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ARTICLES

Development Assistance — A Tool of Foreign Policy*

by Lynne Dratler Finney**

I. INTRODUCTION

Foreign assistance is one of the United States' most potent foreign policy tools. The focus of American aid to foreign countries reflects, as it always has, national political and economic philosophies and objectives. One of the primary objectives has always been and continues to be humanitarian. As President John F. Kennedy said in his message to Congress on the subject of foreign aid, the United States has:

[M]oral obligations as a wise leader and good neighbor in the interdependent community of free nations - our economic obligations as the wealthiest people in a world of largely poor people, as a nation no longer dependent upon the loans from abroad that once helped us develop our own economy - and our political obligations as the single largest counter to the adversaries of freedom.¹

However, another purpose of our program of foreign assistance is the maintenance of political and economic stability throughout the world. Underlying this objective is the pervasive philosophy that such stability can only be achieved through political and economic freedom, reflecting the democracy upon which our country is founded. All of these considerations and many others govern our policy of foreign assistance. It is significant that our foreign assistance objectives are so basic that they have changed very little from one administration to another, although certain

* This article, submitted in January 1982, represents the views of the author; it does not necessarily represent the views of the Agency for International Development or the U.S. Government. Prior to publication this article was cleared by A.I.D.

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¹ Message of the President to the Congress on the Subject of Foreign Aid (Mar. 22, 1961), reprinted in *WHY FOREIGN AID?* 3 (R. Goldwin ed. 1962).

emphases vary.

This article will explore our present philosophies and policies of foreign aid as reflected in the Foreign Assistance Act of 1961, as amended,² (hereinafter FAA) and various other statutes, regulations and internal policies currently pursued by the Agency for International Development (A.I.D.). Foreign assistance takes a variety of forms, multilateral — through agencies of the United Nations, the World Bank, etc. — and bilateral, which is direct assistance from the United States to another country or group of countries. The United States provides a number of types of economic bilateral assistance, such as economic support funds, which provide primarily balance of payment support although some projects are included; food assistance, such as that provided by Public Law 480³; disaster relief; Peace Corps programs; Overseas Private Investment Cooperation insurance and guarantees; and development assistance, which covers technical assistance, housing guarantees, loans and grants to underdeveloped countries for non-military purposes. It is this last type of bilateral assistance, development assistance, which is the subject of this article.

The first part of this article will review those sections of the FAA and other statutes and regulations which reflect basic American political and economic philosophies as applied to aid programs and projects. The second part of this article will cover statutory and regulatory prohibitions on American foreign assistance which prevent funds from going to countries which do not conform to our philosophies, and where it is not in the best interest of the United States to support political or economic philosophies of other countries. The final part analyzes the concept of "policy dialogue" which is the method used by A.I.D. to change the policies of recipient countries in order to make the development process more effective. This section includes a case study of application of the "policy dialogue" concept to A.I.D.'s housing guarantee program in Israel.

II. BASIC UNITED STATES DEVELOPMENT ASSISTANCE POLICIES

The primary policies underlying the U.S. foreign assistance program are humanitarian, political and economic. These policies have been codified over the years in the FAA and have formed the basis of the U.S. foreign aid program, although the emphasis on each of the three policies has changed during various administrations. The main focus of the U.S.

² 22 U.S.C. § 2151 (1976).

³ Pub. L. No. 480 is the Food for Peace Program established by the Agricultural Trade Development and Assistance Act of 1954, Pub. L. No. 83-480, 68 Stat. 454 (1954). The program consists of Title I, concessional sales of agricultural commodities on credit terms for foreign currencies; Title II, donations of agricultural commodities, and Title III, the food for development program under which funds accruing from the local sales of commodities are used for development. See A.I.D. HANDBOOK, Vol. 9.

foreign aid program is stated to be humanitarian. The first section of Part I of the FAA reaffirms the traditional humanitarian ideals of the American people, and renews our commitment to assist developing countries to eliminate hunger, poverty, illness and ignorance.⁴ Congress has declared that the "principal purpose of United States bilateral development assistance is to help the poor majority of people in developing countries to participate in a process of equitable growth through productive work and to influence decisions that shape their lives, with the goal of increasing their incomes and their access to public services which will enable them to satisfy their basic needs and live lives of decency, dignity, and hope."⁵ Our foreign policy has always reflected a concern for humanitarian goals and a sincere desire to help other nations attain our level of development and freedom. This concern has increased, rather than abated, over the years, and has been reflected through Congressional mandates in amendments to the Foreign Assistance Act.

A. *Humanitarian Aspects of Foreign Assistance Programs*

Although the first American assistance programs were largely motivated by political concerns, the humanitarian aspects of our program quickly became more prominent. The first American foreign aid program was targeted for Greece and Turkey in 1947.⁶ Its basic purpose was to help Greece quash the guerrilla rebellion, which if successful, would have delivered Greece into the hands of the Communists. Our aid to Turkey was designed to strengthen military forces in order to prevent a possible attack by the Communists on Turkey in an effort to gain control of the outlet to the Black Sea. The popular concept of foreign aid was first established by the Marshall Plan, which originated in 1948 as a program of economic aid for the reconstruction of Europe. Both the original program and the Marshall Plan were extremely successful because they focused on reviving, rather than creating, previously developed economies and cultures.

More recent foreign aid programs have focused on less developed countries. Over the past several decades, our aid has encompassed the developing world and we have confronted a multitude of new development challenges, including a total absence of physical infrastructure, economic management, technology and development tools within many recipient countries. The task that our country has undertaken is frankly formidable.⁷ We now provide development assistance and economic sup-

⁴ 22 U.S.C. § 2151(a) (1976).

⁵ 22 U.S.C. § 2151-1(a) (1976).

⁶ See Sulzberger, *Foreign Affairs: Where It All Began*, N.Y. Times, Aug. 28, 1968, at 46, col. 5.

⁷ AGENCY FOR INT'L DEVELOPMENT, 1982 ANNUAL REPORT OF THE CHAIRMAN OF THE DE-

port fund assistance to 76 countries.⁸

American humanitarian concerns have created an enormous challenge for us in trying to assist so many countries and cultures. A.I.D. has searched for effective solutions to a multiplicity of development problems through the process of trial and error. During the 1950's and 1960's, the basic development approach at A.I.D. was based on what some critics have termed the "trickle down" theory, which posited that if large-scale capital intensive projects, such as dams, railroads and highways, were created to strengthen industry and government in developing countries, the benefits of such projects — jobs, food, education and higher incomes — would inevitably "trickle down" to the poorest people in those countries. While some benefits resulted to the developing countries as a result of this type of assistance, it soon became clear that the major benefits did not in fact inure to the poorer people. Experts now agree it is equally important to improve the distribution of assistance to the poor.⁹

Congressional recognition that the large-scale capital transfers which were then the primary strategies in our bilateral assistance efforts were not effective in reaching the world's poor majority led to a rejection of the "trickle down" approach. In 1973, Congress amended the Foreign Assistance Act to focus aid priorities expressly on the poor.¹⁰ These changes came to be known as the "New Directions" for development assistance and evolved into the "basic human needs" strategy which continues to dominate the foreign aid program today.

The Foreign Assistance Act of 1973 provided specific guidelines for the Agency for International Development on meeting basic human needs:

(1) Bilateral development aid should concentrate increasingly on sharing American technical expertise, farm commodities, and industrial goods to meet critical development problems, and less on large-scale capital transfers, which when made should be in association with contributions from other industrialized countries working together in a multilateral framework.

(2) Future United States bilateral support for development should focus on critical problems in those functional sectors which affect the lives of the majority of the people in the developing countries: food production, rural development and nutrition; population planning and

VELOPMENT COORDINATION COMMITTEE: DEVELOPMENT ISSUES, at 43.

⁸ AGENCY FOR INTERNATIONAL DEVELOPMENT, CONGRESSIONAL PRESENTATION: FISCAL YEAR 1982, at 8 (Main Volume, amended version).

⁹ H.R. REP. No. 388, 93d Cong., 1st Sess. note o, at 15 (1973), where Congress found that although the industrial sectors of developing countries benefited from U.S. bilateral economic assistance, such assistance had not helped the majority of the poorest people.

¹⁰ Legislative Development, *Foreign Assistance Act of 1973*, 6 LAW & POL'Y INT'L BUS. 925, 927-8 (1974).

health; and education, public administration and human resource development.¹¹

The new focus on basic human needs and the delineation of specific sectors of development assistance increased the humanitarian emphasis of the program. In addition, the 1973 Act addressed another humanitarian concern, disaster relief. Although A.I.D. had previously implemented projects for victims of catastrophe under a contingency fund, the 1973 amendments for the first time appropriated funds "primarily for disaster relief purposes," and required that they be used for those purposes.¹² At the same time, Congress inserted the first provisions for disaster relief in specific areas, in the Sahel in West Africa, in the flooded areas of Pakistan, and in the earthquake-damaged portions of Nicaragua. More recent amendments to the Foreign Assistance Act and Foreign Assistance Appropriations legislation have engendered a proliferation of specific provisions for designated areas of assistance, which has reduced the Agency's flexibility to make decisions on budget allocations among countries.

B. Political Considerations in Foreign Assistance Programs

Although it is clear that our foreign assistance program has a substantial humanitarian aspect, it is equally clear that our program is also designed to serve our political interests. In this case, a distinction must be made between short-term and long-term political interests. Financial assistance to a country may be based on short-term political considerations such as helping a country quash an insurrection, as was the case with the early U.S. aid program in Greece. On the other hand, allocations of foreign assistance funds to countries may be based on longer-term interests such as promoting the development of democratic institutions in a country in order to insure that the country will remain in or gain entry to the free world. This longer-term type of development is known as "political development." The strongest statement of our philosophy of political development is set forth in Title IX, entitled "Utilization of Democratic Institutions in Development."¹³ Title IX provides: "In carrying our programs authorized in this chapter and chapter 1 [our basic foreign assistance program] emphasis shall be placed on assuring maximum participation in the task of economic development on the part of the people of the developing countries, through the encouragement of democratic

¹¹ 22 U.S.C. § 2151(b)(1) and (2) (1976).

¹² Legislative Development, *supra* note 10, at 939.

¹³ 22 U.S.C. § 2218 (1976). See an excellent analysis of this section in Butler, *Title IX of the Foreign Assistance Act: Foreign Aid and Political Development*, 3 LAW & SOC. REV. 115 (Aug. 1968).

private and local government institutions."¹⁴

The proponents of Title IX wanted U.S. development assistance to focus on building the kinds of political and social institutions that would enhance economic development and effective self-government. Congressman Donald M. Frazier, who introduced the legislation, asserted that the United States should emphasize economic aid, and "go forward with a massive program of political development activities" ¹⁵ Title IX was intended to foster democratic values and to encourage the growth of political power at the local level which would hopefully result in the evolution of democratic, pluralistic societies. Title IX also provided specifically for support of "civic education and training in skills required for effective participation in governmental and political processes essential to self government."¹⁶

Following the enactment of Title IX, A.I.D. recognized that it could not attempt a wholesale transfer of American democratic institutions to recipient countries and stated, in its report to Congress, that it would take a flexible approach to implementing Title IX.¹⁷ However, A.I.D. has acknowledged that participation at the local level is essential to the success of assistance projects. Thus, projects subsequent to 1967 may have had an increased emphasis on self-help and participation at the local level, but A.I.D. has, at the same time, avoided overly politicizing its projects. As administrations have come and gone, various countries have changed their status in an endless popularity contest to obtain U.S. aid. But the cadre of technical experts at A.I.D. has steadfastly continued to develop projects in their areas of special expertise in agriculture, health, nutrition and education, deemphasizing current political concerns.

