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D. FOOD AID ABROAD AND PUBLIC LAW 480

1. Background

Food aid has been a major component of US foreign assistance since the end of World War II. The machinery for handling it that existed in 1963, however, was basically shaped in 1954 with the passage of PL 480. That law, as amended several times, governed, as it does today, almost all US concessional sales and donations of agricultural commodities.

From the beginning, PL 480 had the dual purpose of meeting both domestic and foreign policy objectives. Initially, the dominant motive was our desire to export large US stocks of agricultural products, accumulated as an unwanted result of domestic farm policy. This coincided with a need for food abroad, arising from incomplete post-war recovery of production, rising populations, and growing consumption generally. Subsequently, however, as foreign production improved, increasing international scrutiny centered on the competitive effects of PL 480 programs on commercial trade. At home, there was growing emphasis, notably during the Kennedy Administration, on the use of food aid as an integral part of US assistance efforts.1/

Between 1954, when emphasis on surplus disposal led both Congress and the Administration to give major responsibility for PL 480 to their agricultural organs,2/ and 1963, the trends noted above gave increased foreign policy content to PL 480. Concurrent with this change was a growing difference of opinion among Executive Branch agencies over how much jurisdiction each should have in

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1/ The preamble to Executive Order 10915, issued at the beginning of the Kennedy Administration in 1961, stated in part: "...it is of fundamental importance that we have a national food policy directed toward using our agricultural abundance as a national asset to meet foreign policy objectives."

2/ In Congress the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry were responsible for PL 480 legislation. In the Administration, the Secretary of Agriculture had primacy.

administering it. In addition to the law itself, which assigned certain aspects of administration to specific agencies as well as to the President, the basic instrument governing PL 480 in 1963 was Executive Order 10900 signed by President Eisenhower in January 1961. While making the Secretary of State responsible for foreign policy and some operational aspects, this Executive Order delegated major responsibility for sales programs to the Secretary of Agriculture.

In January 1961, President Kennedy issued Executive Order 10915 (amending that of President Eisenhower) which stressed the foreign policy importance of PL 480 and created a new piece of machinery to improve PL 480 administration and policy-making within the Executive Branch. From 1954 to 1961 interagency PL 480 machinery had consisted of (1) the Interagency Committee on Agricultural Surplus Disposal, established by the President and chaired by a White House Office representative, the function of which was to develop general policy guidance, and (2) the Interagency Staff Committee on Agricultural

Surplus Disposal, established by the Secretary of Agriculture and chaired by his representative, the function of which was to develop and review PL 480 sales programs. (Donation programs were the responsibility of the Secretary of State.) Executive Order 10915, which left intact the basic delegation of authority among the executive agencies contained in Executive Order 10900, established the position of Director of the Food-for-Peace Program with an office in the White House. The creation of this office ostensibly provided for more effective interagency coordination; but, despite the existence of the Interagency Committee, many issues that could not be resolved in the ISC were taken to higher levels within the participating agencies on an ad hoc basis. After its establishment the Food for Peace Office set up an Interagency Policy Committee, chaired by the Food for Peace Director, "to resolve major agency differences, and to provide broad program guidance ..."

In 1963 the role of the State Department (not including AID) in PL 480 administration was somewhat limited. Upon the creation of the Agency for International

Development in 1961, the Secretary of State delegated most of his PL 480 responsibilities to the AID Administrator.3/ State's remaining responsibilities were described as "pretty much confined to the balance of payment effects, deposit rates for Title I sales, and third country consultations on usual marketings".4/ They were discharged by the Bureau of Economic Affairs headed by an Assistant Secretary of State. (This does not imply that geographical bureaus and other functional bureaus did not have a say in PL 480 matters. Their activities re these matters, however, were largely coordinated in ISC by AID representatives.)

3/ State Department Delegation of Authority No. 104, as Amended. November 3, 1961 (UNCLASSIFIED).

4/ Draft letter prepared by Office of the Legal Adviser/E, dated March 1, 1964 (LIMITED OFFICIAL USE*); also Memorandum for Joseph A. Califano, Jr. from Richard W. Reuter, Subject: "RE: Your questions on Food for Peace", August 16, 1965 (LIMITED OFFICIAL USE*) -- [*The asterisk used here and elsewhere below in conjunction with a security classification means that although the original document bore no classification there is reason to believe that it should have.]

2. Role of the State Department, November 1963-
September 1964

The PL 480 machinery inherited by the Johnson Administration remained intact until November 1, 1965. By signing Executive Order 11252 [5/] on October 20, 1965, however, President Johnson made a major alteration of importance to all PL 480 agencies but of particular consequence to State. The Executive Order provided that all of the functions of the Director of the Food-for-Peace Program would be transferred to the Secretary of State, who would have a special assistant to carry them out. Essentially, the office that President Kennedy had created in the White House answerable to him was transferred to the Department of State and made answerable to the Secretary. The functions of the new office in State, entitled "Special Assistant to the Secretary (Food-for-Peace) M/FFP", were set forth in a Foreign Affairs Circular. [6/] According to this circular, the office retained much the same interagency

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5/ Executive Order 11252, "Food-for-Peace Program", October 23, 1965. Text found in US Code of Federal Regulations.

