) liberalization of investment and capital, including the repatriation of profits by foreign investors,

(G) tax policies which provide incentives for economic activity and investment,

(H) establishment of rights to own and operate private banks and other financial service firms, as well as unrestricted access to private

B. *Structural Adjustment Provisions*

Title I of the Act authorized outlays directed towards structural adjustment.[115] Section 101 directed the government to play a leadership role in the development of assistance packages, debt relief, and other programs in international organizations such as the International Monetary Fund (IMF), the World Bank, and the Organization of Economic Cooperation and Development (OECD).[116] Such programs would be intended to support the Polish government's plan for attacking hyperinflation, relieving balance of payments problems, and carrying out structural reforms.[117]

Section 102 authorized $200 million in Economic Support Funds as the U.S. contribution to a $1 billion multilateral currency stabilization fund.[118] Section 103 authorized the provision of food and agricultural commodities to alleviate shortages.[119] It directed that the expenditure not be less than $125 million.[120] Such assistance, however, was to provide quantities of food that would eliminate shortages and ease inflation but not impair the development of private agricultural production by removing profit incentives.[121] Finally, the structural adjustment provisions directed the President to investigate debt-for-equity swaps as a means to reduce debt burdens.[122]

C. *Private Sector Initiatives*

Private sector development was the principal focus of Title II of the Act, and contained the largest single spending authoriza-

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sources of credit, and
(I) access to a market for stocks, bonds, and other instruments through which individuals may invest in the private sector; and
(3) not to contribute any substantial benefit—
(A) to Communist or other political parties or organizations which are not committed to respect for the democratic process, or
(B) to the defense or security forces of any member country of the Warsaw Pact.

Id. § 2(b), 103 Stat. at 1299-1300.

115. *Id.* at tit. I, § 101, 103 Stat. at 1302. Structural adjustment policies are intended to "lead to long-term internal and external balance, such as divestiture of unprofitable public sector enterprises." DONOR ASSISTANCE, *supra* note 62, at 15 n.2.

116. SEED, *supra* note 3, at tit. I, § 101, 103 Stat. at 1302.

117. *Id.*

118. *Id.* at tit. I, § 102, 103 Stat. at 1303.

119. *Id.* at tit. I, § 103, 103 Stat. at 1303-04.

120. *Id.*

121. *Id.*

122. *Id.* at tit. I, § 104, 103 Stat. at 1304-05.

tion—creation and funding of the Polish-American Enterprise Fund.[123] The Act authorized $240 million for the Fund intended to promote:

> (1) the development of the Polish . . . private sectors, including small businesses, the agricultural sectors, and joint ventures with United States and host country participants, and
>
> (2) policies and practices conducive to private sector development in Poland . . . through loans, grants, equity investments, feasibility studies, technical assistance, training, insurance, guarantees, and other measures.[124]

The Fund, established as a private entity, would receive its initial funding via the Agency for International Development.[125]

For programs or projects to be eligible, their goals were required to be consistent with the purposes of the Fund.[126] Explicitly approved were programs to establish Employee Stock Ownership Plans, encourage the development of credit unions, and modernize telecommunications technology.[127] The Fund also was directed explicitly to consider factors such as workers' rights, environmental effects, and commercial viability in determining whether or not to approve a project.[128] The Act also required the Fund to report to Congress and to be audited by independent accounting firms and the General Accounting Office (GAO).[129] Any organization that received money from the Fund also was required to maintain detailed, separate accounts subject to audit.[130]

Other sections of Title II authorized funding for technical assistance in the areas of labor market transition and private sector development.[131] An authorization of $4 million was designated for the Secretary of Labor to provide assistance regarding employee training and retraining, job search and employment services, unemployment compensation, occupational safety and health protection, labor-manage-

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123. *Id.* at tit. II, § 201, 103 Stat. at 1305. This provision also allocated $40 million for the creation of the Hungarian-American Enterprise Fund. *Id.* at tit. II, § 201 (b)(2), 103 Stat. at 1305.