While A.I.D. has trained many foreign nationals who have later become political leaders, the focus has not been on "training political leaders" but on training a corps of technical experts who can effectively administer the development assistance provided by the United States and other donors and who can form a governmental structure which is able to promote effective economic development. A.I.D. has found it far more important to train administrators for basic health programs and teachers and teacher trainers for primary education programs than to train political leaders. The United States has also provided grants to local and regional organizations, such as the African Development Bank and the Economic Community for Africa, which will help strengthen the participating countries' abilities to provide for their own development. Such grants are

¹⁴ 22 U.S.C. § 2218(a) (1976).

¹⁵ 112 CONG. REC. 14,765-67 (1966).

¹⁶ 22 U.S.C. § 2218(b)(3) (1976).

¹⁷ AGENCY FOR INT'L DEVELOPMENT, REPORT TO CONGRESS ON THE IMPLEMENTATION OF TITLE IX, app. (May 10, 1967).

“political” only in that they train officials of developing countries to work within a peaceful international framework and establish an internal capacity for making effective use of funds for their growing development.

A few A.I.D. funded projects fit directly within the mandate of Title IX and are overtly “political” in nature. A.I.D. provides grants for AFL-CIO projects throughout Latin America,¹⁸ Asia¹⁹ and Africa²⁰ for organizing labor unions and educating labor union leaders. The creation of labor unions is seen as a first step toward encouraging democracy.

An even more direct effort to promote democracy abroad is the recently created “Democracy Project,” chaired by U.S. Trade Representative William E. Brock, III. The Executive Board will include the national chairmen of the Democratic and Republican parties, and Senators and other political luminaries from both parties. This is a major bipartisan initiative to support democratic institutions, parties and movements throughout the world. This project will be the first effort to address transnational involvement of American political parties. A.I.D. has provided a \$150,000 grant for start-up expenses in fiscal year 1983.²¹

The Project has recommended the establishment of a “National Endowment for Democracy” which will be financed by Congress. Legislation has passed Committee and is pending in both Houses of Congress to establish and fund the Endowment. The Endowment will fund specific projects through the Democratic and Republican Parties, the AFL-CIO and the U.S. Chamber of Commerce. Projects will be designed as direct incentives to encourage recipient countries to adopt the American form of democracy.²²

1. Encouragement of Private Enterprise

Other sections of our foreign assistance legislation also reflect basic attitudes and values inherent in our national philosophy. One of the key sections in the Foreign Assistance Act which has been reemphasized during the present administration is Section 601 which encourages free enterprise and private participation. Section 601 states:

The Congress of the United States recognizes the vital role of free enterprise in achieving rising levels of production standards of living essential to economic progress and development. Accordingly, it is declared to be the policy of the United States to encourage the efforts of other countries

¹⁸ \$8,000,000 for FY 83. AGENCY FOR INT'L DEVELOPMENT, CONGRESSIONAL PRESENTATION FISCAL YEAR 1983, at 387 (Main Volume).

¹⁹ \$4,000,000 for FY 83. *Id.* at 327.

²⁰ \$3,000,000 for FY 83. *Id.* at 285.

²¹ A.I.D. Grant No. OTR-0098-G-SS-3029-00, FY 83.

²² S. 1342, 98th Cong., 1st Sess. (1983); H.R. 130, 98th Cong., 1st Sess. (1983).

to increase the flow of international trade, to foster private initiative and competition, to encourage the development and use of cooperatives, credit unions, and savings and loan associations, to discourage monopolistic practices, to improve the technical efficiency of their industry, agriculture, and commerce, and to strengthen free labor unions; and to encourage the contribution of United States enterprise toward economic strength of less developed friendly countries, through private trade and investment abroad, private participation in programs carried out under this Act (including the use of private trade channels to the maximum extent practicable in carrying out such programs), and exchange of ideas and technical information on the matters covered by this subsection.²³

This section recognizes that private enterprise can be promoted in two ways: by encouraging the creation of indigenous businesses and by direct American private investment in developing countries. Both types of projects have been implemented by A.I.D. throughout the developing world.

The importance of private investment in the foreign assistance effort has been recognized throughout the history of our foreign assistance program.²⁴ The capital required by developing countries far exceeds what the United States and other donor governments contribute as foreign assistance; therefore, private investment must be encouraged to provide as much of the difference as possible.²⁵ Since the early 1950's, the United States has encouraged the participation of private investment in developing countries as a means of accelerating their economic and social advancement. Numerous programs have been undertaken to mobilize the resources of the private sector. For example, beginning with the 1948 Marshall Plan for the rehabilitation of Western Europe, the United States has provided political risk insurance to encourage private U.S. investment abroad. By the late 1950's, the insurance program was re-oriented to its present purpose of promoting U.S. private investment in friendly less-developed countries and its coverage was expanded to include losses from expropriation and war, as well as currency inconvertibility. The insurance program used to be administered by the Agency for International Development. However, in 1971, Congress created the Overseas Private Investment Corporation as an independent government corporation which has expanded the coverage and scope of private investment insurance and guaranty programs.²⁶

²³ 22 U.S.C. § 2351(a) (1961) (as amended).

²⁴ See ADVISORY COMMITTEE ON PRIVATE ENTERPRISE IN FOREIGN AID, REPORT ON FOREIGN AID THROUGH PRIVATE INITIATIVE (1965); COMMITTEE TO STRENGTHEN THE SECURITY OF THE FREE WORLD, REPORT TO THE PRESIDENT ON THE SCOPE AND DISTRIBUTION OF UNITED STATES MILITARY AND ECONOMIC ASSISTANCE PROGRAMS (1963).

²⁵ Cameron, *The A.I.D. Housing Guaranty Program*, 65 NW. U.L. REV. 183 (1968).

²⁶ See 22 U.S.C. § 2191-2200a (1976).

In addition to the investment and guaranty programs, various initiatives to support private enterprise have been included in our bilateral assistance program of grants and loans. During the 1960's and early 1970's, A.I.D. had an office devoted to encouraging private enterprise to invest in developing countries. In fact, the A.I.D. reorganization proposals which President Nixon presented to Congress on September 15, 1970, emphasized the continued role of the private enterprise sector in development.²⁷ During this period, A.I.D. had an extremely active private enterprise program. The Bureau for Private Enterprise began to initiate a variety of projects in several countries.

As part of its efforts to encourage private investment abroad, Congress created a housing guaranty (HG) program to assist developing countries in obtaining resources for low-cost housing construction.²⁸ The housing guaranty program has been an outstanding success in mobilizing financial resources in the United States to build shelter in developing countries. Low cost housing projects were constructed throughout Latin America, Asia and Israel. (A.I.D.'s Israeli Housing Guaranty Program is analyzed in Section IV, Part C of this article.)

Despite some singular development successes, private enterprise programs were deemphasized in the mid 1970's after Congress rejected the "trickle down" approach to development and redirected our foreign assistance focus toward basic human needs. The Bureau for Private Enterprise was reorganized out of existence, and projects proliferated in basic agriculture, health, education and population sectors. Of the private sector effort, basically only the housing guaranty program and a program for the development of cooperatives continued with any real vigor.

Cooperatives are part of our heritage and their replication in developing countries has been supported by legislation. Cooperatives are associations whose members pool their resources to serve particular needs. Membership is usually open, earnings are returned to members on the basis of their participation in the business and each member has one vote regardless of the number of shares owned. The success of American cooperatives, as evidenced by credit unions and agricultural and electric cooperatives, has created a constituency in Congress and throughout the United States which supports them and encourages their replication in developing countries. In 1973, Congress codified the philosophy of

²⁷ AGENCY FOR INTERNATIONAL DEVELOPMENT, UNITED STATES DEPARTMENT OF STATE, FOREIGN ASSISTANCE FOR THE SEVENTIES, PRESIDENT NIXON'S MESSAGE TO THE CONGRESS (Sept. 15, 1970). These recommendations were based on a report of the Task Force on International Development (Peterson Report), REPORT TO THE PRESIDENT FROM THE TASK FORCE ON INTERNATIONAL DEVELOPMENT, UNITED STATES FOREIGN ASSISTANCE IN THE 1970'S: A NEW APPROACH (Mar. 4, 1970).

²⁸ 22 U.S.C. § 2181-2182 (1976).

prompting cooperatives by promulgating the following amendment to the Foreign Assistance Act:

In order to strengthen the participation of the rural and urban poor in their country's development, high priority shall be given to increasing the use of funds made available under this Act for technical and capital assistance in the development and use of cooperatives in the less developed countries which will enable and encourage greater numbers of the poor to help themselves toward a better life.²⁹

Under the authority of developing cooperatives, A.I.D. made technical assistance grants and loans on both a government-to-government basis and also directly to recipient cooperative organizations, such as the Cooperative League of the U.S.A. (CLUSA) and the Credit Union National Association, Inc. (CUNA).³⁰

Aid was provided to finance rural electrification cooperatives in Peru and the Philippines, to assist in financing agricultural credit cooperatives in the Dominican Republic, and to make loans to affiliated savings and loan associations in Panama.³¹ Where these programs had the support of the government and local groups, they succeeded spectacularly. However, where the United States attempted to force them on a reluctant government or on an economy which was not structured to accept them, such as Israel, they failed. (See Section IV.) Another failure occurred in Senegal where A.I.D. attempted to establish food cooperatives. The Government of Senegal controlled the input and the output of the cooperatives, so they were unable to operate independently or profitably. Despite some failures, the basic concept of cooperatives has proven its worth and has motivated self-help efforts of local organizations and encouraged the growth of private enterprise throughout the developing world.

The present administration has reemphasized private enterprise throughout the government and has resurrected the Bureau for Private Enterprise at A.I.D. The current Administrator of A.I.D., Peter McPherson, has made private sector development one of his top priorities.³² The thrust of the new effort is twofold: to encourage the United States private sector to invest in developing countries and to develop indigenous private enterprise within the developing countries themselves. The reorganized Bureau is developing a variety of programs; a recent grant is to a Women's World Banking project which will relend funds to small businesses owned by women in developing countries. The renewed emphasis

²⁹ 22 U.S.C. § 2151(i) (1976).

³⁰ See Dublin, *Foreign Assistance through Private Enterprise: A New Challenge to United States Credit Unions and other Cooperatives*, 6 J. INT'L LAW & ECON. 27, 29 (1971).

³¹ *Id.* at 32-33.

³² *New U.S. Foreign Aid Director Sees Greater Role for Private Enterprise*, Christian Science Monitor, May 6, 1981.

on the importance of the private sector in development reflects American economic philosophy, as well as our historical development, which recognizes individual initiative in private enterprise as the basis of our own developed economy.

2. Special Assistance for Women's Programs

Women's issues have recently gained prominence and an amendment reflecting this priority has been added to the Foreign Assistance Act. In 1973, Senator Charles Percy sponsored an amendment which focused on women in developing countries. Until this amendment, foreign assistance projects were designed primarily by men and were targeted toward traditionally male activities and needs, despite the fact that women are significantly poorer than men in most developing countries. The amendment acknowledged that women in developing countries are a resource which should not be neglected. The provision on women in development was amended in 1977, and now states:

In recognition of the fact that women in developing countries play a significant role in economic production, family support, and the overall development process of the national economies of such countries, [this part] shall be administered so as to give particular attention to those programs, projects, and activities which tend to integrate women into the national economies of developing countries, thus improving their status and assisting the total development effort.³³

Senator Percy insured that some emphasis would be placed on the effort to help women in developing countries by providing special funding for these programs. Under President Carter, a special office for Women in Development was established at the Agency for International Development. The Women in Development Office created programs designed to institutionalize projects for women in our foreign assistance program and funded studies to gather statistics and materials which would demonstrate to recipient countries the benefits of integrating women into their economies.