6/ Foreign Affairs Manual Circular No. 368, Subject: "Special Assistant to the Secretary (Food-for-Peace) M/FFP"; October 29, 1965 (UNCLASSIFIED) responsibility it had exercised in the White House. At the same time, the office assumed internal responsibilities within State; e.g. "focal point in the Department on policy towards overseas use of food", "responsibility for coordinating State Department recommendations on food aid legislation", and "coordination with AID on food aid programming policy in US assistance efforts".[7/] Inasmuch as the Economic Bureau continued to perform its assigned PL 480 functions, State now had two PL 480 offices (non-competing) instead of one.

Executive Order 11252, by placing the Food-for-Peace Program Office in State, rather than in a domestic agency, gave new emphasis to the foreign policy content of PL 480. Its preamble stated that "the objectives of the Food-for-Peace Program can now best be achieved by vesting responsibility for the Program in the Secretary of State, the Cabinet official chiefly responsible for our policies and programs abroad, so that the activities of this Program will be coordinated, consolidated, and carried out more effectively with related activities of the United States

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7/ Ibid

abroad". Although the Executive Order gave the Secretary the policy and coordination role that had been exercised in the White House, in practice this function was not performed after the transfer was made. The man who headed this office both in the White House and at State attributed this failure to non-cooperation of the other two agencies mainly responsible for PL 480, i.e. the Department of Agriculture and AID, which, he suggests, were unwilling to cooperate once this responsibility had been transferred to one of the action agencies.[8/] The non-functioning of the coordination role left ISC as the only established interagency coordinating organ. With respect to its assigned functions within State, however, M/FFP played an active role. (LIMITED OFFICIAL USE)

In late 1966 the PL 480 Special Assistant to the Secretary resigned and was not replaced. Shortly before his resignation, Congress had passed and the President had signed an extension of PL 480 retitled "The Food for Peace Act of 1966", which introduced major changes in the program. Because these changes rendered Executive Order 10900

8/ Memorandum for M/FFP - Richard W. Reuter to Mr. Rostow: Subject: "Background on Food for Peace Office"; October 24, 1966 (LIMITED OFFICIAL USE*) obsolete in a number of ways, it was expected that a new Executive Order would be issued. State, together with other agencies, worked out a draft Executive Order which the most important innovation as far as State was concerned was the establishment of an intermediate-level decision-making body.[9/] In anticipation of this Executive

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9/ While a new Executive Order was never issued, much interagency effort was expended on achieving a mutually acceptable draft. This exercise was illustrative of the difference of opinion as to who should have administrative responsibility for PL 480, particularly between State/AID on the one side and USDA on the other. (While State and AID were generally in agreement, they, too, sometimes had differences that had to be harmonized.) Some of the documents drafted in connection with the proposed Executive Order were: (1) Memorandum for the Under Secretary from AID - William S. Gaud and E - Anthony M. Solomon; Subject: "Recommended Position for Discussion of Bureau of Budget draft Executive Order for Administration of Food for Freedom Program - ACTION MEMORANDUM"; December 22, 1966 (LIMITED OFFICIAL USE; (2) Letter to Mr. Charles L. Schultze, Director, BOB, from Douglas MacArthur, Assistant Secretary for Congressional Relations, December 23, 1966 (UNCLASSIFIED); (3) Memorandum to Mr. James W. Clark, Chief, International Division, BOB, from Anthony M. Solomon, Assistant Secretary of State for Economic Affairs, Department of State and Thomas L. Farmer, General Counsel, AID. Subject: "PL 480 Executive Order on Food for Peace - BRIEFING MEMORANDUM"; January 18, 1967 (LIMITED OFFICIAL USE); and (4) Memorandum to Under Secretary Katzenbach and to AID - Mr. Gaud from E - Anthony M. Solomon and AID - Stanley J. Siegal, Acting General Counsel; Subject: "Executive Order on Food for Peace - BRIEFING MEMORANDUM"; January 18, 1967 (LIMITED OFFICIAL USE)

Order, State also decided to consolidate its PL 480 responsibilities in the Bureau of Economic Affairs, where a new Office of Food Policy and Programs was created. The transfer to E of M/FFP functions was effected in early 1967. The reorganization of E was formalized on May 23, 1967.[10/] (UNCLASSIFIED)

In expectation of the new Executive Order, State and AID worked out a new internal delegation of authority to be signed by the Secretary of State once the Executive Order was effective. While AID would continue to have the main PL 480 operational responsibilities as before, E would be recognized as the center for State's other functions,[11/] except population matters. In July 1967,

10/ Foreign Affairs Manual, Vol. 1 - Organization and Functions: Transmittal Letter: ORG - 11, May 23, 1967.