124. *Id.* at tit. II, § 201(a), 103 Stat. at 1305.

125. *Id.* at tit. II, § 201(f), 103 Stat. at 1306.

126. *Id.* at tit. II, § 201(f)(1), 103 Stat. at 1306.

127. *Id.* at tit. II, § 201(f)(1)-(5), 103 Stat. at 1306.

128. *Id.* at tit. II, § 201(g), 103 Stat. at 1306.

129. *Id.* at tit. II, § 201(m)-(p), 103 Stat. at 1307-08.

130. *Id.* at tit. II, § 201(o), 103 Stat. at 1307.

131. *Id.* at tit. II, §§ 202, 203, 103 Stat. 1308-10.

ment relations, market driven wage systems, worker's rights, and other matters.[132] AID received a $10 million authorization for the purpose of designing and implementing technical assistance programs for private sector development.[133] AID was directed to coordinate and cooperate with other agencies such as the Agriculture Department, the Farmer-to-Farmer program, the Enterprise Funds, and other public and private entities.[134] Finally, the Act authorized an additional $6 million for the Peace Corps to conduct programs to provide training in the English language and private sector development.[135]

D. *Trade Initiatives*

Initiatives in Title III of the Act granted tariff concessions and provided financing authority to foster trade between the United States and Poland.[136] The Act extended eligibility to Poland for special treatment of some Polish exports to the United States under the Generalized System of Preferences.[137] Such treatment, normally reserved for developing countries, permits reduced tariffs on exports of raw materials and semifinished goods.[138] Section 303 authorized the Export-Import Bank of the United States to "guarantee, insure, finance, extend credit, and participate in the extension of credit in connection with the purchase or lease of any [Polish or Hungarian] product."[139] The Act authorized the President to provide short-term guarantees through the Export-Import Bank to finance the export of goods for private sector

132. *Id.* at tit. II, § 202(a)-(b), (g), 103 Stat. at 1308.

133. *Id.* at tit. II, § 203, 103 Stat. at 1309-10.

134. *Id.* at tit. II, § 203, 103 Stat. at 1309. Several organizations, programs, and agencies are explicitly listed as candidates for such projects. *Id.* The House Report devoted considerable attention to the nature and content of AID programs to provide agricultural and managerial technical assistance. HOUSE REPORT, pt. 2, *supra* note 8, at 10, 1989 U.S.C.C.A.N. at 753. The report stated that the statute "mentioned these particular organizations and programs because of the critical role the [House Foreign Affairs] committee believes [the organizations] can play in helping Poland and Hungary develop a market based economy." *Id.*

135. SEED, *supra* note 3, at tit. II, § 204, 103 Stat. at 1310.

136. *Id.* at tit. III, §§ 301-307, 103 Stat. at 1311-14.

137. *Id.* at tit. III, § 301, 103 Stat. at 1311.

138. The Generalized System of Preferences (GSP) was formulated to serve as an economic development tool by providing duty-free access to United States markets for developing countries. HOUSE REPORT, pt. 1, *supra* note 103, at 2, 1989 U.S.C.C.A.N. at 741. The President was authorized to grant tariff concessions to countries provided that they were not, as in the case of Poland, specifically excluded from participation in the program. *Id.* This section removes Poland from the statutory exclusion list. *Id.*; *see also Poland Aid*, *supra* note 1, at 504.

139. SEED, *supra* note 3, at tit. III, § 303(a), 103 Stat. at 1312.

use in Poland.[140] These guarantees capped at $200 million during any fiscal year.[141]

Title III also authorized $6 million to expand the Trade and Development Program into Poland and Hungary.[142] In addition, the President was urged to negotiate treaties that would lead to a more stable legal framework for United States investment in Poland and Hungary.[143] Finally, Title III amended the Tax Reform Act of 1986 to permit Poland to sell bonds at below-market interest rates in the United States.[144]

E. *Educational, Cultural, and Scientific Programs*

Title IV authorized funding and directed the administration to implement educational, cultural, and scientific programs.[145] Section 401 authorized $12 million to the United States Information Agency (USIA) for programs that promote educational and cultural exchanges.[146] These activities, whose principal emphasis would be to assist in developing business and economic skills for the free market environment, would use "the full array of existing . . . programs."[147] The section also called upon the President to "encourage the establishment

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140. *Id.* at tit. III, § 304, 103 Stat. at 1312.