In many countries, for example, women are responsible for food production for home consumption. By expanding agricultural training programs to include women, per capita food production could be increased, child health would be improved and the family economy would improve since excess food could be sold for additional income. The new office designed and implemented projects for women which became models in the development field and which began to be replicated within the geographic bureaus of A.I.D. The new programs were discussed at interna-

³³ 22 U.S.C. § 2151(k) (1976) (as amended Supp. V 1981).

tional conferences and a network of persons interested in assisting women was established in the developing world. These programs have also led to a greater awareness on the part of both recipient governments and women in developing countries of the availability of funds for women's activities which has generated a greater demand for the funds.

The creation of programs for women, which has reflected our own women's movement in the United States, is a striking example of the use of foreign assistance to change the philosophies and values in recipient countries. Although some governments are still reluctant to assert women's rights because of religious or cultural beliefs, such as in some Moslem countries, most countries are becoming persuaded by studies produced by A.I.D. and other donors that women are an important factor in economic growth and are taking advantage of funds available for projects for women.

3. Environmental Scrutiny of Assistance Projects

Our national concern for the environment is also reflected in our foreign assistance policies. In this area, two national concerns are in conflict. On the one hand, we have an interest in preserving the environment, not just in our own country, but throughout the world. On the other hand, the United States is dependent upon oil, gas and strategic minerals, many of which are only available in the developing world. This conflict is reflected in amendments to the Foreign Assistance Act. The section on environment formerly read as follows:

The President is authorized to furnish assistance under this subchapter for developing and strengthening the capacity for less developed countries to protect and manage their environment and natural resources. Special efforts shall be made to maintain and where possible restore the land, vegetation, water, wildlife, and other resources upon which depend economic growth and human well-being especially that of the poor.³⁴

The recently amended section on the environment expresses the urgency of our growing concern over natural resources, since the 1973 energy crisis. The new section states:

The Congress finds that if current trends in the degradation of natural resources in developing countries continue, they will severely undermine the best efforts to meet basic human needs, to achieve sustained economic growth, and to prevent international tension and conflict. The Congress also finds that the world faces enormous, urgent, and complex

³⁴ 22 U.S.C. § 2151p(a) (1976), as added by Sec. 113 of Public Law 95-88 (91 Stat. 537) and amended by Sec. 110 of Public Law 96-53 (93 Stat. 948), was amended and restated by Sec. 307 of the International Security and Development Cooperation Act of 1981 (Public Law 97-113; 95 Stat. 1533).

problems with respect to natural resources, which require new forms of cooperation between the United States and developing countries to prevent such problems from becoming unmanageable. It is therefore, in the economic and security interests of the United States to provide leadership both in thoroughly reassessing policies relating to natural resources and the environment, and in cooperating extensively with developing countries in order to achieve environmentally sound development. . . . In order to address the serious problem described in subsection (a), the President is authorized to furnish assistance under [this part] for developing and strengthening the capacity of developing countries to protect and manage their environment and natural resources. Special efforts shall be made to maintain and where possible to restore the land, vegetation, water, wildlife, and other resources upon which depend economic growth and human well-being, especially of the poor.³⁵

Although the amendment expresses Congress' growing concern over the scarcity of natural resources, A.I.D.'s concern for protection of the environment has not abated as a result of the amendment. The amendment fortunately did not eliminate the requirement for an environmental impact statement on all programs and projects which would significantly affect the environment. Evaluation of environmental consequences has been institutionalized within A.I.D. and written assessments are included as a routine part of all project development.³⁶ Happily, concern over the scarcity of natural resources has not diminished environmental scrutiny of assistance projects, although a greater emphasis has been placed within the U.S. assistance program generally on developing energy resources in third world countries.

Concern over the environment is one area in which American philosophy has spread through our assistance program. A.I.D.'s emphasis on protecting the environment, combined with a growing concern in the world community about environmental degradation, has increased the awareness of officials in the developing world about environmental concerns. By designing projects with the environmental consequences in mind, A.I.D. has created an awareness in developing countries about the importance of protecting the environment, and, at the same time, has provided model analyses which officials in developing countries can duplicate in their own development programs. The United States has thus been able to foster environmental awareness in developing countries by demonstrating that protection of the environment is in their economic self-interest.

An example is the impact of A.I.D.'s funding of an environmental assessment on the Mahaweli Development Program in Sri Lanka, which

³⁵ 22 U.S.C. § 2151p (Supp. V 1981).

³⁶ 22 U.S.C. § 2151p(c)(1)(A) (Supp. V 1981).

involves construction of five major storage reservoirs in conjunction with agricultural and related development in a semi-arid region comprising more than 420,000 hectares of land. When fully developed, the program will increase hydroelectric output, provide new settlement opportunities for one million people and produce more than 600,000 tons of rice and other crops. A number of other donors such as the World Bank, United Nations Development Programme, the EEC and other countries, are participating in the project. The comprehensive environmental assessment resulted in major changes to the program design and adoption of procedures for watershed management; controlled logging and forest preservation; creation of fuelwood plantations, fisheries and wild preserves; and establishment of monitoring programs for soils and pests, and rural water supply and sanitation schemes. The Government of Sri Lanka and the other donors agreed to the proposals. More important, the assessment resulted in the involvement of a number of Sri Lanka government agencies in the environmental aspects of the program and has led to the inclusion of the environmental planning process as a major and permanent part of the overall development program.³⁷ Programs such as the one in Sri Lanka have been successful in making one of our national priorities a world priority.

C. *Current Priorities*

It is evident that the number and variety of "basic" philosophies of foreign aid codified in the FAA have proliferated. It is difficult to tell which priority has priority. In practice, one could conclude that the U.S. foreign assistance program has come full circle and that political considerations have again begun to predominate, as they did in the earliest programs in Greece and Turkey. Country allocations of aid generally are made on the basis of political considerations, such as military and economic strategy, rather than on need. Geographic emphases have changed under different administrations; for example, the Caribbean Basin is a present priority. At the same time, project emphases also vary. As we have seen, the current Administration is stressing projects involving private enterprise.

As a practical matter, once funds have been allocated to countries and sectors through the negotiating process among A.I.D., the State Department and the Office of Management and the Budget, development projects are created with inputs from the recipient government, A.I.D. technical staff and the U.S. Ambassador. Thus a number of different points of view are presented. In addition, all A.I.D. projects and programs

³⁷ Sobczak, *Sri Lanka's Mahaweli Program Undergoes an Environmental Planning Process*, A.I.D. POLICY PAPER (Nov. 1, 1982).

are subjected to an extensive review process and are analyzed to determine if they have taken into consideration the statutory priorities. Thus, "priorities" are constantly changing and vary from one administration to the next and from one country to another. Moreover, as discussed in the next section, the question of allocations is further complicated by a number of statutory prohibitions which prevent the United States from furnishing assistance to countries whose policies conflict with ours.

III. PROHIBITIONS ON THE USE OF FOREIGN ASSISTANCE

While we have seen that foreign assistance is used as an incentive to promote our priorities, foreign aid also may be withheld from countries whose policies run counter to those priorities. Many of the philosophies and values which are inherent in our affirmative program of foreign assistance have their negative counterparts. The Foreign Assistance Act prohibits the President from providing aid to countries which are our enemies, which are hostile to our citizens, or which otherwise espouse policies which are inimical to our interests. Clearly, we would not want to give money to foster the economic development of our enemies. However, which countries are our enemies is a determination which is not always clear, or even consistent. We do not provide assistance to countries with whom we are actively at war. Absent an actual state of war, eligibility for our foreign assistance becomes cloudy. The President's constitutional powers to conduct foreign policy have been limited by Congress in the area of foreign assistance through the imposition of restrictions and conditions on country eligibility for aid.³⁸ For example, Congress has expressly prohibited furnishing assistance to the present government of Cuba.³⁹ In 1974, however, Congress decided to permit the President to provide assistance to a *new* government in Cuba if, according to the Foreign Assistance Act, the President deems it to be in the interest of the United States, or if the President determines that such government has taken appropriate steps to return property taken from United States citizens or to provide equitable compensation for property taken by the present Government of Cuba.⁴⁰ At least with respect to the present government of Cuba, we have applied the ultimate sanction in our foreign assistance arsenal, eliminating all possibility of supplying any type of foreign aid to that country.

³⁸ For an extensive analysis of the President's foreign affairs powers and encroachments thereon by Congress, see Wallace, *The President's Exclusive Foreign Affairs Powers Over Foreign Aid: Part I*, 1970 DUKE L.J. 292, and Wallace, *The President's Exclusive Foreign Affairs Powers Over A.I.D.: Part II*, 1970 DUKE L.J. 453.

³⁹ 22 U.S.C. § 2370(a)(1) (1976).

⁴⁰ 22 U.S.C. § 2370(a)(2) (1976).

A. *Restrictions on Assistance to Unfriendly or Communist Countries*

Other restrictions also limit eligibility for assistance to various nations considered to be unfriendly. Angola, Cambodia, Laos, Vietnam, Syria, Libya, Iraq and South Yemen are currently on the proscribed list.⁴¹ These prohibitions can address very specific political situations. For example, assistance to Afghanistan is conditioned on the President certifying to Congress that "(1) the Government of Afghanistan has apologized officially and assumes responsibility for the death of Ambassador Adolph Dubbs; and (2) the Government of Afghanistan agrees to provide adequate protection for all personnel of the United States Government in Afghanistan."⁴²

Eligibility for assistance depends on whether or not a country is "friendly," a determination which changes with the political winds. Although the Foreign Assistance Act expressly prohibits assistance to Communist countries, this prohibition may be waived if the President finds and reports to Congress that:

- (1) Such assistance is vital to the security of the United States; (2) the recipient country is not controlled by the international Communist conspiracy; and (3) such assistance will further promote the independence of the recipient country from international communism.⁴³

It might seem fairly obvious that the United States would not provide economic assistance to hostile regimes, and certainly not to Communist regimes. This would seem to be consistent with the use of assistance as a foreign policy incentive. However, the fact is that we have and do render assistance to the "friendly people" of Communist countries, as distinguished from their governments. Moreover, Secretary of State Dulles made a determination on December 11, 1956, which was reaffirmed by Secretary Rusk on November 29, 1961, that declared "Poland is not at present 'dominated or controlled' by the U.S.S.R. and hence is eligible for Title I and Title III P.L. 480 transactions."⁴⁴ On the basis of this determination, A.I.D. permitted assistance to the Polish Children's Hospital in 1964.⁴⁵ The United States has also used foreign assistance on numerous occasions over the years to promote better relations between the U.S. and Communist countries and to begin to develop economic ties which might

⁴¹ See, e.g., 22 U.S.C. § 2151 (1981) (Cambodia, Laos and Nicaragua); 22 U.S.C. § 2293 (1981) (Angola); 22 U.S.C. § 2346(a) (1981) (Syria); 22 U.S.C. § 2370 (1981) (Chile, Cuba, El Salvador and Vietnam); 22 U.S.C. § 2372 (1981) (Argentina); 22 U.S.C. § 2374 (1981) (Afghanistan); 47 Fed. Reg. 11,267 (1982) (Libya); and Exec. Order No. 12,311, 46 Fed. Reg. 34,305 (1981) (Mozambique).