11/ In a draft prepared by L/E and E, these were described as follows:

"(i) designating and instructing Department representatives on the interagency Committee now in existence or to be established to conduct the War on Hunger;

"(ii) ensuring, in consultation with the AID Administrator, that all War on Hunger functions are exercised in accordance with the foreign policy of the US;

"(iii) providing foreign policy guidance on PL 480 programs outside the War on Hunger, e.g. barter; and

"(iv) sharing with Agriculture the responsibility for determining usual marketing requirements, export limitations, and offset purchase requirements."
(LIMITED OFFICIAL USE)

with a new Executive Order still not issued and with a number of problems arising because of a lack of clear-cut lines of responsibility, the Under Secretary signed a memorandum to regional and pertinent functional bureaus asking them to implement that part of the draft delegation of authority relating to E.[12/] Since July 1967 there have been no formal changes of PL 480 machinery, either interagency or within State, and the President has not issued a new Executive Order. (LIMITED OFFICIAL USE)

A further word should be added here on the consultation role of State. As previously noted, one of the functions performed by State (not including AID) in conjunction with the Department of Agriculture has been the administration of that section of the law (currently Sec. 103(c)) directing the President to take precautions to assure that PL 480 sales will not disrupt normal commercial trade. This section conforms with United States international commitments to protect commercial trade and to consult with countries, individually and collectively, having verifiable interest in the trade of PL 480 recipients.

12/ Memorandum from U - The Under Secretary; Subject: "Bureau of Economic Affairs Responsibilities for PL 480 and Other Food Aid Matters"; July 26, 1967. (LIMITED OFFICIAL USE)

Basically the United States has tried to ensure that PL 480 shipments are additional to normal commercial trade. The evolution of the use of the tools it has developed for this purpose (principally the usual marketing requirement and the export-offset requirement) illustrates the already-noted conflict between domestic and foreign policy interests.13/ In essence, the Department of Agriculture has increasingly sought to tie to the United States the commercial imports required of PL 480 recipients, an effort which State has attempted to keep within the bounds of our international commitments. While this problem did not originate during the Johnson Administration, it has become increasingly acute in recent years.

3. Legislation, November 1963-September 1968

During the Johnson Administration, laws extending the life of PL 480 for two more years were passed in 1964, 1966, and 1968. The 1966 law, upon the initiative of the Administration, was a major revision. Less

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13/ Paper entitled "Trade Policy Implications of Agricultural Surplus Disposal" prepared in E/ORF/OFP; October 3, 1968 (LIMITED OFFICIAL USE*) extensive changes, initiated mainly by Congress, were made in existing legislation in 1964 and 1968. (UNCLASSIFIED)

In all three years it was the Department of Agriculture that called the first interagency meetings on extending the legislation and prepared initial legislative drafts. (Apparently it took the lead because of the fact that in Congress the legislation was handled by the Agriculture Committee.) The Department of State, however, on each occasion actively sought to influence the shaping of the legislation, both within the Administration and before Congress. Its fundamental aim was to keep open the President's foreign policy options. With regard to Congress, this meant attempts to persuade that body not to impose new foreign policy restrictions and to encourage it to remove old ones. Within the Administration, the State Department opposed changes that would diminish its foreign policy role in favor of other agencies, primarily the Department of Agriculture, and supported those that would make PL 480 an instrument of integrated assistance. The offices in State mainly responsible for PL 480 legislation were the Bureau of Economic Affairs and the Legal Adviser (especially the Assistant Legal Adviser for Economic Affairs). In 1966 only, the Special Assistant to the Secretary on Food for Peace (M/FFP) played a coordinating role for State with respect to PL 480 legislation.

In early 1964 there were no major disagreements within the Executive Branch on draft legislation prepared by the Department of Agriculture to extend PL 480. In late January key members of Congress met with high level representatives of State/AID and Agriculture, at which time it was agreed that the PL 480 program should be extended "much in its present form".[14/] On February 28, 1964, Under Secretary of State Harriman testified in favor of extending PL 480 before the Subcommittee on Foreign Operations of the House Committee on Agriculture. He particularly noted the role PL 480 had played in "encouraging movement toward national independence among communist countries of Eastern Europe".[15/]

14/ Memorandum of Conversation drafted by Mr. W. A. Harriman, subject: "Meeting on PL 480, held at Food for Peace Office, Executive Office Building; January 27, 1964 (LIMITED OFFICIAL USE)

15/ Department of State Press Release No. 88, Subject: "Statement by the Honorable W. Averell Harriman, Under Secretary of State, before the Subcommittee on Foreign Operations of the Committee on Agriculture, House of Representatives, Friday, February 28, 1964" (UNCLASSIFIED)

Despite the harmonious beginning noted above, bills containing changes objectionable to the Administration were reported out in both houses of Congress.[16/] State was particularly concerned with the definition of "friendly nations" that would, in effect, prohibit Title I and Title IV programs with countries having communist governments and that could adversely affect programs with other countries.