141. *Id.* at tit. III, § 304(a), 103 Stat. at 1313 (adding new § 225(g) following existing § 224 of the Foreign Assistance Act of 1961 (codified at 22 U.S.C. § 2184) (1988)).

142. *Id.* at tit. III, § 305, 103 Stat. at 1314. The Trade and Development program was created as an independent agency separate from AID "to provide information to persons in the private sector concerning trade development and export promotion" to developing countries. The program was initiated in 1974 as an amendment to the Foreign Assistance Act of 1961. *See* 22 U.S.C. § 2421 (1990).

143. *Id.* at tit. III, § 306, 103 Stat. at 1314.

144. *Id.* at tit. III, § 307, 103 Stat. at 1314. Previously, only Israel was allowed to seek American investment at discount rates without running afoul of Internal Revenue Service regulations. *Poland Aid*, *supra* note 1, at 504. *See* 26 U.S.C. § 7872 (1988).

145. SEED, *supra* note 3, at tit. IV, §§ 401-403, 103 Stat. at 1314-17.

146. *Id.* at tit. IV, § 401(e), 103 Stat. at 1315.

147. *Id.* at tit. IV, § 401(a), 103 Stat. at 1315. A number of programs are mentioned for special emphasis including:

> [the] J. William Fulbright Educational Exchange Program, the International Visitors Program, the Samantha Smith Memorial Exchange Program, the exchange programs of the National Academy of Sciences, youth and student exchanges through such organizations as The Experiment in International Living, The American Field Service Committee, Youth for Understanding, and research exchanges sponsored by the International Research and Exchanges Board (IREX).

Id.

of 'sister institution' programs" between Polish, Hungarian, and American cities, universities, and organizations in the fields of health care, business, environmental protection, and agricultural research.[148]

Section 402 created a scholarship program to enable Polish and Hungarian students to attend United States educational institutions.[149] This provision authorized $10 million over a three year period to AID's Administrator to provide state grants for scholarships.[150] As in the case of the exchange programs, the Act directed that special emphasis be given to the areas of business and economics.[151]

In section 403, the Act provided for scientific and technology exchange programs.[152] The section authorized $5.5 million and $2.5 million for programs directed to Poland and Hungary, respectively.[153] Specifically, in the case of Poland, the funds were allocated to the Secretary of State to implement a United States-Polish agreement concerning scientific and technical cooperation.[154] While section 403 does not direct the Secretary to take any specific actions, a commission formed to guide the implementation of the 1987 agreement had been under-utilized according to the House Report.[155] That commission, the report suggested, should be given the responsibility for evaluating and recommending ways "in which joint cooperation in science and technology may more effectively promote economic and political reform in Poland."[156]

F. Miscellaneous Provisions

Title V authorized other assistance programs to support the development of democratic institutions, promote environmental initiatives, and to provide medical supplies and training.[157] Section 501 designated $12 million of Economic Support Funds (ESF) to promote democratic institutions and activities.[158] Section 502 allotted funds to the Environmental Protection Agency (EPA) and the Department of Energy

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148. *Id.* at tit. IV, § 401(d), 103 Stat. at 1315.
149. *Id.* at tit. IV, § 402, 103 Stat. at 1315-16.
150. *Id.* at tit. IV, § 402(i), 103 Stat. at 1316.
151. *Id.* at tit. IV, § 402(b), 103 Stat. at 1315.
152. *Id.* at tit. IV, § 403, 103 Stat. at 1316-17.
153. *Id.* at tit. IV, § 403(a)-(b), 103 Stat. at 1316.
154. *Id.* at tit. IV, § 403(c)(1), 103 Stat. at 1316.
155. HOUSE REPORT, pt. 2, *supra* note 8, at 14, 1989 U.S.C.C.A.N. at 757.
156. *Id.*
157. SEED, *supra* note 3, at tit. V, §§ 501-503, 103 Stat. at 1317-19.
158. *Id.* at tit. V, § 501, 103 Stat. at 1317. The Economic Support Fund is codified at 22 U.S.C. § 2346 (1988).