⁴² 22 U.S.C. § 2374(a)(1)-(2) (1982).

⁴³ 22 U.S.C. § 2370(f) (1976).

⁴⁴ Opinion of the A.I.D. General Counsel's Office, Charles Stephenson (Jan. 20, 1964).

⁴⁵ *Id.*

tend to loosen the hold of the U.S.S.R. over its satellite countries.

The People's Republic of China is included on the list of Communist countries which are ineligible for development assistance.⁴⁶ However, a determination has been made that China is a "friendly" country for purposes of participation in our trade and development program.⁴⁷ Our United States Trade and Development Program provides technical assistance to countries which would otherwise be ineligible for other types of foreign assistance. The program is designed to facilitate access to natural resources of interest to the United States and to stimulate reimbursable aid programs. The authorizing legislation expressly provides that funds used under this program are available notwithstanding any other provisions of the Foreign Assistance Act. Thus, the Secretary of State has the authority to declare China to be a "friendly" country for purposes of receiving aid under this program.

The United States has already made two grants to China under the Trade and Development Program. The first is for a \$400,000 feasibility study for a hydroelectric power project. The plans call for construction of the plant by private contractors. Since the Chinese Ministry has no experience in dealing with private enterprise, it requested assistance in negotiating with the private sector. Therefore, in addition to the grant, we are providing the expertise of the U.S. Corps of Engineers to prepare bid documents and other auxiliary support in order to help the Ministry reach the contract stage. The second grant to China is a prefeasibility study for three projects: a continuous aluminum casting plant, a copper mine and beneficiation facility, and a titanium sponge plant. In addition to these grants, over the last three years, A.I.D. (TDP) has financed approximately \$500,000 of exchange programs for technicians under the hydro-power protocol. Interest in assisting China in its developmental efforts are increasing. Amendments to the Foreign Assistance Act intended to benefit China have been introduced in both Houses of Congress which would permit the President to authorize assistance to Communist countries which would otherwise be prohibited, if he determines that such assistance is important to the security of the United States.⁴⁸ The Senate Committee, "in making this change, recognizes that the People's Republic of China, although it has a communist form of government, is a non-allied nation which plays a helpful strategic role."⁴⁹ Congress has thus implicitly recognized that providing development assistance to China will open additional doors between our two countries, and will help the Chinese main-

⁴⁶ 22 U.S.C. § 2370(f) (1976).

⁴⁷ 22 U.S.C. § 2421 (Supp. V 1981).

⁴⁸ REPORT OF THE COMMITTEE ON FOREIGN RELATIONS ON S. 2608, S. REP. NO. 464, 97th Cong., 2d Sess. 17 (1982), and H.R. REP. NO. 547, 97th Cong., 2d Sess. (1982).

⁴⁹ *Id.*

tain their economic and political stability. The change in our development assistance policy with respect to China reflects new political realities. Thus, even Communist countries may be considered "friendly" for some purposes and be entitled to assistance under some circumstances.

B. Extraterritorial Protection of U.S. Citizens and Property

Foreign assistance is withheld from countries with which we do not have diplomatic relations and which do not protect our citizens and their property. In order to provide assistance, the recipient country must establish diplomatic relations with the United States and must negotiate and enter into a bilateral assistance agreement with us.⁵⁰ The United States also uses foreign assistance leverage to protect its citizens and their property. The Foreign Assistance Act provides that the President must consider terminating assistance to a country which fails to take adequate measures to prevent damage or destruction of United States property by mob action and to provide adequate compensation for such damage or destruction.⁵¹ In most cases, recipient countries have provided protection for U.S. embassies and other U.S. property and have compensated the U.S. government and U.S. citizens for damage caused by mobs or revolutionary groups.⁵² This legislatively-approved threat of withdrawal of foreign assistance provides at least an illusion of protection for our citizens abroad and can be used to bargain for additional police protection in times of political crisis or social unrest.

Protecting the property of our citizens and corporations from expropriation without compensation has equally high priority in our foreign policy scheme. Although every nation has the sovereign right, in the absence of specific governmental undertakings to the contrary, to expropriate foreign property under international law, the United States insists that its citizens are entitled to receive prompt, adequate and effective compensation for their property. This legal right to compensation is the

⁵⁰ 22 U.S.C. § 2370(t) (1976).

⁵¹ 22 U.S.C. § 2370(j) (1976).

⁵² Opinion of the A.I.D. General Counsel's Office, Stephen B. Ives (Feb. 4, 1970) (In 1969, a small group of University students wrecked and burned the U.S. Ambassador's automobile and the Turkish government made restitution); Opinion of the A.I.D. General Counsel's Office, Arthur B. Gardiner, Jr. (Apr. 10, 1973) (Youths affiliated with the pro-Soviet party of Bangladesh vandalized four USIS buildings in 1972 and 1973 and the Government of Bangladesh assigned police to protect the buildings, expressed "sincere regrets" over the incidents, and made restitution); Opinion of the A.I.D. General Counsel's Office, Charles S. Gladson (July 6, 1976) (Anti-American violence occurred in Cyprus in April 1976 following announcement of the signing of a Defense Cooperation Treaty between Turkey and the United States. Attempts by mobs to stone and enter the U.S. embassy were thwarted by Cyprus security officials and compensation for damage was provided).

basis for Section 620(e) of the Foreign Assistance Act, commonly known as the "Hickenlooper Amendment," which mandates suspension of assistance if a country expropriates property owned by American citizens without taking steps to provide appropriate compensation.⁵³ In 1973, recognizing that the Hickenlooper Amendment was counterproductive because it denied the President flexibility in providing foreign assistance, Congress amended Hickenlooper to allow the President to waive its provisions, if he determines that "such a waiver is important to the national interest of the United States."⁵⁴ Congress noted that the automatic sanction of suspending all assistance might leave the President without any discretion, even in cases where an American company might have provoked the expropriation by its own actions.⁵⁵ Many court decisions have analyzed the application of Hickenlooper in cases of expropriation and have discussed its effect on our foreign relations.⁵⁶ Despite large numbers of expropriation claims, this section has been invoked to cut off assistance only twice: once, in 1973, in Pakistan and once, in 1979, after Ethiopia nationalized the property of 21 U.S. firms and citizens. In the case of

⁵³ 22 U.S.C. § 2370(e)(1) (1976).

⁵⁴ *Id.* This amendment was accomplished by Pub. L. No. 93-189, 87 Stat. 714 (1973).

⁵⁵ H.R. REP. No. 388, 93d Cong., 1st Sess. 45 (1973).

⁵⁶ The Hickenlooper Amendment, 22 U.S.C. § 2370(e) (1976), originated in the reaction of Congress to the expropriation of a subsidiary of ITT by Brazil in 1962; the expropriation occurred just prior to a visit to this country by Brazil's President in his search for financial assistance for Brazil. Congress enacted the Amendment in order to deny foreign assistance from the United States to any country that had expropriated assets of an American company without adequate compensation.

The original Hickenlooper Amendment was expanded by the Sabbatino Amendment, 22 U.S.C. § 2370(e) (1976), as Congress reacted to the Supreme Court's decision in *Banco Nacional De Cuba v. Sabbatino*, 376 U.S. 398 (1964). In that case, the Supreme Court held, that the act of state doctrine applied in expropriation cases because the Executive was better equipped to determine expropriation damages in its role as a political body. Overriding the *Sabbatino* decision, Congress provided in the Sabbatino Amendment that "[n]otwithstanding any other provision of law, no court of the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law . . ." where expropriation of U.S. assets has taken place unless the President specifically requests the court so to use the act of state doctrine. See 22 U.S.C. § 2370(e)(2) (1976). Examples of other important litigation involving the Hickenlooper Amendment are: *Banco Nacional De Cuba v. Farr*, 243 F. Supp. 957 (S.D.N.Y. 1965), *aff'd*, 383 F.2d 166 (2d Cir. 1967) (further definition of the act of state doctrine); *Chemical Natural Resources, Inc. v. Republic of Venezuela*, 420 Pa. 134, 215 A.2d 864 (1966) (includes discussion regarding sovereign immunity); and *Republic of Iraq v. First National City Bank*, 353 F.2d 47 (2d Cir. 1965) (importance of location of expropriated property and extent of foreign government's reach as to expropriated assets). See generally Lillich, *The Protection of Foreign Investment and the Hickenlooper Amendment*, 112 U. PA. L. REV. 1116 (1964); Recent Case, *International Law—Sovereign Immunity and Act of State—Hickenlooper Amendment Precludes Assertion of Act of State Where Act is Violative of International Law*, 21 VAND. L. REV. 388 (1968).

Ethiopia, most of the expropriations took place in 1975 and 1976 and Ethiopia declared that compensation would be provided. However, no meaningful progress toward resolution of the claims had occurred by 1979, so bilateral assistance was suspended.⁵⁷ As of 1980, 136 disputes involving private investment in 51 countries were officially listed by the Department of State, *not* including claims arising from the then pending crises in Iran and Nicaragua.⁵⁸ In several instances, cases have been pending for more than a decade for claims in countries to which the United States continues to provide bilateral assistance.⁵⁹ A complete discussion of the application of this provision is beyond the scope of this article. However, it is clear from the number of expropriation claims presently pending that Section 620(e) is rarely invoked to terminate assistance and that foreign policy considerations override private losses.

In addition to addressing expropriation concerns, the Foreign Assistance Act also provides some leverage for insuring that governments pay debts owed to American citizens and companies. The Act directs that no assistance shall be provided to the government of any country which is indebted to any United States citizen for goods or services furnished or ordered, where: (1) the citizen has exhausted available legal remedies including arbitration; or (2) the debt is not denied or contested by such government; or, (3) the indebtedness arises as an unconditional guarantee of payment given by such government or predecessor government.⁶⁰ Congress again recognized with respect to this prohibition that the President may require flexibility and thus included an exception if the President finds that withdrawing assistance would be contrary to the national security. The debt provision has never been used to terminate assistance because A.I.D. has always found one of the exceptions to be applicable, usually that the debt is contested or denied by the government.⁶¹

The precipitous increase in international terrorist activity prompted Congress to enact a prohibition against furnishing assistance to countries which grant sanctuary to international terrorists.⁶² In the legislative de-

⁵⁷ DEPARTMENT OF STATE BUREAU OF INTELLIGENCE AND RESEARCH, DISPUTES INVOLVING U.S. PRIVATE DIRECT FOREIGN INVESTMENT MARCH 1, 1977-FEBRUARY 29, 1980, Unclassified Report No. 1441, at 27-28 (Aug. 18, 1980).

⁵⁸ *Id.* at i and 3.

⁵⁹ *Id.* at 11-12. Morocco, 110 land expropriations pending since 1973; Burma, 4 expropriations pending since 1963, 1964, and 1965; and Somalia, Caltex expropriation since 1970.

⁶⁰ 22 U.S.C. § 2370(c) (1976).

⁶¹ *E.g.*, Opinion of the A.I.D. General Counsel's Office, Herbert Morris (Mar. 29, 1962) (debts contested and denied by Japan); Opinion of A.I.D. General Counsel's Office, F. Kingston Berlew (Mar. 23, 1982) (debt contested by Turkey).