State/AID concern over the objectionable amendments led Acting Secretary Ball on December 21, 1964, to send a memorandum to the President recommending that he request the House and Senate leadership to take them up with their respective conferees.[17/]

16/ Department of State, Memorandum from E, L, and EUR to H: Subject: "PL 480 Legislation"; September 4, 1964. This document outlined State Department objections to both bills. (LIMITED OFFICIAL USE*)

17/ Memorandum for the President from Acting Secretary Ball; Subject: "PL 480 Conference--Unacceptable Provisions of Draft Conference Bill"; September 21, 1964 (LIMITED OFFICIAL USE *)

When the PL 480 extension bill cleared Congress on September 24, 1964, it still contained most of the objectionable provisions. A memorandum for the Under Secretary sent jointly from the Economic Bureau and the Legal Adviser on October 1, 1964, found three points particularly objectionable and expressed the view that the President should comment on them when he signed the bill. These points were:

> "1. two amendments to Section 104 which give components of Congress a veto over the exercise of executive authority. [see reference document for explanation of what these were.]
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> "2. amendments to section 107 which would cut off local currency sales to Yugoslavia and Poland, although permitting credit sales for dollars, and
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> "3. the requirement for export sales of extra-long staple cotton." 18/

On October 8 when President Johnson signed the law, he issued a statement which did express his concern about the above points.

18/ Memorandum for the Under Secretary from L - Leonard C. Meeker and E - G. Griffith Johnson; Subject: "Objectionable Provisions in PL 480 Extension: ACTION MEMORANDUM"; October 1, 1964 (LIMITED OFFICIAL USE*)

In late December 1965 and early January 1966 the Department of Agriculture took the initiative in proposing new food-aid legislation.[19/] This was to be a new bill to replace PL 480 that would eliminate the surplus concept and gear food assistance into long-range development programs in less developed countries. With this in mind it provided for a gradual conversion of local currency sales into long-term dollar credit sales.

While in accord with these concepts, the State Department was concerned about other aspects of Agriculture's proposed legislation, the first draft of which was described in E and L as a "crude attempt to cut all other agencies from responsibility for the Food for Peace Program."[20/]

19/ Memorandum from M/FFP - Richard W. Reuter to M - Mr. Mann; Subject: "Future PL 480 Legislation" December 28, 1965; Memorandum to the files; Subject: "Decision on Food for Peace Legislation," January 7, 1966. Authors: AFL (Andreas F. Lowenfeld) and KEM (Knute E. Malmborg) of L/E (LIMITED OFFICIAL USE).

20/ Department of State, Memorandum for E - Mr. Solomon from E - Edward R. Fried and L - Andreas F. Lowenfeld; Subject: "Food for Peace"; January 17, 1966 ~~(CONFIDENTIAL)~~.

Given the switch in emphasis from surplus disposal to planned production, State was concerned lest sole determination of agricultural commodity availability by the Secretary of Agriculture would give him complete authority over country programs.21/ The Agriculture Department proposal as drafted, also threatened to scuttle the "usual marketing requirement" commitment that protected commercial trade, foreign and US, from undue disruption by PL 480 transfers.22/

Faced with State/AID opposition, the Department of Agriculture at an inter-agency meeting on January 14, 1966, agreed that:

> "1. Presidential [rather than Secretary of Agriculture] authority for negotiating agreements would be restored;

21/ Department of State, Memorandum to OR - Mr. Fried from E/ICD/TEP - Fred H. Sanderson; Subject: "Agriculture's Proposal for New Food for Peace Legislation," January 14, 1966 (LIMITED OFFICIAL USE)

22/ From 1954 the US had committed itself under international agreements to prevent PL 480 from interferring unduly in international commercial trade. The chief instrument for achieving this was the "usual marketing requirement" included in PL 480 agreements, whereby recipient countries agreed to maintain their commercial purchases at levels based on trade history.

"2. The objective of economic development would be made more prominent;

"3. The requirement of safeguarding normal marketings would be restored as under the present act." 23/

On January 27 the Special Assistant to the Secretary (M/FFP) recorded the fact that proposed legislation for a new PL 480 had been completed by an interagency group meeting at Agriculture's initiative. 24/ He found himself still

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23/ In the Executive Branch Bill of 1966 the provision re commodity determination read: "After consulting with other Agencies of the Government affected and within policies laid down by the President for implementing this Act, and after taking into account productive capacity, domestic requirements, farm and consumer price levels, commercial exports, and adequate carryover, the Secretary of Agriculture shall determine the agricultural commodities and quantities thereof available for disposition under this Act, and the commodities and quantities thereof which may be included in the negotiations with each country." Compared with the comparable provision of the 1964 act (Sec. 106), this gave the Secretary of Agriculture less latitude.

