



UNITED STATES GENERAL ACCOUNTING OFFICE
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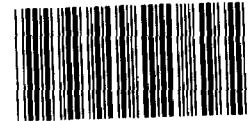
INTERNATIONAL DIVISION

B-207303

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The Honorable Don Bonker
Chairman, Subcommittee on Human Rights
and International Organizations
Committee on Foreign Affairs
United States House of Representatives

RELEASED



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Dear Mr. Chairman:

Subject: Funding of International Election
Observers for El Salvador Election
(GAO/ID-82-44)

Your letter of March 18, 1982, outlined your concerns relative to the use of \$200,000 of funding under section 116(e) of the Foreign Assistance Act of 1961, as amended, to pay expenses of international observers for the March 28 election in El Salvador. These concerns included whether it was proper to use funds made available under section 116(e) of the Foreign Assistance Act of 1961, as amended, to pay expenses incurred by international election observers; whether other funds were available for this purpose; whether there were any precedents for using section 116(e) authority to fund election observers; and who would be liable if an election observer were injured. You also asked for an audit of the expenditures of the funds.

We conclude that section 116(e) funds were properly available for the election observer program; that certain other funds might have been available for such activities; and that the United States might have had to compensate election observers who were Federal employees for medical expenses or disability if they were found to have been performing official duty at the time of injury.

GRANT AGREEMENT

On March 12, 1982, the Agency for International Development (AID) entered into a limited scope grant project agreement with the Government of El Salvador. The agreement provided \$200,000 from AID section 116(e) funds and required the Government of El Salvador to contribute not less than \$120,000 to the project. The AID funds were to be used for round trip international air fares for official observers; up to 5-days lodging and meals;

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in-country transportation; and selected administrative support including interpreters, guides, and secretarial services. None of the AID funds were to be used for publicity, printing, and binding; receptions; entertainment of any kind; and support of news media personnel. The agreement provided that the Government of El Salvador Ministry of Foreign Affairs submit a report on the project to AID no later than June 26, 1972. A chronology of the events relating to the international election observers is included as enclosure I.

PRIVATE FUNDING

The Department of State Assistant Secretary for Human Rights and Humanitarian Affairs proposed that \$150,000 for support of the international observer operation be raised from private sources to create a broader base of funding. Four foundations--Scaife Foundation, Olin Foundation, Smith Richardson Foundation and Grace Foundation--contributed the funds which were given to the Government of El Salvador for their use to fund the expense of the international observers.

LEGALITY OF USING SECTION 116(e) AUTHORITY TO FUND ELECTION OBSERVERS

Section 116 of the Foreign Assistance Act of 1961, Public Law 87-195, 22 U.S.C. §2151n, was amended by Public Law No. 95-88, Title 1, section 111, August 3, 1977, 91 Stat. 537, to add subsection (e) which makes development assistance funds available:

"* * * for studies to identify, and for openly carrying out, programs and activities which will encourage or promote increased adherence to civil and political rights, as set forth in the Universal Declaration of Human Rights * * * . None of these funds may be used, directly or indirectly, to influence the outcome of any election in any country." 22 U.S.C. §2151n(e) (Supp. III 1979).

Considering the law's prohibition against the use of section 116(e) funds to influence the outcome of any election, the question arises whether it is proper to use these funds to pay expenses of the international observers.

The section was sponsored by Representative D. M. Fraser during a markup session of the Committee on International Relations on April 21, 1977. ^{1/} Mr. Fraser's original amendment did not make reference to the Universal Declaration of Human Rights

^{1/}See "Foreign Assistance Legislation for Fiscal Year 1978 (Part 9)," Markup Sessions before the Committee on International Relations, 95th Cong., 1st Sess., 67 (1977).

nor did it state that none of the funds could be used to influence the outcome in any election. During the markup session, in which the language concerning the Declaration of Human Rights was added, Mr. Fraser agreed to make it "abundantly clear" that the amendment does not encourage political activities by United States agencies in the affairs of other nations. Rather, it was intended that the law would enable the United States to assist eligible countries in the development of "the right to vote, the right to choose one's own government, the right to due process, the procedural rights that are embraced * * * in the Universal Declaration of Human Rights * * *." Accordingly, the language concerning the Declaration of Human Rights was added and agreed to by the full committee. 2/

Article 21 of the Universal Declaration of Human Rights, which section 116(e) incorporates by reference, sets forth political and civil rights. In pertinent part Article 21 provides:

"(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives."