⁶² 22 U.S.C. § 2371 (1976), which was added by Sec. 303 of the International Security Assistance and Arms Export Control Act of 1976 (Pub. L. No. 94-329, 90 Stat. 753); *see also* Foreign Assistance and Related Programs Appropriations Act of 1982, Pub. L. No. 97-121, § 520, 95 Stat. 1647 (1982).

bates concerning this amendment, Senator Stone used the seizure of the OPEC oil ministers in Vienna as an example of acts constituting terrorist activity.⁶³ This provision, however, can be waived if the President "finds national security to require otherwise."⁶⁴ The President is also directed to consider excluding from assistance countries which seize, or impose penalties or sanctions against, any United States fishing vessel as a result of fishing activities in international waters.⁶⁵ This section is not an absolute prohibition and leaves discretion as to its application in the hands of the President.⁶⁶ If a country harasses our vessels, the section is available as an effective lever to terminate such actions, at least with respect to countries to which we provide substantial assistance.

C. Nuclear Proliferation and Termination of Aid

A strong concern which is reflected in U.S. foreign assistance policy is the issue of nuclear proliferation. Section 669 of the Foreign Assistance Act forbids furnishing economic or military assistance to countries which either deliver or receive nuclear enrichment equipment, materials or technology, unless, before such delivery, certain international safeguards have been observed.⁶⁷ The Act does provide for a waiver of the prohibition if the President determines and certifies that 1) termination of such assistance would have a serious adverse effect on vital United States 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. At the time this provision was passed, the United States had received information that Brazil was purchasing a German nuclear power plant, Korea was purchasing a French plant, and Pakistan had a contract with France to build a nuclear fuel reprocessing plant.⁶⁸

Our concerns about Pakistan's proliferation threat provided the only test to date of the use of foreign assistance as a nonproliferation tool. Pakistan claimed it was only responding to the development of a nuclear bomb by India, its historic enemy.⁶⁹ The United States considered the

⁶³ 122 CONG. REC. S1754 (1976).

⁶⁴ 22 U.S.C. § 2371 (1976).

⁶⁵ 22 U.S.C. § 2370(o) (1976).

⁶⁶ This discretion was exercised by the President in favor of continuing assistance to Peru and Ecuador during the 1970's despite seizures of U.S. fishing vessels. Opinion of the A.I.D. General Counsel's Office, Arthur Gardiner, Jr. (Apr. 10, 1973).

⁶⁷ 22 U.S.C. § 2429 (1976).

⁶⁸ 122 CONG. REC. S15139 (1976); 122 CONG. REC. S8668 (1976); *Pakistan Atom Deal Affirmed by France*, N.Y. Times, Sept. 9, 1977, at 1, col. 1; *France Reaffirms Nuclear Sale*, Washington Post, Sept. 9, 1977. As Congressional Record S8668 and the N.Y. Times citations above both indicate, South Korea ultimately did not consummate its purchase of a French nuclear processing plant.

⁶⁹ *Pakistan Atom Deal Affirmed by France*, *supra* note 68.

reprocessing plant dangerous because it separates out small quantities of the highly explosive plutonium metal which can be used for nuclear weapons from the spent fuels used in conventional nuclear power reactors to generate electricity.⁷⁰ The Carter and Ford Administrations tried unsuccessfully to discourage Pakistan's plans.⁷¹ The United States was similarly unsuccessful in obtaining Pakistan's assurance of compliance with nuclear safeguards or with obtaining their agreement to allow inspection of their unsafeguarded nuclear facilities by the International Atomic Energy Agency.⁷²

Furthermore, the U.S. government had reason to believe that Pakistan was in the process of developing an uranium enrichment capability. For this reason, Section 669 was triggered and assistance to Pakistan was terminated in 1979.⁷³

Termination of aid is itself a delicate process. Recognizing that immediate termination of ongoing assistance projects would cause unnecessary losses to both the recipient country and the United States, Congress provided that funds will remain available for up to eight months from the date of termination to cover the necessary expenses of winding up programs.⁷⁴

Termination of assistance is a drastic measure, not just because of the detrimental effect upon the recipient country, but because of the potential enormous losses to the United States. Due to the nature of the appropriations process for the Agency for International Development, appropriations are usually made on an annual basis. Therefore, in order to maximize the use of funds available, A.I.D. obligates funds for projects on an incremental basis rather than obligating for the total project all at once.

For example, if A.I.D. is building a canal with cement linings, the project may take from six to ten years to complete. Funds for the project are obligated in phases, with the first phase covering the digging of the canal which might take two or three years. If assistance is terminated during the digging stage, how much of the remaining canal can be completed depends on the language of the statute which provided for termination. The Hickenlooper Amendment, Section 620(e) of the Foreign Assistance Act,⁷⁵ uses the language that the "President shall *suspend* assistance" to governments which expropriate property without compen-

⁷⁰ *Id.* See also *France Reaffirms Nuclear Sale*, Washington Post, Sept. 9, 1977.

⁷¹ 125 CONG. REC. S5287 (daily ed. May 3, 1979). The United States sent Warren Christopher to Pakistan on March 1 and 2, 1979, and his discussions were said to have included the topic of U.S. opposition to Pakistan's purchase of the French plant.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ 22 U.S.C. § 2367 (1976) (as amended Supp. V 1981).

⁷⁵ 22 U.S.C. § 2370(e)(1) (1976).

sation. The A.I.D. Office of General Counsel has interpreted the word "suspend" strictly so that even projects for which funds are already obligated are stopped. Where Congress uses the words "shall not provide" in a provision for termination for assistance, the A.I.D. Office of General Counsel has interpreted that language to mean that no new funds may be obligated for a project, but disbursements can be continued on existing obligations. Thus, in the case of expropriation, in the canal project example, the project would be terminated before completion of the digging even though funds for digging were fully obligated. On the other hand, if the canal project was terminated in a country which began to develop a nuclear bomb in violation of Section 669, A.I.D. would have the authority to complete the digging. Then, in addition, A.I.D. could use Section 617 to obligate new funds to complete the cement lining of the canal, assuming it could be shown that the canal would be worthless without the lining, in order to prevent a total loss to the United States. Thus, Congress has provided the United States with some ability to protect itself against leaving white elephants in countries where assistance has been terminated. Of course, in extreme cases, the United States can, as we did when the Russians entered Afghanistan, terminate all projects immediately.

In the case of Pakistan, the United States elected to complete some existing projects and to discontinue others. However, shortly after the United States terminated assistance, the Russians invaded Afghanistan. This led to a dramatic reassessment of U.S. political interests in the area. Pakistan's security and stability assumed greater importance. In order to support Pakistan, it was important for the United States to reestablish its aid program.⁷⁶ However, the United States was legally prevented from doing so because Pakistan would still not comply with the provisions of Section 669. The President was forced to go to Congress with this predicament in order to negotiate a resolution which would enforce nuclear safeguards but allow the United States to develop a relationship with Pakistan which was deemed politically important. Congress recognized the importance of Pakistan to our foreign policy but refused to repeal Section 669. Instead Congress passed the special provision, Section 620E,⁷⁷ which expressly made an exception for Pakistan alone on the basis of the Soviet occupation of Afghanistan. In fact, Congress recited the political facts in the section itself:

The Congress recognizes that Soviet Forces occupying Afghanistan poses a security threat to Pakistan. The Congress also recognizes that an independent and democratic Pakistan with continued friendly ties to the United States is in the interest of both nations. The Congress finds that

⁷⁶ Rubin, *U.S. Aid for Pakistan*, N.Y. Times, Feb. 19, 1982, at A31, col. 1.

⁷⁷ 22 U.S.C. § 2375 (Supp. V 1981).

the United States assistance will help Pakistan maintain its independence. Assistance to Pakistan is intended to benefit the people of Pakistan by helping them to meet the burdens imposed by the presence of Soviet Forces in Afghanistan and by promoting economic development. In authorizing assistance to Pakistan, it is the intent of Congress to promote the expeditious restoration of full civil liberties and representative government in Pakistan. The Congress further recognizes that it is in the mutual interest of Pakistan and the United States to avoid the profoundly destabilizing effects of the proliferation of nuclear explosive devices or the capacity to manufacture or otherwise acquire nuclear devices.⁷⁸

Congress finally agreed to authorize the President to waive the prohibitions of Section 669 between the date of enactment of the amendment and September 30, 1987, to provide assistance to Pakistan.⁷⁹ The President exercised this authority on February 11, 1982, and reestablished our assistance program in Pakistan. A.I.D. has reopened the Mission in Pakistan and is now developing a comprehensive new program of assistance in that country.⁸⁰ Whether, in the future, Congress will maintain its strong posture against nuclear proliferation or will follow the Pakistan precedent and establish another exception for other countries under Section 669 will depend upon the strength of the political necessities at the time. In any event, the prohibition remains available as a negotiating tool which can be used to encourage countries receiving assistance to join the International Atomic Energy Agency and comply with nuclear safeguards.

D. Social and Financial Obstructions to Extension of Aid

The Foreign Assistance Act also gives the President authority to cut off assistance to countries which take acts considered to be against U.S. national interests. For example, although the United States does not force its equal rights philosophy on other countries, it also does not allow countries to whom it is furnishing assistance to discriminate against U.S. officers or employees on the basis of race, religion, national origin or sex.⁸¹ The United States therefore, has Jewish and female A.I.D. officials working in Arab and Moslem countries and is able to spread the principle of

⁷⁸ *Id.*

⁷⁹ *Id.* For further information about the events which led to passage of this amendment, see S. REP. No. 83, 97th Cong., 1st Sess. 91-94 (1981), and H.R. REP. No. 413, 97th Cong. 1st Sess. 87-89 (1981).

⁸⁰ The drama concerning Pakistan's nuclear facility is still unfolding; the recent Washington Post's report that India had plans for a preemptive strike against Pakistan's facility was denied by India as "absolute rubbish," *India Denies Plan to Hit Pakistani Nuclear Plants*, Washington Post, Dec. 21, 1982, at A10, col. 4.

⁸¹ 22 U.S.C. § 2426(b) (1976).

equality by example.

The Foreign Assistance Act also addresses our country's growing narcotics problem. A few developing countries are the main producers of the opium poppy from which heroin is derived.⁸² In order to try to halt the importation of heroin into the United States, Congress decided to try to stop production at its source. Thus Congress ordered the President to suspend economic and military assistance, including Title I of Public Law 480 food aid, to any country which fails to take adequate steps to prevent drugs from being sold illegally within the country to U.S. Government personnel or their dependents or from entering the United States unlawfully.⁸³ The same section also authorizes the President to furnish assistance to any country or international organization for controlling the production and smuggling of narcotic and psychotropic drugs.

Other sections of the Act provide the United States with leverage to encourage developing countries to become fiscally responsible, and to honor debts to the United States and to international organizations which it supports. No assistance can be furnished to a country which is in default for more than six months on loans to the United States, unless the President determines that continued assistance to such country is in the national interest.⁸⁴ Although a substantial amount of American foreign assistance is provided in the form of outright grants, a major portion of our assistance is made in the form of loans, usually at concessional rates.⁸⁵ Aid to Zaire was almost terminated in 1981, when Zaire defaulted on loans to the United States and was slow in negotiating and completing a debt rescheduling agreement. The rescheduling agreement was signed just in time to avoid an interruption in A.I.D. project implementation. The default provision has been interpreted flexibly to permit continuation of aid if a country enters into a negotiated international agreement fixing a new schedule for payment of outstanding debts.

The United States, as the largest single contributor to the United Nations, has an interest in insuring that other countries meet their payment obligations as members of the United Nations. The United States presently pays one quarter of the total United Nations' assessed budget,

⁸² Burma, Thailand, Pakistan, Afghanistan, Turkey, and Iran have all been substantial recipients of American aid and are the major producers of opium.