24/ Department of State, draft memorandum for the Secretary from M/FFP: RWReuter; Subject: "Proposed legislation for a new PL 480", January 27, 1966 (LIMITED OFFICIAL USE) concerned, however, on several points, one of which was the lack of authority of State/AID in program determination, an omission which he predicted would cause problems if not remedied in the law or in a clear definition of responsibilities in an Executive Order.[25/]

To launch the new legislation President Johnson on February 10, 1966, sent to Congress a Food-for-Freedom message proposing a law that would, while retaining the best provisions of PL 480, emphasize self-help and eliminate the surplus requirement from food aid. (He also recommended a companion act on food and fiber reserves, but this legislation was never enacted.) On February 25, 1966, Under Secretary Mann delivered a statement supporting the legislation before the House Committee on Agriculture. Secretary Rusk delivered a similar statement before the Senate Committee on Agriculture and Forestry on March 7.

While both the House and Senate Agricultural Committees accepted the framework of the legislation proposed by the

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25/ *Ibid*. This prediction was later borne out when no new E.O. was issued followed enactment of the new law.

Executive Branch, they introduced a number of amendments that were unpalatable to the Administration.[26/] At one point the Assistant Secretary of State for Economic Affairs sent a memorandum to Under Secretary Mann stating that the restrictions were so numerous as to raise the "question whether the President should sign it if it is passed in its current form". The principal target for State, as it had been in 1964, was the definition of "friendly countries."[27/] The Administration version of the 1966 bill had omitted this provision entirely, but the House reinstated it in much the same form as it appeared in the 1964 Act.

26/ Department of State, Memorandum from E- Anthony M. Solomon for M - Mr. Mann, Subject: "Food for Freedom Bill"; May 6, 1966 (LIMITED OFFICIAL USE*); Untitled paper (possibly an enclosure) by M/FFP of May 6, 1966 which lists the specific major issues in Congress' version of the bill (LIMITED OFFICIAL USE*).

27/ A number of papers were prepared on this subject which detailed State's objections to this provision and told of its efforts to change it. Among them were the following: Memorandum prepared by L/E - AFLowenfeld and KEMalmborg; Subject: "PL 480: Analysis of friendly country provisions in Committee Print No. 2"; April 5, 1966 (LIMITED OFFICIAL USE*); Memorandum from Mr. Reuter to Mr. Mann; Subject: "Food for Freedom Bill"; (April 12, 1966 (LIMITED OFFICIAL USE*); Memorandum for M - Mr. Mann from E - Anthony M. Solomon; Subject: "Food for Freedom Act -- Friendly Countries"; April 23, 1966; Memorandum from M/FFP - Richard W. Reuter to L - Mr. Lowenfeld; Subject: "Food for Freedom Legislation"; May 4, 1966 (LIMITED OFFICIAL USE*); Memorandum from M/FFP - Richard W. Reuter to the Secretary; Subject: "Significant Developments During Your Absence"; June 10, 1966 (LIMITED OFFICIAL USE*); Letter from the Secretary of State to the Honorable John W. McCormack, Speaker, The House of Representatives, dated September 27, 1966; Letter from the Secretary of State to the Honorable Harold D. Cooley, Chairman, Committee on Agriculture, House of Representatives, dated September 27, 1966; Memorandum to the Secretary from H - H. G. Torbert, Jr.; Subject: "Food for Peace Bill - Prohibition against any countries trading with Cuba-North Vietnam or permitting vessels their registry to call at Cuba or North Vietnam ports. - Action Memorandum"; October 10, 1966 (LIMITED OFFICIAL USE*). It should also be noted that State was fighting against the friendly nations provisions on another front at the same time. The House of Representatives added a rider to the Agriculture appropriation bill which would eliminate PL 480 sales to "any nation which sells or furnishes or which permits ships or aircraft under its registry to transport to North Vietnam any equipment, materials, or commodities, so long as North Vietnam is governed by a Communist regime." Though opposed by State, this language was eventually incorporated into the PL 480 Act of 1966 (Section 104(d)).

Although the Administration was able to obtain some modifications, most of the objectionable changes, including the one on friendly nations, appeared in the final version. When President Johnson signed the bill, he noted, as he had in 1964, his concern about this provision which restricted the flexibility of US foreign policy; he expressed the hope that Congress would later change it.[28/]

In October 1967 the Department of Agriculture called an interagency meeting to consider the extension of PL 480, which was due to expire on December 31, 1968.[29/]

28/ As an outgrowth of the enactment of the "friendly nations" section of the 1966 legislation, State became involved in a lengthy exchange on interpretation involving other agencies, the Justice Department, Representative Findley, and the General Accounting Office. It was State's contention supported by Justice, that the word "nation" meant the "government of a country" and did not refer to activities of private citizens. At the time this had particular importance with respect to fulfillment of a PL 480 agreement with Yugoslavia that had been signed before the Act was passed but had not been fully consumated. Document No. 37 gives a resume of the issues involved.