* * * * *

"(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

At the same time, the prohibition against using the funds to influence the outcome of an election was added to preclude AID from funding the political campaigns of any candidates. This was done after an exchange between Representative Lester Wolff of New York and Mr. Robert Nooter, Acting Deputy Administrator of AID, resulted in agreement that none of the funds should be used for political campaigns. 3/

Thus, the use of section 116(e) funds for the observer program is proper since this program was arguably intended to promote adherence to political and civil rights as defined by the Universal Declaration of Human Rights. 4/

2/ Id., at 69, 76, 79.

3/ Id., at 77-79.

4/ See also 22 U.S.C. §2151-1(b)(1) setting forth principles governing development assistance of which section 116(e) is but one type: " * * * Maximum effort shall be made * * * to stimulate the involvement of the people in the development process through the encouragement of democratic participation in private and local governmental activities and institution building appropriate to the requirements of the recipient countries."

Similarly, the use of these funds for the observer program is not violative of the section's prohibition against use of the fund to influence the outcome of any election since the purpose of the observers is to encourage that everyone have the opportunity to participate in the electoral process as opposed to specific involvement in the campaigns of political candidates.

AVAILABILITY OF OTHER FUNDS

Concerning the availability of other funds for activities such as the election observer program, the Foreign Assistance Act of 1961, as amended, authorizes AID to administer two different kinds of assistance, development assistance and Economic Support Funds (ESF). To implement these economic assistance programs, AID is authorized to make loans or grants for a wide range of programs.

The administration decided to fund the El Salvadoran election observer program from section 116(e) funds. Section 116(e) falls within Subchapter 1 of the Foreign Assistance Act of 1961, as amended, which authorizes development assistance; ESF falls within Subchapter 2 of the Act. This distinction is important because AID officials stated AID gave serious consideration to funding the program from its ESF.

The ESF has a more immediate political orientation than the development assistance program. Section 2346 of Title 22 indicates that the ESF is designed to promote economic or political stability in areas where the United States has special foreign policy interest. The use of this fund is restricted generally by the requirements that the Secretary of State be responsible for policy decisions and justifications for use of economic support programs and that these funds not be used for military or paramilitary purposes. El Salvador is eligible to receive assistance from the ESF. (See 22 U.S.C. §2346e(h)).

We have not made a determination whether ESF funds would in fact be legally available for such a purpose nor have we made an exhaustive analysis to determine whether any other potential sources of funds exist. An AID official pointed out that contributions from private organizations were solicited on behalf of the Government of El Salvador for the election observer program but no U.S. funds, other than under section 116(e), were used. These private contributions were made directly to the Government of El Salvador.

PRECEDENTS FOR USING SECTION 116(e) AUTHORITY TO FUND ELECTION OBSERVERS

Since enactment of section 116(e) in 1977, assistance funds have been used to carry out programs and activities which encourage or promote increased adherence to internationally recognized civil

and political rights in countries eligible for assistance under the Foreign Assistance Act. The terms "civil" and "political" rights have a well understood meaning in international law on human rights and can be grouped into two broad categories,

- freedom from governmental violations of the integrity of the person and
- enjoyment of civil and political liberties including freedom of speech, press, religion, assembly, travel, racial and sexual discrimination, and freedom to participate in government.

Since fiscal year 1978, funds obligated using the section 116(e) authority have been:

<u>Fiscal year</u>	<u>Amount</u>
1978	\$ 675,026
1979	\$2,164,011
1980	\$2,279,894
1981	\$1,511,721

Election observers have not previously been funded under the section 116(e) authority. The authority was used to purchase ballot boxes and to provide transportation for ballot materials to Uganda for the first post-Idi Amin elections in December 1980.