⁸³ 22 U.S.C. § 2291(a) (1976). For a discussion of State Department opposition to this amendment and a comprehensive analysis of United States bilateral and multilateral aid to combat drug traffic, see Freedman, *U.S. Bilateral and Multilateral Aid to Nations Which Do Not Cooperate with the United States to Combat International Drug Traffic*, 7 INT'L L. & POL. 361 (1974).

⁸⁴ 22 U.S.C. § 2370(q) (1976).

⁸⁵ By statute, A.I.D. is required to use 30% of its 1982 appropriated funds for loans. Foreign Assistance and Related Programs Appropriation Act, Pub. L. No. 97-121, 95 Stat. 1647 (1981) (Title II - unnumbered section).

as well as contributing funds to many of the voluntary organizations under the U.N. aegis. Therefore, Congress has directed the President to take into consideration a country's status with respect to its dues, assessments and other obligations to the United Nations in deciding whether to provide assistance.⁸⁶ If a country is in arrears, the President is required to report to Congress setting forth the assurance given by the government of paying all of its arrearages or a full explanation of the "unusual or exceptional circumstances which render it economically incapable of giving such assurances."⁸⁷ The provision thus provides a useful means of encouraging countries to honor their fiscal commitments to the United Nations.

The United States has traditionally had a strong commitment to human rights. This commitment is embodied in the Foreign Assistance Act in a section which precludes assistance to:

[T]he government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of person, unless such assistance will directly benefit the needy people in such country.⁸⁸

This provision reflects one of the fundamental philosophies of our foreign assistance program: to encourage and protect freedom and democracy.⁸⁹ Adoption of this human rights policy also expresses Congressional sentiment that the U.S. bilateral assistance program should focus on the elimination of poverty and not support a particular regime.⁹⁰ The application of this provision has been the subject of several law review articles⁹¹ and it is one of the provisions of the Foreign Assistance Act which has, at least in the past, achieved major international influence. Under President Carter, concern for human rights violations was a policy priority.⁹² The Carter Administration reformed foreign assistance policies to prevent awards of "liberal grants and loans to repressive regimes which violate

⁸⁶ 22 U.S.C. § 2370(u) (1976).

⁸⁷ *Id.*

⁸⁸ 22 U.S.C. § 2151n(a) (1976).

⁸⁹ S. REP. No. 620, 93d Cong., 1st Sess. 23 (1973).

⁹⁰ *Id.*

⁹¹ See, e.g., Balmer, *Use of Conditions in Foreign Legislation*, 7 DEN. J. INT'L L. & POL. 197-238 (1977), and Derian, *Human Rights in American Foreign Policy*, 55 NOTRE DAME LAW. 264-80 (1979).

⁹² *Human Rights*, 33 CONG. Q. ALMANAC 321-322 (1977); Carter, *Speech on Humane Purposes in Foreign Policy* (1977). For an excellent analysis of application of President Carter's policy on human rights, see also Cohen, *Conditioning U.S. Security Assistance on Human Rights Practices*, 76 AM. J. INT'L L. 246 (1982).

human rights."⁹³ The reformed policies resulted in aid cutbacks for Ethiopia, Uruguay, the Central African Empire and Argentina.⁹⁴ These policies, as well as similar human rights policies which applied to loans by international development banks were reversed by the present Administration.⁹⁵

There has been considerable criticism of the present Administration's decision to diminish scrutiny of human rights violations in countries receiving assistance.⁹⁶ The present Administration's reluctance to use this provision to influence human rights policies is the subject of continued debate in Congress where pressure has grown to mandate enforcement of this provision by the United States, especially in El Salvador, Haiti and the Philippines. Although the present Administration has taken the position that it will continue to discourage human rights violations abroad in less "public" ways, the United States appears, at least in the eyes of the international community, to have relinquished one of its most effective foreign policy levers for protecting dissidents abroad.

E. Leverage Achieved from Prohibitions

The leverage we achieve from various prohibitions and policies embodied in the Foreign Assistance Act in terms of foreign policy influence increases in direct proportion to the dollar amount of aid which we provide to a country and the percent of aid which is provided by the United States, as opposed to other individual and multilateral donors. In Egypt, for example, A.I.D. is required by statute to provide \$750,000,000 of assistance which dwarfs all other assistance received by that country.⁹⁷ If we were to terminate our assistance to Egypt, the results to the Egyptian

⁹³ President Carter's March 17, 1977 Message to Congress on Foreign Aid, CONG. Q. 62-A (Apr. 1978).

⁹⁴ *Human Rights*, *supra* note 92, at 322. Section 116(d)(2) Report to Congress, February 1978, at 2.

⁹⁵ *U.S., in Change, Is Backing Loans to 4 Latin Lands*, N.Y. Times, July 9, 1981, at 1, col. 5; *Certifying Chile on Rights is Wrong*, N.Y. Times, Mar. 23, 1982, at 27, col. 1. It should be noted that under President Carter, "[i]n 1978 consideration of human rights was made an integral part of A.I.D.'s budget justifications and in allocation of resources." Section 116(d)(2), Report to Congress, January 1980, at 1. This statement was made in each report under President Carter. The first report issued after the current administration reformed human rights policies deletes this statement. Section 116(d)(2), Report to Congress, January 1982.

⁹⁶ *See, e.g., South Korea urges U.S. to alter Rights Policy*, Washington Post, Dec. 25, 1982, at 1, col. 1, where South Korea opposition leader Kim Dae Jung urged the United States to speak out openly for human rights rather than pursue "quiet diplomacy"; *Certifying Chile on Rights is wrong*, N.Y. Times, Mar. 23, 1982, at 27, col. 1; *Certifying El Salvador*, N.Y. Times, July 27, 1982, at 33, col. 1; 3 *Human Rights Groups Assail Reagan Policy*, N.Y. Times, Dec. 12, 1982, at 6, col. 1.

⁹⁷ 22 U.S.C. § 2346 (a)(1) (Supp. V 1981).

economy would be serious. On the other hand, we provide much smaller amounts to many countries in Africa who are already receiving assistance from a variety of European, Canadian and Scandinavian donors, as well as international organizations. Our ability to influence the policies of countries which receive smaller amounts is less than in countries who are more dependent upon our financial assistance.

Our Ambassadors have always been aware that they have a great deal more influence within a country if the United States is providing economic assistance. If we are not providing development assistance, our Ambassadors find it far more difficult to discuss economic policy with country officials. Providing assistance entitles us to a seat at the economic policy table and provides us with an opportunity to nudge countries into what we regard as fiscally sound policies.

IV. THE USE OF POLICY DIALOGUE IN THE DEVELOPMENT OF U.S. FOREIGN ASSISTANCE PROGRAMS

Another important use of the foreign aid program is as a means of inducing internal policy changes within recipient countries which provide a more favorable climate for economic development. These policy changes are based on existing economic and social conditions within the developing country and must be particularly tailored to the conditions and culture. Unlike the policies which are expressly set forth in the Foreign Assistance Act and which are discussed in Parts II and III of this article, the power to induce these policy reforms is totally within the discretion of the implementing agency, A.I.D., and the nature of such reforms is not specified in U.S. foreign aid legislation.

A. *The Concept of Policy Dialogue*

The development assistance community has long realized that domestic economic policies in third world countries may thwart development efforts. Even well designed and well executed economic assistance projects may fail to have a significant development impact in the absence of a favorable economic policy environment. "[T]he soundness of domestic, economic and social policies is in general the dominant long-term influence on development . . . economic assistance in support of ill-conceived policies would be a poor investment indeed."⁹⁸

Although this common sense policy has frequently been ignored in the practice of aid in development, the importance of the principle has been recognized throughout the U.S. foreign assistance program. Presi-

⁹⁸ AGENCY FOR INT'L DEVELOPMENT, 1982 ANNUAL REPORT OF THE CHAIRMAN OF THE DEVELOPMENT COORDINATION COMMITTEE, DEVELOPMENT ISSUES 1982, at 43.

dent John F. Kennedy declared in a 1961 message to Congress on the subject of foreign aid:

If our foreign aid funds are to be prudently and effectively used, we need a whole new set of basic concepts and principles: . . . Special attention to those nations most willing and able to mobilize their own resources, *make necessary social and economic reforms*, engage in long-range planning, and make the other efforts necessary if these are to reach the stage of self-sustaining growth⁹⁹ (Emphasis added)

A.I.D. has attempted to influence policy reforms in developing countries throughout its existence with varying degrees of success. However, the present A.I.D. Administrator, Peter McPherson, has elevated the level of concern for encouraging necessary policy changes to one of his four top priorities.¹⁰⁰ In the words of the Administrator:

We believe that the policies and programs of the third world are more important than the assistance we give them. This point is critical. No doubt, our assistance is very important to bring reasonable economic growth, but the third world will grow and prosper first and foremost because of its own policies and programs.¹⁰¹

Discussion of what constitutes appropriate policy influence necessitates a definition of terms. Perhaps the best explanation is found in a recently published A.I.D. policy paper which makes the following distinction:

The policy influence continuum encompasses, among other things, the concepts of leverage and of dialogue. Given that the parties' viewpoints differ, "LEVERAGE" REFERS TO THE CAPACITY TO HAVE ONE VIEWPOINT PREVAIL OVER THE OTHER. "DIALOGUE" IS BETTER UNDERSTOOD AS A MECHANISM WHEREBY EITHER VIEWPOINT OR BOTH CAN CHANGE TO BRIDGE THE INITIAL DIFFERENCE BETWEEN THE TWO. Through a 'dialogue,' then, the aid recipient comes to view the policy advice as genuinely in the interest of its own economic progress. Through the application of 'leverage,' instead, the aid recipient agrees to enact a certain policy because of threats of damage or promises of gain, and not because it concurs with the other party's views of the policy's desirable effects. In actual practice, the dividing line between leverage and dialogue is blurred. Even a naked threat or an explicit bribe does not usually entirely rule out the possibility of a dialogue - that is, of a change in either party's viewpoint. And the least coercive, friendliest sort of policy dialogue almost always entails the *pos-*

⁹⁹ See *supra* note 1, at 6.

¹⁰⁰ The Next Generation of World Development, an address by M. Peter McPherson to the Washington Leadership Conference of the United Nations Association, May 16, 1981.

¹⁰¹ Development Strategies for the 1980's, an address by Peter McPherson to the National Conference of former Peace Corps Volunteers, June 19, 1982.

sibility that some form of leverage will be exercised at some point. Focusing attention on the availability of potential leverage as a means of influence can be badly misleading. *Potential leverage is only a possible facilitator of the policy dialogue, and is neither a sufficient nor a necessary condition for its success.* On the contrary, if exercised clumsily, it may in the longer term be counterproductive. Thus, to find that U.S. bilateral aid carries strong potential leverage in a particular country does not in the least require that it be actually used as such. On the contrary, a priori common sense as well as the AID experience of the 1960s suggest that influence on policy is maximized by providing the recipient country's government with full 'information' on the availability of leverage and the consequences of its use, but actually abstaining from using it.¹⁰² (Emphasis added)

The concept of policy dialogue is applicable to all of the U.S. bilateral economic assistance programs, regardless of the specific aid instrument in question. In some instances, the aggregate A.I.D. program in a particular country can be used as the vehicle to discuss policy changes; in other cases, such a dialogue may be based on particular constraints and opportunities in individual economic support fund, development assistance and Public Law 480 projects. Since foreign policy motivations are dominant in the provision of economic support funds, it is more difficult to use these funds as an instrument of leverage. Unfortunately, recipient countries are often all too aware of the strength of commitment of American support and may use our own foreign policy objectives as an excuse for avoiding painful policy adjustments.¹⁰³ However, in some cases, notably Afghanistan and South Korea, where the motivation shifted from security or short-term political objectives to longer-term development goals, the emphasis on self-help increased and the programs were concomitantly more successful.