29/ Department of State, Memorandum from E/ORF - George R. Jacobs to E - Mr. Solomon, Subject: "Interagency Meeting to Consider Extension of PL 480," October 26, 1967 (LIMITED OFFICIAL USE).

It was generally agreed that Congress would be asked simply to extend the law in its existing form for another three years. State considered using the renewal opportunity to ask revision of the "friendly nations" provision, but did not do so.30/ On February 21, 1968, it informed the Bureau of the Budget that it agreed with the latter's proposal to ask for renewal without amendment.31/

On March 8 Acting Deputy Assistant Secretary of State George R. Jacobs appeared before the House Committee on Agriculture to support the renewal of PL 480. He called attention to the relationship between PL 480 and the International Grains Arrangement and stressed the contribution that PL 480 makes to the balance of payments. Under Secretary of State Rostow made a similar appearance before the Senate Committee on Agriculture and Forestry on March 15.

30/ Memorandum from E/ORF - George R. Jacobs to E - Mr. Solomon; Subject: "BOB Proposal to Renew PL 480 with Amendment" dated February 2, 1968 (LIMITED OFFICIAL USE*).

31/ Letter from William B. Macomber, Jr., Assistant Secretary for Congressional Relations, to Charles J. Zwick, Director, Bureau of the Budget; February 21, 1968.

In comparison with 1966 and 1964 the House and Senate made few revisions in the law. Of particular concern to the State Department, however, was an amendment directing the President to "take steps to assure that the United States obtains a fair share of any increase in commercial purchases of agricultural commodities by the purchasing country /PL 480 recipient7." In countries that compete with the United States for sales of agricultural commodities this provision aroused the fear that PL 480 would be used to preempt the market share open for competition. 32/ As the result of Administration intervention, the House-Senate conference report contained language that softened this provision by stating that action contemplated under it would have to be consistent "with US obligations under international agreements." Under these agreements, the United States has committed itself to making PL 480, under most circumstances, additional to normal commercial imports (LIMITED OFFICIAL USE).

32/ Department of State Memorandum to the files by E/ORF/OFP - Fred H. Sanderson, Subject: "Fair Share" Amendment to PL 480", March 29, 1968 (LIMITED OFFICIAL USE*).

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E. INTERNATIONAL COMMUNICATIONS BY SATELLITE

The Communications Satellite Act of 1962 sets forth US policy favoring the creation of a global commercial communications satellite system in conjunction and in cooperation with other countries as expeditiously as practicable. The system was intended to be part of an improved global communication network, to be responsive to public needs and national objectives, to serve the communications needs of the United States and other countries, and to contribute to world peace and understanding.

Pursuant to the terms of the Act, on February 1, 1963, the Communications Satellite Corporation (ComSat) was established under the laws of the District of Columbia. During 1963 and early 1964 bilateral and multilateral international talks were conducted on the topic of international cooperation for satellite communications.[1/] These talks culminated

1/ Department of State Press Release 328, July 17, 1964 (Department of State Bulletin 167, August 3, 1964).

in a Plenipotentiary Conference convened in Washington in July 1964. The process of formulating US Government positions for the talks leading up to the 1964 Conference involved contributions from the Department of State, the Federal Communications Commission (FCC), National Aeronautics and Space Administration (NASA) and ComSat, among other agencies of government and the international common carriers.

A substantial controversy on policy arose in the United States in 1964 over the question of the extent to which the United States should retain for itself relative investment and corresponding voting power vis-a-vis other members of a proposed international communication satellite organization. The issue centered on ComSat's insistence that the United States take a majority share of both investment and voting power. Some opposition to this position arose within the Department of State and the FCC. Their concern was lest US dominance lessen the acceptability of the proposed international organization to other nations; but this factor was considered outweighed by the need to assure strong and competent early leadership in the organization. The issue was resolved in favor of a stronger rather than a weaker US position, because it was determined to be both necessary and in the national interest for the United States to play a leading role in the formation and establishment of the proposed international satellite system.

The 1964 Conference formulated an "Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System" and an associated Special Agreement. The Agreements were opened for signature by governments and their designated operating entities respectively on August 20, 1964. Participation in these Agreements grew steadily. By September 3, 1968, sixty-three states had signed or acceded to them. Under these Agreements the United States, through the Department of State and ComSat, played a leading role in establishing and encouraging the growth of the International Telecommunications Satellite Consortium (INTELSAT). Two National Security Action Memoranda promulgated by the White House in late 1965 and early 1966, set forth United States policy encouraging development of INTELSAT and discouraging proliferation of communication satellite systems outside of INTELSAT. 2/ Among major policy issues requiring resolution during the years immediately following establishment of INTELSAT were: questions of FCC regulation of INTELSAT procurement; establishment of a method for providing advice to and control of ComSat when it was acting on behalf of the United States in INTELSAT; and determining the extent to which any modifications in the 1964 Agreements establishing the single system concept would give way to proliferation of commercial communication satellite systems independent of INTELSAT. Each of these problems is discussed below.