PHYSICAL SAFETY OF OBSERVERS

The grant agreement did not specify responsibility for the physical safety of the observers. The physical safety of all the international election observers was considered by the State Department and AID officials to be the ultimate responsibility of the Government of El Salvador. To provide additional protection for the U.S. observers, the Department of State provided four security personnel to augment the American Embassy-San Salvador security force. The four security personnel were assigned to accompany the four ranking members of the U.S. observer party. No injuries were reported by the U.S. observer party.

COSTS OF PROVIDING DEPARTMENT SECURITY OFFICERS FOR THE AMERICAN OBSERVERS

We estimate that costs, including basic salary, overtime, 25-percent danger pay, and per diem totaled \$11,560. These costs were funded from the Department of State salaries and expenses appropriation. Travel to El Salvador for three of the officers was performed via commercial airlines at an estimated cost of \$864. Travel for the one remaining security officer and return transportation for the four officers was performed via Department of Defense aircraft.

U.S. GOVERNMENT LIABILITY FOR INJURIES

For several reasons we cannot determine with any certainty what the liability of the United States would have been for injuries to observers. The absence of any agreement with El Salvador on this point means that liability would no doubt have been subject to negotiation and possibly litigation among the governments and individuals involved. The result would depend on the exact circumstance of the injury and considerations of sovereign immunity and jurisdiction may affect the legal liability. Without attempting a definitive answer, we offer a few observations on these issues.

In responding generally to this question, it is important to distinguish between the members of the U.S. delegation and members of delegations from other countries. AID and State Department officials told us that the United States was making a grant to the Government of El Salvador only for certain specified observer costs and because of this the United States would not have incurred any obligation if a foreign observer were injured in El Salvador (assuming of course that the United States were not responsible for the injury).

An AID official thought that the United States potentially could be liable for injuries to members of the United States delegation who were Federal employees, based on 5 U.S.C. §8101 et seq. Under this provision, a Federal employee injured while in the performance of duty is entitled to compensation. We are of the opinion that since members of the U.S. delegation were asked to participate in the program by the State Department, a Federal employee injured while in the observer capacity arguably would have been in the performance of duty as intended by the statute. However, in the event the United States had to compensate its employee, it would succeed to any rights the employee might have against whoever caused the injury.

AUDIT OF EXPENDITURES

An audit of the project expenditures will require travel to El Salvador and cannot be undertaken until October 1982, at which time the accounts will be completed and ready for audit. We will subsequently be discussing this matter with your office.

SCOPE AND METHODOLOGY

We interviewed Department of State and AID officials and a non-Government member of the U.S. observer delegation. We also reviewed related legislation, congressional testimony, Department of State messages, and Department of State and AID memorandums and reports which documented the decisionmaking process relating to funding the international election observers. The review was

performed in accordance with the Comptroller General's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

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As requested by your office, we did not follow our usual policy of obtaining agency comments. Unless you publicly announce its contents earlier or you notify us that the report can be released, we plan no further distribution of this report for 30 days. At that time, we will send copies to the Chairmen, Senate and House Committees on Appropriations; Senate Committee on Foreign Relations; House Committee on Foreign Affairs; Senate Committee on Governmental Affairs; House Committee on Government Operations; the Director, Office of Management and Budget; the Secretary of State; the Administrator, Agency for International Development; and other interested parties.