(DOE)[159] in recognition of "the severe pollution problems facing Poland and Hungary . . . ."[160] The bill provided highly specific instructions. For example, the EPA was directed to establish an air quality monitoring network and improve water quality in Krakow.[161] The DOE was directed "to retrofit a coal-fired commercial powerplant in the Krakow . . . region with advanced clean coal technology."[162] Finally, section 503 authorized $4 million for medical supplies and equipment provided through private entities and the training of medical personnel in Poland.[163]

Titles VI and VII contained miscellaneous provisions concerning various policy objectives and establishing reporting requirements.[164] Title VI directed the President to designate an official within the State Department to be responsible for implementing and coordinating the SEED Program.[165] Other sections required the creation of a SEED information system and encouraged private voluntary assistance.[166] Title VII directed the President to provide a number of reports to Congress concerning progress towards reform and an overall annual status report on SEED program assistance.[167]

Finally, Title VIII contained the Act's strong suggestion that SEED assistance be terminated in the event that certain conditions are violated.[168] If a recipient country engages in activities that are "contrary to United States national security interests," institutes martial law for reasons other than natural disaster or foreign invasion, or removes a member of parliament from office for "extraconstitutional" reasons, the President "should suspend all assistance" upon the determination and notification of the situation to Congress.[169]

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159. *Id.* at tit. V, § 502(e), 103 Stat. at 1317 (authorizing funds for EPA activities); tit. V, § 502(f)(1), 103 Stat. at 1318 (authorizing funds for DOE activities).

160. *Id.* at tit. V, § 502(a), 103 Stat. at 1317.

161. *Id.* at tit. V, § 502(c)(1)-(2), 103 Stat. at 1317.

162. *Id.* at tit. V, § 502(f)(1), 103 Stat. at 1318.

163. *Id.* at tit. V, § 503, 103 Stat. at 1318-19.

164. *Id.* at tits. VI-VII, §§ 601-706, 103 Stat. at 1319-21.

165. *Id.* at tit. VI, § 601, 103 Stat. at 1319. Deputy Secretary of State Lawrence S. Eagleburger was selected to coordinate the SEED Program by President Bush. *Focus on Central and Eastern Europe*, 1 DEP'T ST. DISPATCH. 214, 214 (1990).

166. SEED, *supra* note 3, at tit. VI, §§ 602-603, 103 Stat. at 1319.

167. *Id.* at tit. VII, §§ 701-706, 103 Stat. at 1320-21. These include reports on Poland's requirement for agricultural assistance, on confidence building measures being undertaken to promote investment and trade, and on environmental problems. *Id.* at tit. VII, §§ 701-703, 103 Stat. at 1320-21.

168. *Id.* at tit. VIII, § 801, 103 Stat. at 1322.

169. *Id.* It is unclear whether or not Congress' use of the word "should" actually requires the President to terminate assistance in such circumstances; however, the

V. Administrative Interpretation and Implementation of the SEED Programs

Based upon its interpretation of the Act's mandates, the Bush Administration undertook a number of activities to implement SEED's directives following its enactment.[170] The Administration redefined U.S. assistance policy to the nations of Central and Eastern Europe.[171] Rooted in SEED's statement of objectives, the State Department announced that assistance would be provided to those countries that are moving towards a "new democratic differentiation."[172] The nations would receive aid based on their individual needs for the attainment of four United States objectives:

> First, progress toward political pluralism, based on free and fair elections and an end to the monopoly of the communist party;
>
> Second, progress toward economic reform, based on the emergence of a market-oriented economy with a substantial private sector;
>
> Third, enhanced respect for internationally recognized human rights, including the right to emigrate, and to speak and travel freely; and
>
> Fourth, a willingness on the part of each of these countries to build a friendly relationship with the United States.[173]

The State Department established a new framework for U.S. aid encompassing the three types of assistance incorporated in SEED.[174]

House Report states that "[the] bill conditions . . . assistance on continued steps toward democracy and market-oriented economies through the implementation of comprehensive economic reform in both Poland and Hungary." HOUSE REPORT, pt. 1, *supra* note 103, at 2, 1989 U.S.C.C.A.N. at 745.

170. Kenneth I. Juster, Remarks before RAND Corporation Conference on Supporting East European Democracy and Free Markets (Sept. 21, 1990) *in* 1 DEP'T ST. DISPATCH. 214 (1991).

171. *Id.*

172. *Id.* Previously, contact with and assistance to the Central and Eastern European nations was directly proportionate to the extent of each country's variance from Soviet foreign policy. *Id.* At the time of these remarks, the administration had explicitly recognized four countries as being qualified to receive support under this new definition: Poland, Hungary, Czechoslovakia, and Yugoslavia. Of these four, Poland was deemed to be the top priority because of its size, the severity of its problems, and the breadth of its proposed reforms. *Id.* at 216.

173. *Id.* at 214.

174. *Id.*

First, short-term humanitarian assistance would be provided in the form of medical supplies and food relief.[175] Second, medium-term assistance would be offered, such as guidance in the development of democratic institutions, technical assistance to support the transition to a market economy, environmental assistance, and involvement in the negotiation of agreements to normalize trade relations.[176] The final level of assistance would be through bilateral and multilateral economic support in the form of contributions to IMF stabilization funds, the Polish Stabilization Fund, World Bank structural adjustment programs, and the establishment of the Polish-American Enterprise Fund.[177]

These interpretations and resultant actions, however, have had a mixed impact. Some of the largest programs in terms of financial commitments have caused the least controversy and have been fairly successful in the achievement of their objectives. For example, the establishment of the multi-lateral Polish stabilization fund has largely achieved full convertibility of the *zloty* in the international currency markets.[178] There is also little debate that the United States' decision to forgive a substantial portion of Poland's official government debt substantially reduced pressure on Poland's economy.[179] Polish policies also have succeeded in spurring private entities to a 20% annual growth rate.[180] Now, more than 90% of retail operations are in private firms, and lines have disappeared at shops whose shelves are filled with food and consumer goods.[181]

Despite these successes, there have been substantial problems in the Polish economy. The overall purchasing power of Polish citizens has declined by over a third.[182] Unemployment has increased two-fold during the past year to a current rate approaching 12%.[183] Polish average annual income is only $200, yet Warsaw office space costs more than rents in Manhattan.[184] In response to IMF requirements, the Warsaw

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175. *Id.*

176. *Id.* at 214-15.

177. *Id.* at 215-16.

178. Coopers & Lybrand, *supra* note 93, § 3.5.

179. *Id.* § 2.4.

180. Blaine Harden, *Poles Led the Way but Have Far to Go; "Shock" Plan is Moscow Model*, WASH. POST, Jan. 2, 1992, at A1 [hereinafter *Shock Plan*].

181. *Id. See also* Coopers & Lybrand, *supra* note 93, § 3.7 (noting that the private sector contribution to overall GDP is now estimated at 22-23%).

182. *Shock Plan*, *supra* note 180, at A1.

183. Blaine Harden, *Poles Sour on Capitalism*, WASH. POST, Feb. 5, 1992, at A1, A24 [hereinafter *Poles Sour on Capitalism*].