The Department of State, the FCC, and the Presidentially-

2/ NSAM 338 - Policy Concerning United States Assistance in the Development of Foreign Communications Satellite Capabilities (original dated September 17, 1965; revised June 28, 1967); NSAM 342 - US Assistance in the Early Establishment of Communications Satellite Service for Less-Developed Nations (dated March 4, 1966).

appointed incorporators (and subsequent directors and officers) of ComSat were the primary action groups in the initial negotiations leading to international agreements on INTELSAT. Decisions on national policy concerning the organization of INTELSAT were generated substantially in the Bureau of Economic Affairs, the Bureau of International Organization Affairs and the Office of the Legal Adviser in the Department of State, coordinated with the Department of Defense (DOD), the FCC, the Office of the Director of Telecommunications Management (ODTM), NASA and ComSat.

By August 1964, when INTELSAT was created, ComSat had become sufficiently organized as a business entity to undertake the discharge of its responsibilities as Manager of the global satellite system established pursuant to the 1964 Agreements. In discharging these duties, ComSat was not acting under direction or control of the US Government. However, the Corporation's position as a member of INTELSAT holding a majority of the voting power enabled the US Government, through ComSat, to maintain a substantial if not controlling presence in the decision-making forums of

INTELSAT. 3/ During the period August 1964 - August 1966 the Department of State, the ODTM, and the FCC maintained direct contact with and provided advice and authorizations to ComSat in its role as the US member of INTELSAT. As it became increasingly apparent that control of ComSat required substantial policy coordination within the Government, the Department of State, through the Bureau of Economic Affairs, provided a continuing series of consistent, coordinated policy pronouncements for the guidance of ComSat.

After August 1964, INTELSAT began to procure satellites and related command and control facilities through international competitive procurement procedures. The FCC initially declared that, pursuant to the Communications

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3/ The instructional and guidance process for conveying government views to ComSat was formalized in August 1966; letter dated August 18, 1966, from Frank E. Loy, Deputy Assistant Secretary of State, to James J. McCormack, Chairman of the Board and Chief Executive Officer, ComSat, conveying the substance of the agreed guidance procedures.

Satellite Act of 1962, it had jurisdiction over ComSat whether acting individually or as the Manager of INTELSAT in procurement of such hardware related to the space segment of the INTELSAT system. The Department, recognizing the adverse political impact of an attempt by the FCC to regulate ComSat when functioning as Manager of INTELSAT, discouraged FCC adherence to rigorous domestic administrative procedures applicable to satellite procurement. NASA and ODTM were also concerned about the adverse impact on foreign relations which unilateral domestic regulation of INTELSAT might generate.

Accordingly, the Department, through its Bureau of Economic Affairs, encouraged the FCC to consider modification of its stand with regard to regulation vis-a-vis ComSat when acting as Manager for INTELSAT. Simultaneously, ComSat sought administrative redress for what it considered an unreasonable extension of FCC jurisdiction. Between the Bureau of Economic Affairs and the Office of the Legal Adviser, a project looking toward adoption of INTELSAT's self-imposed procurement regulations was initiated in conjunction with the FCC, ComSat and the Small Business Administration. Through negotiations involving these agencies and ComSat, a set of procurement regulations for INTELSAT was agreed to in the form substantially drafted by the Department. These regulations were presented to INTELSAT by ComSat and were ultimately adopted. Subsequently, in light of INTELSAT's self-regulation of ComSat's procurement as Manager, and at the Department's specific request, the FCC modified its regulations, 4/ excluding ComSat from FCC

4/ See correspondence between Department of State and others, particularly letter from Richard Colino, Director of International Arrangements, ComSat, to Frank E. Loy, Deputy Assistant Secretary for Telecommunications and Transportation, Department of State, dated August 26, 1966; letter from Richard Colino to Robert O'Mahoney, Bureau of Economic Affairs, Department of State, dated September 16, 1966; letter from Frank E. Loy to Rosel Hyde, Chairman, FCC, dated September 19, 1966; letter from Frank E. Loy to John Johnson, Vice President - International, ComSat, dated March 13, 1967; letter from Philip F. Patman, Attorney, Office of the Legal Adviser to Richard Colino, ComSat, dated October 2, 1967; letter from Rosel Hyde, Chairman, FCC to Robert C. Moot, Administrator, Small Business Administration, dated December 5, 1967, and the response dated December 5, 1967; letter from Frank E. Loy to John Johnson, dated December 6, 1967; letter from John Johnson to Rosel Hyde, dated February 6, 1968; and letter from Frank E. Loy to Rosel Hyde, dated February 9, 1968 ~~(CONFIDENTIAL).~~

regulation when that Corporation is acting as Manager for INTELSAT. This action removed a substantial political irritant in INTELSAT relationships between the United States and its foreign partners.