B. Policy Dialogue and Development Assistance

Development assistance, because it is primarily project oriented, has traditionally been a more successful vehicle for establishing a policy dialogue than economic support funds. Although in some countries, the small amount of development aid the U.S. provides somewhat limits its ability to influence policy changes, some 32 developing countries receive over \$20 million each in total U.S. bilateral economic assistance and therefore are prime candidates for an effective policy dialogue.¹⁰⁴ The fact that development assistance is project oriented provides an opening for an exchange of views on how the economic policy environment will affect

¹⁰² Approaches to the Policy Dialogue, A.I.D. Policy Paper 5-6 (August 1982).

¹⁰³ *Id.* at 21.

¹⁰⁴ *Id.* at 22.

the success of the project. Such a discussion may lead to a consideration of broader policy issues, such as domestic agricultural pricing policies. Public Law 480 food aid also provides substantial potential for policy reform and greater emphasis is being placed on the use of this type of assistance to promote more effective agricultural and rural development policies in recipient countries.

Since Public Law 480 food imports have an impact on food availability and rural development in the recipient country, as well as balance of payments implications, Public Law 480 programs are an effective instrument for introducing discussions of either macroeconomic or micropolicy changes. For example, a current Public Law 480 agreement between the United States and Pakistan contains a provision for stimulating Pakistani production of vegetable oils, which is designed to help Pakistan reduce its dependence on vegetable oil imports.¹⁰⁵ A.I.D. is attempting to encourage greater use of policy dialogue when negotiating new Public Law 480 agreements in order to increase the developmental effects of our food assistance programs.

The question which naturally arises is whether influencing policy reform is a legitimate aim of the U.S. foreign assistance program. Some critics contend that the United States should not be overtly obtrusive into the affairs of other countries and that matters of policy reform, especially macroeconomic policies, should be left to the International Monetary Fund (IMF) or the International Bank for Reconstruction and Development (IBRD).¹⁰⁶ However, a more logical view, and certainly the prevailing one in the development assistance community, is that it is not only wise but essential for donors to encourage policy reforms because they have a responsibility to maximize the success of their development assistance and such success depends to a large extent on the existence of a favorable policy environment in the recipient country. Most donors believe IMF and IBRD efforts to influence macroeconomic policies of developing countries are insufficient and that the donor community must support and promote such changes through the use of their own bilateral programs in order to maximize the effect of multilateral efforts. This view was expressed by former A.I.D. Deputy Administrator, Joseph C. Wheeler in his recent testimony before the House Foreign Affairs Committee on

¹⁰⁵ *Id.* at 25.

¹⁰⁶ For a discussion of the IMF's use of conditionality, see Gold, *Conditionality, IMF pamphlet series No. 31*, Washington, D.C.; Guitian, *Fund Conditionality and the International Adjustment Process: The Early Period 1950-1970*, FINANCE AND DEVELOPMENT, March 1981, at 8; *Fund Conditionality and the International Adjustment Process: A Look into the 1980s*, FINANCE AND DEVELOPMENT, June 1981, at 18. For a description of use of the policy dialogue in structural adjustment lending programs, see Landell - Mills, *Structural Adjustment Lending: Early Experience*, FINANCE AND DEVELOPMENT, December 1981, at 17; Stern, *Structural Adjustment Lending*, WORLD BANK, May 9, 1980, at R80-122.

our foreign assistance program. Based on his two decades of experience in development as an A.I.D. career Foreign Service Officer, Mr. Wheeler made the following assessment:

First, I think we must be more effective in our policy dialogue with less developed countries. We need to sponsor a policy framework which will encourage development benefitting the total populations of the countries we help. This means universal primary education, health outreach programs reaching the whole population and policies which encourage agricultural production. In this connection I believe we have tended to leave too much to the IMF and the World Bank and have not given them the support they need in order to persuade countries to adopt sensible exchange rate policies, agricultural price policies, and other policies which will encourage the full use of agricultural production assets. Similarly, I think we need to encourage government to get out of wasteful government industries which are uneconomic and to leave more of the production process to a competitive private sector. We need to be more willing to help government establish the rules and regulations needed in order to assure a competitive process.¹⁰⁷ (Emphasis added)

Development efforts often fail in third world countries due to counterproductive domestic economic policies. In Africa, agricultural pricing policies and the proliferation of parastatals (state organizations which control agricultural production and distribution) are two primary constraints on agricultural development.¹⁰⁸ For example, in Mali, the government has established prices for rice which are so low as to discourage production and to create a black market. A study has shown that it cost farmers 83 Malian francs to produce a kilo of rice, but the government paid farmers only 60 Malian francs per kilo.¹⁰⁹ Our experience in Pakistan, where A.I.D. worked with the government to develop a wheat program, demonstrates what can be achieved if projects are tied to policy changes. As part of the U.S. effort to improve wheat production in Pakistan, A.I.D. financed imported fertilizer during Pakistan's construction of its own fertilizer production capacity. As part of the plan for development, the Pakistanis raised the price of wheat paid to the farmer closer to world market values and opened the fertilizer market to the private sector. These strategies increased the wheat crop from a previous record of 7.5 million tons to approximately 12 million tons today.¹¹⁰

If policy discussions are not handled with sufficient sensitivity, however, the results can be disastrous. A well publicized example occurred in

¹⁰⁷ Statement of Joseph C. Wheeler before the House Foreign Affairs Committee, August 17, 1982.

¹⁰⁸ See Eicher, *Facing up to Africa's Food Crisis*, FOREIGN AFFAIRS 151, 160 (Fall 1982).

¹⁰⁹ *Id.* at 160.

¹¹⁰ *Supra* note 107, at 15-16.

Colombia in 1966 when donors combined to put pressure on the government to get it to agree to IMF demands for a currency devaluation. The pressure was so heavy and crude that Colombia's President, Carlos Lleras Restrepo made a dramatic appearance on television in November 1966 to denounce the pressure, reject the conditions, and enact strict new exchange rate and price controls. The matter ended happily, after more discreet and diplomatic negotiations resumed to improve Colombia's balance of payments. During the negotiations, the IMF backed down and, less than three months after the Lleras speech, agreed to new standby arrangements without including an earlier demand for a specific timetable for exchange rate changes. Several years of economic stability and growth followed the Colombian policy changes.¹¹¹

The Colombian situation exemplifies the dangers of a heavyhanded approach to policy dialogue. In fact, the sensitivity of participants in policy negotiations is a key factor in the success of a policy dialogue, which assumes understanding and acceptance by the recipient government. The foreign assistance community uniformly agrees that:

External donors . . . assume a heavy burden of responsibility when they intervene vigorously and on a continuing basis in a developing country's policy formulation. This is not to argue against such intervention . . . external influence may be extremely useful as a counterweight to internal resistance to needed change, as a supplement to analytic capacity in countries lacking their own trained analysts, and as a stimulant to fresh perspectives in more sophisticated countries. But effective use of influence also demands recognition of the limits of our understanding of development problems, the patience to work toward a consensus on goals and means, and the willingness to stand by the implicit obligations of the game.¹¹²

Sensitivity, combined with the donor's knowledge and understanding of host country conditions, are the prime ingredients for a successful policy dialogue.

C. Israel: The Successful Use of Policy Dialogue

A recent A.I.D. evaluation of assistance provided to Israel through A.I.D.'s housing guaranty program illustrates policy dialogue at its best. In this case, A.I.D. assistance began under the least favorable conditions for influencing policy reforms. First, Israel was a United States ally with the highest foreign policy priority, and the Government of Israel was certainly aware of that fact. Second, Israel's housing policies were well estab-

¹¹¹ Approaches to the Policy Dialogue, A.I.D. Policy Paper, August 1982, Annex I, at A1-2.

¹¹² J. NELSON, A.I.D. INFLUENCE IN FOREIGN POLICY 89-90 (1968).

lished, highly political and strongly rooted in the traditions and culture of the country. Certainly they were perceived by the government as being politically immutable. Finally, neither Israel nor A.I.D. expected A.I.D. to provide technical assistance or envisioned discussing policy changes at the time the first housing guaranty agreement was executed. However, even under these "worst case" conditions, A.I.D.'s seven-year \$200 million housing guaranty program in Israel was a resounding success and led to a number of policy reforms.¹¹³

In order to analyze the elements which determined the success of the policy dialogue with Israel, it is necessary to understand the policies in effect when the housing guarantee program began. Housing in Israel was then and is still the Israeli government's highest priority. Since the creation of the State of Israel, the budget for the Ministry of Construction and Housing has been second only to the budget for defense. Israel's housing policy is based on the fact that the population has increased more than five-fold since Israel declared its independence in 1948. The Israeli government continues to produce new housing in order to provide homes for young couples and in anticipation of the possible large immigration of Russian Jews in the event that the Soviet Union allows them to emigrate to Israel.

One of Israel's strongest national priorities is to provide homes for all refugees. Most refugees have been stripped of their possessions by the countries from which they emigrate and they arrive in Israel without resources. Initially, many immigrants had to be placed in temporary sub-standard housing. With time and the slowing of the population growth, the housing standard gradually improved.

Another primary facet of Israel's housing policy is the emphasis on home ownership. Israel's housing policy strongly encourages people to buy their apartments and most of the buildings in Israel are condominiums. This policy is an attempt to eradicate a long history of discrimination where Jews were not allowed to own property. The policy is also based on the belief that if people own their homes, they have a stake in the country. Thus, rental housing is generally used only for those persons who cannot afford to purchase homes even with government assistance.

An additional factor in Israel's housing policy is the overall plan for promoting orderly and effective development of the country as a whole.

¹¹³ The discussion of A.I.D.'s housing guaranty program in Israel is based on an A.I.D. evaluation of the program in which the author participated. After extensive research and briefings in the United States, the four-member team spent a month in Israel interviewing government officials, housing contractors, residents in buildings financed through housing guarantees, economists, bank officials and others. A.I.D. evaluation teams are "independent" in that they are chosen among A.I.D. personnel who have not been associated with either the project or office which sponsored it. The results of this evaluation will be published by A.I.D.

The State owns 92% of the land and exercises tight control over all planning and development.¹¹⁴ Israel uses its housing policy to promote growth in development towns and other strategic regions, such as Jerusalem, the border towns and the West Bank, and also to discourage development in such highly populated areas as Tel Aviv and the coastal strip. Although Israel no longer places its new immigrants in designated areas but allows them to choose their own locations, housing policy is still used to encourage location where the State desires growth.

All of these policies have determined the course of Israeli housing development and contributed to both the success and problems which exist today. Israel has been overwhelmingly successful in providing a high standard of living for its citizens. No one is without a home. On the other hand, Israel's emphasis on housing construction, rather than on maintenance and rehabilitation, has led to a progressive deterioration of its housing stock. Moreover, while government control has been successfully used for the spectacular development of Israel, the government also undertook almost complete responsibility for housing construction which became a tremendous drain on the Israeli budget.

Initially, the A.I.D. program in Israel was little more than a resource transfer. The program began in fiscal year 1972 when A.I.D. guaranteed a \$50 million loan, channelled through Tefahot, the Israeli Mortgage Bank, Ltd., to provide mortgage financing.¹¹⁵ Both the United States and Israel understood that Israel would use the funds to improve its balance of payments and to increase its housing budget. A.I.D. was not directly involved in the planning or development of housing units for Israel. However, during the course of the relationship with Israel, U.S. influence on Israel's housing program and housing policies increased.