184. *Id.*

government is being forced to impose drastic budget cuts.[185] The government also has announced substantial increases in energy prices.[186]

Officials within U.S. agencies have criticized the SEED program, as interpreted and implemented by the top levels of the Bush Administration, since medium-term transition aid may only consist of technical assistance and private investment.[187] For example, AID officials criticize SEED's overly specific programmatic directives because they would prefer more general statements of goals and objectives.[188] This criticism stems from the belief that the Act "mandated solutions to problems that were poorly defined and understood."[189] Such excessively specific directives have created considerable inter-agency friction. For example, the Act directed the Department of Energy to retrofit a Krakow commercial power plant with "clean coal" technology.[190] Department of Energy officials sought to implement the program, yet believed that State Department, AID, and EPA officials undermined Polish support for the program, which led to mixed results.[191] These officials noted that Polish officials were too "fragmented" and "overwhelmed" by donors.[192] However, a State Department official countered that the Polish government did not want to commit its own resources to the project in the face of more pressing needs.[193]

The language of the Act also presented considerable difficulties to agency officials because it requires support of private sector initiatives to the exclusion of the recipient country's public sector. For example, the Department of Commerce was to provide technical assistance to promote trade and investment opportunities.[194] Noting that the Act's restrictions clash with Eastern Europe's reality, one Commerce official was paraphrased as saying that: "[a] huge portion of Poland's economy consists of state-owned enterprises which the U.S. government cannot work with to improve operations and, thus, their impact on the local

185. Mary Battiata, *Poles Strike Against Economic Reforms; Price Increases, Proposed Budget Cuts Anger Public Suffering from Unemployment*, WASH. POST, Jan. 13, 1992, at A13.

186. *Id.*

187. *See generally* U.S. GEN'L ACCOUNTING OFFICE, EASTERN EUROPE: STATUS OF U.S. ASSISTANCE EFFORTS, PUB. NO. GAO/NSIAD-91-110, at 1 (1991) (describing critiques of program made by agency officials) [hereinafter U.S. ASSISTANCE EFFORTS].

188. *Id.* at 23.

189. *Id.*

190. SEED, *supra* note 3, § 502(f)(1), 103 Stat. at 1318.

191. U.S. ASSISTANCE EFFORTS, *supra* note 187, at 30.

192. *Id.*

193. *Id.*

194. *Id.* at 27.

economy."[195] Overseas Private Investment Corporation (OPIC) officials also made a similar criticism.[196] They would like to focus some of their efforts on providing risk insurance to assist state-owned enterprises in their privatization efforts; however, a strict reading of the Act prevents them from taking such steps.[197]

Finally, aside from the difficulties presented by the Act's provisions, Polish officials have criticized the form and size of U.S. assistance efforts. Polish President Lech Walesa unleashed a resounding damnation of Western and, especially, U.S. assistance efforts, before a February 1992 meeting of the Council of Europe: "It is you, the West who have made good business on the Polish revolution . . . . The West was supposed to help us in arranging the economy on new principles, but in fact it largely confined its effort to draining our domestic markets."[198] This criticism reflected a substantial change in Poland's public mood pertaining to the transition to a market economy. One opinion poll showed that only one in four Poles supported the conversion to a market economy, and that a majority of the people were in favor of aiding state-owned enterprises and were increasingly suspicious of foreign investment.[199]

These public pressures led to a substantial shift in Polish policies that arguably ran counter to SEED's objectives. The government, led in early 1992 by Prime Minister Jan Olszewski, "centralize[d] economic decision making, questioned the need for rigorous free market reform, and pledged to aid money-losing state industries."[200] The current government, led by Hanna Suchocka, eliminated many of the Olszewski attempts at retrenchment; nonetheless, her government is attempting to balance IMF demands for stern fiscal and monetary policy with the need to soften the blows of the Balcerowicz "shock therapy" plan.[201]

Nonetheless, this retrenchment and criticism reflects a substantial weakness of the SEED program structure that in the words of one commentator, "is hurting America's image."[202] The technical assistance

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195. *Id.* at 29.

196. *Id.* at 39.

197. *Id.*

198. *Poles Sour on Capitalism*, *supra* note 183, at A1.