The 1964 Agreements required that no later than January 1, 1969, the Interim Communications Satellite Committee (ICSC), governing body of INTELSAT, should submit a report to INTELSAT members recommending definitive arrangements for the continuation of the global satellite system. In October 1967 the United States tabled in the governing body of INTELSAT its preliminary proposals for definitive arrangements. 5/ These proposals were formulated over a period of several months through joint effort of the FCC, ODTM, NASA, DOD and ComSat under the leadership and guidance of the Bureau of Economic Affairs, Department of State. An organization to facilitate this joint effort, known as

5/ Interim Communications Satellite Committee Document No. 28-40, dated October 3, 1967 ~~(copy attached as Annex 7)~~.

Panel 4, had been created in August 1966.[6/]

A major policy issue which arose in preparing US Government proposals for INTELSAT's definitive arrangements related to the question of regional satellite systems. During early 1967 when the Government's positions were being formulated, the FCC and NASA suggested that the Department consider adoption of a policy allowing the establishment of regional satellite systems outside of INTELSAT.[7/] This

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6/ Pursuant to a memorandum from the Assistant Secretary of State for Economic Affairs to the Administrator of NASA, the Chairman of the FCC, and the Assistant Secretary of Defense for Administration, dated August 18, 1966, Panel 4 was established to be concerned with preparations for the negotiation of definitive arrangements for the global satellite system. It was established as a Subcommittee of the Ad Hoc Intragovernmental Communications Satellite Policy Coordination Committee organized by the Director of the Office of Telecommunications Management in early 1966.

7/ The FCC drafting proposals containing this position were transmitted by a letter from Rosel Hyde, Chairman, FCC, to Anthony Solomon, Assistant Secretary of State for Economic Affairs, dated May 11, 1967; the NASA concern about this question was conveyed with a memorandum addressed to Frank E. Loy, Deputy Assistant Secretary of State for Telecommunications and Transportation, *et al*, from Walter Radius, NASA Panel IV Member, dated May 5, 1967 (~~CONFIDENTIAL~~).

proposal was deemed by the Assistant Secretary for Economic Affairs to be inconsistent with the concept of a single global system of communication satellites under unified control. The regional approach clearly would not facilitate joint financing and mutual sharing in benefits for all system members. Accordingly, the Economic Bureau opposed the suggestion that provision for the establishment of regional satellite systems be included in the United States proposals for definitive arrangements. The controversy continued within the Department as the Counselor, Mr. Bowie, supported the proposal to include provisions allowing separate regional systems. The issue was resolved by the Under Secretary of State. 8/ The single global system concept prevailed and the FCC and NASA accepted the Department's formulation of the US proposals for INTELSAT definitive arrangements.

8/ Memorandum from Robert R. Bowie to the Secretary dated September 15, 1967, on the subject of INTELSAT (LIMITED OFFICIAL USE) and the Memorandum from the Under Secretary, Mr. Katzenbach, to Messrs. Bowie (S/C), Solomon (E) and Belman (L), dated September 20, 1967 ~~(CONFIDENTIAL).~~

In the early summer of 1968, foreign members of INTELSAT began to submit for consideration in the ICSC their views on the US proposals, as well as original proposals on various aspects of the definitive arrangements. These proposals and US Government preparation for the 1969 Conference to be convened in Washington to consider definitive arrangements for INTELSAT were studied and acted upon in a program of interdepartmental cooperation employing Panel 4. In its deliberations, Panel 4 considered, in addition to agency views and proposals, views submitted by selected industrial representatives who were invited to meetings of the Panel on occasion for consultation.

During 1968 the Government of Canada made known its plans to establish for Canada a domestic communications satellite system. This plan was made known to the Department of State prior to its publication. In talks with the Canadian Ambassador, the Under Secretary for Political Affairs made known to the Canadians our hope that any such domestic satellite system would be discussed with and coordinated through the governing body of INTELSAT.[9/] Subsequently, the Government of Canada presented its plans to INTELSAT. The US spokesman in the governing body expressed the hope that Canada and INTELSAT would explore carefully the possibilities for cooperation in establishing the proposed Canadian system which might be of mutual benefit to Canada and INTELSAT. Simultaneously, pursuant to instructions from the Department, he made known to Canadian Government officials the US interest in exploring the possibilities of US-Canadian bilateral arrangements or US-Canadian-INTELSAT arrangements for technology sharing and cost sharing which would redound to the benefit of

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9/ Memorandum of Conversation dated March 25, 1968, between Under Secretary Eugene V. Rostow and other officers of the Department, and Mr. James C. Langley, Assistant Under Secretary for External Affairs, Ambassador A. E. Ritchie and other representatives of the Canadian Government (LIMITED OFFICIAL USE).

all parties. [10/]

10/ Letter from Frank E. Loy, Deputy Assistant Secretary of State, to John A. Johnson, Vice President - International, ComSat, dated May 17, 1968, in which Department's instructions to ComSat on this question are set forth.