After legislation was enacted requiring A.I.D. to target its programs to people below the median income, A.I.D. guarantees on construction loans to Israel focused on housing for low income families and minorities. More important, however, a dialogue was established between A.I.D. and Israeli housing and finance ministry officials on housing problems and a relationship of trust developed between the countries, resulting in increased A.I.D. influence on Israeli policy. Israeli ministry officials began to request technical assistance from A.I.D. because they recognized that the U.S. had successfully resolved some of the housing problems which Israel faced and because they were impressed by the expertise of A.I.D. officials and consultants and our willingness to help without imposing unsolicited conditions. The recommendations made by A.I.D., coupled with

¹¹⁴ Israel Housing and Shelter Improvement Program, A.I.D. Project Paper 271-HG-006, at 9 (1978).

¹¹⁵ Israel Shelter Upgrading and Housing Program, A.I.D. Project Paper 271-HG-007, at 7.

an analysis of the economic implications of Israeli housing policy, provided an impetus for changes in Israeli housing policy. These changes included new policies which placed greater emphasis on maintenance and rehabilitation of Israel's existing housing stock; the development of sophisticated community renewal projects, combining physical rehabilitation and the provision of social services; and increased emphasis on participation by the private sector in Israeli housing.

A.I.D. had a substantial impact on changing Israeli policy in the area of rental housing maintenance and management. Peter Abeles, an A.I.D. housing consultant, raised challenging questions with respect to the utilization of the existing housing stock.¹¹⁶ Through these questions, Israeli officials gained new perspectives on how to manage the existing housing supply and began to emphasize maintenance and rehabilitation, rather than focusing exclusively on building new units. The A.I.D. - Israeli dialogue led to a larger allocation for housing renovation in subsequent Israeli budgets.

A.I.D. recommendations also led to the strengthening of maintenance departments in districts throughout Israel. A.I.D. recommended establishing a local maintenance corporation in each subsidized project.¹¹⁷ Amidar, the Israeli National Housing Corporation for Immigrants, Ltd. which is responsible for low-income units and is the single largest owner of rental housing, did not have the resources to establish such a corporation in each project. However, Amidar was able to decentralize its maintenance operations and establish district offices. According to Amidar officials, substantial funds were saved because officials in the area were able to take quicker action with respect to property improvements and maintenance.¹¹⁸ (Due to the high inflation in Israel, even a postponement of two or three weeks in making repairs or construction alterations could raise costs 2 to 3 percent.¹¹⁹)

A.I.D.'s technical assistance program also influenced internal policy changes by exposing Israeli housing officials to successful housing maintenance and management programs in the United States. A.I.D. and Israel jointly sponsored a visit for housing officials to the United States which enabled the Israelis to learn sophisticated maintenance and management techniques from American housing experts. The Israeli officials were able to apply what they learned to Israel when they returned.

A.I.D. was also successful in encouraging Israeli housing ministry offi-

¹¹⁶ Boone, Young and Associates and Abeles, Schwartz and Associates, *Housing Maintenance and Management in Israel, Review and Recommendations* (Nov. 1977).

¹¹⁷ *Id.* at 33-39.

¹¹⁸ Israel Shelter Upgrading and Housing Program, *supra* note 115, at 20.

¹¹⁹ Inflation in Israel hovers around 110 to 150 per cent per year. Vines, *Israel*, MIDDLE EAST REVIEW (1981).

cial to create a larger rental housing market, despite some reluctance on the part of Israeli officials to modify Israel's strong policy in favor of home ownership. The American recommendations were made on the basis of high vacancy rates in condominiums in some areas, the difficulty experienced by Israelis in moving to other cities in Israel, and the fact that, even with the huge housing subsidies offered by the government, some Israelis could not afford or did not want to purchase their own units. Although Israeli officials were aware of the arguments for creating some rental housing, the formal recommendations made by A.I.D. in reports submitted to the government, as well as our offer to guarantee construction loans on some of the initial experimental projects, set the stage for the Israeli government to reach a consensus and agree to a rental housing experiment at an earlier time than would have occurred without U.S. intervention. The experiment proved to be successful and resulted in an increase of rental housing units in Israel.

Another area in which A.I.D. technical assistance had a policy impact was in encouraging the creation of a private sector in the housing construction industry. Again, the impact was not due so much to specific advice given by A.I.D., but to an experiential learning process resulting from the continuing dialogue between Israeli government officials through their discussions with A.I.D. consultants and their analysis of some of the more successful aspects of our construction industry in the United States.

When A.I.D. began its housing guaranty program to Israel in the 1970's, the Israeli government was the dominant factor in the housing construction industry. During the course of the A.I.D. - Israeli relationship, A.I.D. experts pointed out that government costs could be cut by placing more responsibility and risk on the private construction sector. This dialogue caused the government of Israel to adopt new housing policies in 1978, which decreased the cost of the subsidy to the government and increased the financing responsibility of the private contractor. The new system reduced the government's financial burden and resulted in earlier completion of construction by the private contractor, because the contractor assumed a portion of the construction financing risk.¹²⁰ These changes reduced the total time for completion of construction from thirty-four months in 1979 to twenty months in 1981, which substantially reduced interest costs on construction loans.

At the suggestion of A.I.D., the Israeli government also changed its mortgage subsidy policy to allow people eligible for government mortgages to use those mortgages to purchase apartments in buildings of their choice, rather than in designated buildings. Once purchasers were allowed to choose their apartments, they naturally chose those which were better

¹²⁰ Israel Shelter Upgrading and Housing Program, *supra* note 115, at 15.

designed and constructed. The combination of purchaser selection and the imposition of additional risk on the private contractors weeded out a large number of ineffective, wasteful contractors and reduced the cost of construction significantly.

A.I.D. consultants tried to encourage creation of a private sector in Israeli's housing finance market, but with less success. Consultants hired by A.I.D. from the American savings and loan industry visited Israel and made recommendations to the Israeli government over a period of years urging adoption of a housing finance system based on the American savings and loan housing finance and secondary market systems.¹²¹ Although Israeli officials were impressed by the achievements of these American experts in the United States, the Israelis were unable to use the recommendations because the American system is not readily adaptable to Israel. Israeli financial markets are totally controlled by the government and, although mortgage institutions exist, these institutions are required to invest all but a small portion of their deposits in government securities.

Although some Israeli officials believe that reduction in the role of government in mortgage financing is desirable, they do not believe that adoption of the United States system as a whole is possible. Israeli officials were critical of the recommendations made by A.I.D. consultants and suggested that the recommendations would have been more beneficial if they had been specifically tailored to existing Israeli conditions and institutions and had been designed to be adopted on a step-by-step basis over a period of time.¹²² This is an example of a dialogue which was not successful because we attempted to export an American system without designing it to meet existing conditions in the recipient countries' economy and financial markets.

On the other hand, A.I.D. had dramatic success in assisting Israel to implement a distressed neighborhoods program, or "project renewal," as it is known in Israel. The program is designed to eliminate slums by addressing not only the problem of physical deterioration of buildings but a wide range of socio-economic conditions in the neighborhoods. A major goal of the program is to develop an awareness of neighborhood residents of problems and to increase their participation and involvement in finding solutions.¹²³

The neighborhoods designated as "distressed" are generally urban and contain a high concentration of underprivileged families. These neighborhoods have a negative image and are characterized by a high percentage of families in dilapidated housing, overcrowding, high crime rates

¹²¹ 271-HG-005, 1976, financed this study.

¹²² Interviews with Bank of Israel, Tefahot and Ministry of Finance officials.

¹²³ MINISTRY OF CONSTRUCTION AND HOUSING, JERUSALEM, NEIGHBORHOOD REHABILITATION IN ISRAEL 11, 13-14 (Oct. 1977).

and a low level of neighborhood infrastructure and community services.¹²⁴ When A.I.D. began its participation in this program, only 11 neighborhoods were involved. These neighborhoods were chosen because they were the worst in terms of substandard living conditions, physical and organizational infrastructure and other social factors. A.I.D. influenced the distressed neighborhoods program both through technical assistance and the provision of funds. Although some Israeli ministry officials had been advocating creation of a program to rehabilitate distressed neighborhoods, American financial support and technical assistance expedited adoption of the program by the Israeli government.

In 1978, A.I.D. provided a loan guaranty of \$7 million to be used for the physical rehabilitation component of the project.¹²⁵ Although A.I.D.'s monetary participation in this program was small, the \$7 million was a major portion of the Israeli budget for the program at the time and A.I.D.'s participation acted as a catalyst for obtaining greater Israeli government commitment to the program as a whole. The program was so successful that, in 1980, the government of Israel expended \$61 million to expand the effort which will eventually refurbish 160 neighborhoods. This is an example of the type of incentive A.I.D. can use to promote major policy changes through assistance programs.

The changes in Israeli housing policy which resulted from the dialogue between A.I.D. and Israeli Housing Ministry officials are examples of the positive use of development assistance to induce internal policy reforms. Our assistance relationship with Israel is a model for the type of policy dialogue which the United States should follow in other assistance efforts. The Israeli experience was successful because the dialogue was based on a relationship of trust and mutual respect; in no case did American officials attempt to force changes or ideas which were unwanted or unworkable. A.I.D. gave the Israelis the opportunity to become exposed to methods and technology which had worked successfully in our own housing construction and finance industry. We provided experts who, for the most part, were leaders in United States industry and were also familiar with the Israeli system and able to adapt our methods to it. In those instances where recommendations were not based on the realities of the Israeli situation, such as in housing finance, they failed. Where, through a continuing dialogue, recommendations were made in an effort to promote the efficiency of the program, and those efforts were recognized as such by the Israelis, policy changes occurred which went far beyond the initial expectations of A.I.D. officials.

Although Israel's economy and technology are clearly more advanced than those of many developing countries, the basic principles of the dia-

¹²⁴ *Id.* at 9.

¹²⁵ Israel Housing and Shelter Improvement Program, *supra* note 114, at 19.

logue and relationship which resulted between our two countries is certainly transferable to programs in other countries. The recipe for success is a thorough understanding by A.I.D. officials of problems and conditions in the recipient country and a willingness to work with the country in order to solve development problems, without imposing solutions. The role of A.I.D. should be one of advocacy of policy changes, of exposing the recipient country to models and examples of policies which have worked successfully in the United States and elsewhere, and of providing opportunities for recipient countries to experiment by financing projects which the countries might be otherwise unable to undertake. The Israeli experience demonstrates that the dialogue can work successfully and we should attempt to replicate this experience wherever we can in our assistance program. This experience also shows the benefits of using persuasion as opposed to force or threats.

V. CONCLUSION

A wide variety of policies — political, economic, social and developmental — must be considered in order to make the most effective use of foreign assistance as a foreign policy tool. It is clearly in the best interests of the United States to develop foreign assistance programs which foster our basic philosophies of humanitarian concerns, encouragement of democratic institutions and promotion of economic stability and self-sufficiency in developing countries. At times, however, the proliferation of specific prohibitions and mandates continually added by amendments to the Foreign Assistance Act hamper the flexibility needed by A.I.D. to retain the flexibility necessary to respond quickly and effectively to changing world needs, whether caused by natural disasters or military coups. We have seen how the concept of policy dialogue is used to address individual conditions in recipient countries in order to increase the impact of development assistance programs. This concept is effective because it is *not* expressly delimited by statute or regulation and can thus be tailored to deal with unique problems and situations. Our foreign assistance program can be most effective when it is most flexible. The number of legislative restrictions should be kept to a minimum in order to encourage creativity and innovative solutions to the ever-changing challenges of the developing world.