Sincerely yours,



Frank C. Conahan
Director

Enclosure

CHRONOLOGY OF EVENTS RELATING TO
INTERNATIONAL ELECTION OBSERVERS FOR
EL SALVADOR MARCH 28 ELECTIONS

- 9/15/81 President Duarte publicly extended an invitation for international observers to confirm the sincerity of the election process.
- 9/29/81 Department of State Bureau of Inter-American Affairs delegation visiting El Salvador discussed among a wide variety of topics the desirability of international observers for the elections.
- 10/25/81 1/ Deputy Director, National Clearinghouse on Election Administration, Mr. William Kimberling visited El Salvador to discuss election procedures.
- 11/05/81 Mr. Kimberling provided the State Department with "Notes on the Upcoming Election in El Salvador."
- 11/23/81 Deputy U.S. Representative, Organization of American States, sent a memorandum to Assistant Secretary Thomas O. Enders, Bureau of Inter-American Affairs, enumerating cases where the Organization of American States had furnished observers for elections in Latin American countries.
- 12/4-9/81 Government of El Salvador formally extended invitations to governments to send observers for the elections.
- 12/10/81 Organization of American States General Assembly passed a resolution suggesting that governments accept the invitation extended by the Salvadoran Government to observe its elections.
- 12/16/81 Mr. Kimberling provided the State Department with "A General Plan for Providing International Observers to the March 82 Election in El Salvador."
- 12/21/81 Department of State sent a message to the American Embassy-San Salvador commenting on the mechanics of the election process, the administrative and logistic support necessary, and the problems of international observation and credibility.

1/ On or about October 25, 1981.

- 1/19/82 Central American Democratic Community was formed at a meeting of the Foreign Ministers of Costa Rica, Honduras, and El Salvador and expressed its support for Salvadoran elections and the Organization of American States resolution on El Salvador.
- 1/20/82 Agency for International Development Bureau for Program and Policy Coordination prepared a memorandum for the State El Salvador desk officer which outlined what could be funded under the Agency for International Development human rights account to satisfy the Kimberling general plan.
- 2/05/82 Assistant Secretary Thomas O. Enders, Bureau of Inter-American Affairs, sent a memorandum to the Secretary of State on the countries that were to send observers.
- 2/13/82 Department of State sent a message to the American Embassy-San Salvador on what should be included in the limited scope grant agreement.
- 2/24/82 Permanent Representative of El Salvador sent a note to the Organization of American States requesting financial assistance to fund international observers.
- 3/02/82 American Embassy-San Salvador sent a message to the Department of State, Washington, which included the Government of El Salvador budget for the international election observers.
- 3/04/82 February 24, 1982, note from El Salvador received by the Organization of American States.
- 3/05/82 Action memorandum sent to Department of State Under Secretary for Security Assistance, Science and Technology James Buckley by the Bureau of Inter-American Affairs, Bureau of Human Rights and Humanitarian Affairs, and the Agency for International Development Bureau for Program and Policy Coordination on funding options for election observers. The funding decision was made on March 6, 1982.
- 3/09/82 Memorandum prepared by Agency for International Development Acting General Counsel for the Assistant Administrator, Bureau for Program and Policy Coordination, giving a legal opinion on use of section 116(e) of the Foreign Assistance Act of 1961, as amended, to fund election observers. The General Counsel concluded that use of the funds for this purpose was consistent with the intent of section 116(e).

ENCLOSURE I

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- 3/10/82 Agency for International Development Acting General Counsel prepared a memorandum to the files on the requirement of congressional notification. He concluded that congressional notification in this instance was not required since funding for this project was justified in the fiscal year 1982 congressional presentation documents.
- 3/10/82 Department of State sent a message to the American Embassy-San Salvador which amended the amount of funds to be provided and commented on specific grant items to be included in the project agreement.
- 3/12/82 Limited scope grant project agreement between the United States Agency for International Development and the Government of El Salvador signed by both parties on March 12, 1982.
- 3/12/82 Letter sent by the Chairman, Senate Subcommittee on Foreign Operations, Committee on Appropriations, Senator Robert W. Kasten, Jr. to the Administrator, Agency for International Development, Mr. M. Peter McPherson, which discussed the congressional notification issue.
- 3/17/82 Agency for International Development Administrator, Mr. M. Peter McPherson, accompanied by the Acting Assistant Secretary of State for Human Rights and Humanitarian Affairs, Mr. Melvin Levitsky, testified before the House Subcommittee on Human Rights and International Organizations, Committee on Foreign Affairs. Chairman Bonker voiced opposition to funding international observers and mentioned the possibility of requesting a GAO review.
- 3/18/82 Chairman Bonker, House Subcommittee on Human Rights and International Organizations, requested a GAO review.
- 3/28/82 El Salvador elections held.

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