199. *Id.* at A24 (citing a survey published in Poland's largest daily newspaper, GAZETA WYBORCZA).

200. *Id.* at A1. Olszewski led the third government following the 1989 transition. *Id.*

201. Coopers & Lybrand, *supra* note 93, § 3.1.

202. Janine R. Wedel, *Polish Officials Sour On US AID Approach*, CHRISTIAN SCI. MONITOR, Mar. 2, 1992, at 18.

programs of SEED have led Poles to resent the so-called "Marriott Brigade" of American consultants and other experts who exploit the SEED program's resources to advance their personal business agendas.[203] A major element of this criticism is that the consultants receive the financial benefits while the Poles receive nothing but excessive advice that places strains on their already over-burdened schedules.[204] Another commentator suggests that "[t]he right response [to Walesa's criticisms] is to return to all the questions about Western support for Poland and to ask once again whether it is the right kind of help—and whether there is enough of it."[205]

VI. Conclusion

The formulation and implementation of SEED is another chapter in the disjointed development of United States foreign assistance policy. With the continuing conversion of Eastern Europe's political and economic structures, a renewed consideration of U.S. international development policy formulation is vital if we are to fulfill our role in the post cold war environment. The story of Poland and SEED require that Congress and the administration address four broad questions:

- To what extent should U.S. international development policies drive recipient countries' domestic priorities?

- What is the proper relationship of the Executive and the Legislative branches in the determination of international development priorities?

- How should this relationship be reflected in future legislation in order to effectively translate goals into effective policy?

- Is the existing structure for administering economic assistance sufficient to address global needs in the post-cold war environment?

The SEED Act and the Administration's interpretation of its mandate render U.S. assistance contingent upon the pursuit of free market economic organization. The various actors in the process have a pleth-

203. *Id.* The "Marriott Brigade" refers to the consultants' habit of staying in luxury hotels during their trips. *Id.*
204. *Id.*
205. *Blunt Words from Lech Walesa*, WASH. POST, Feb. 9, 1992, at B6.

ora of views regarding the definition of "free market." Thus, for example, if Poland slows its progress toward economic conversion, will either Congress or the Administration revoke its existing commitments, and will threats of revocation be used to second-guess the Polish leadership under the guise of "policy dialogue?" An equally fundamental question is whether or not U.S. institutions should influence the development of recipient country policies through its technical assistance, the content of which is substantially determined by American domestic politics.

At the same time, consideration has to be given to determining who properly should make these determinations and how they should be made. For example, is it intelligent for Congress to direct Administration policy through the use of earmarks and reporting requirements? Does congressional micromanagement produce policies that miss the mark for the attainment of its stated objectives? Yet, would the Administration continually violate the intent of Congress if legislation merely stated mandates in terms of broad objectives?

The attainment of congressional objectives, however stated, may be lost if the administrative structure precludes the effective delivery of assistance. For example, if Congress were to eliminate earmarks in favor of broad objectives, would assistance be effectively administered under the current regime that is supervised by the State Department? If geopolitical considerations were to be downplayed and true need and recipient country accountability to be emphasized, State Department administration might prevent the criteria from being properly applied. To the extent that other U.S. agencies are involved in assistance activities due to their comparative expertise advantages, should they be allowed to pursue their activities independently or should they report to some sort of "development czar?"

The answers to such questions are inevitably elusive, particularly when the policy milieu is highly fluid as is the case with international affairs. The point of this analysis is to urge a renewed consideration of U.S. international development objectives and structures. While it is important that U.S. assistance advance U.S. interests, it is equally important that its aid help rather than harm the recipient country. The U.S. approach is not the only approach. As Secretary Baker said, we can help through the sharing of our expertise; however, our expertise is derived through our experience. As the Polish experience demonstrates, unscrambling "omelets" requires patience, commitment and sensitivity.

The United States owes the recipients of its assistance the benefit of an intelligently designed policymaking structure that will balance priorities in a way that will dispense assistance in a truly constructive manner.

Howard A. Wolf-Rodda