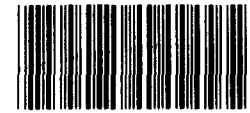


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Testimony

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Severance Pay for Greek Local Nationals
Employed by the Department of Defense

Statement of
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Before the
Subcommittees on Readiness and
Military Installations and Facilities
Committee on Armed Services
House of Representatives



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Mr. Chairman, Mrs. Chairwoman, and Members of the Subcommittees.

I am pleased to be here today to discuss our findings on the issue of severance payments for local national employees at two U.S. military facilities in Greece. As you know, Representative John Kasich asked that we analyze whether section 311 of the National Defense Authorization Act of Fiscal Years 1990 and 1991 applies to the closure of two bases in Greece: Nea Makri Naval Communications Station and Hellenikon Air Base. As requested, we also determined the amount of severance and incentive pay for employees at both locations.

BACKGROUND

Before I summarize our findings, it is important to understand how severance pay is treated in Greece and the laws and agreements governing U.S. payments.

In many nations, when employees are released from service through no fault of their own, the employer legally owes them severance pay. In Greece, as in many countries, these payments are based on the (1) type of employee (that is, "manual labor" or "white collar"), (2) number of months of service, and (3) salary at the time of separation.

In addition to severance pay, Greek employees who have been released because of a reduction in force (RIF) are entitled to retention incentive pay, also known as RIF pay. Incentive pay is equal to one-half month's pay for each full year of service beginning with the

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sixth year of service. There is no limit on the amount of incentive pay an employee can collect.

Three pertinent agreements govern basing rights and severance pay in Greece: the NATO Status of Forces Agreement (SOFA), the bilateral basing agreement, and the labor agreement.

Under the NATO SOFA, wages, supplementary payments, and conditions for the protection of workers are to be based on the laws of the receiving country. The current bilateral basing agreement, in referring to the SOFA, states that the United States will apply to its local national employees the standards contained in Greek labor law as they apply to private sector employees. Greek law provides for severance payments.

The labor agreement designates the Hellenic Air Force the legal employer of all Greek personnel hired for the U.S. forces. The U.S. forces reimburse the Greek government for salaries, allowances, and premiums, including severance pay. The Hellenic Air Force and the U.S. forces, by mutual agreement, establish the regulations on employment conditions, such as severance and incentive pay.

Section 311 prohibits the Department of Defense (DOD) from making severance payments if termination of employment results from the host government's request to close, or curtail activities at, a U.S. base. However, it does not prohibit severance payments if a base closes or activities are curtailed under an agreement concluded with a foreign

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country before November 29, 1989--the effective date of the act containing section 311. Where it has been determined that section 311 applies, DOD is also prohibited from reimbursing contractors for severance pay, regardless of the date of a contract.

The sense of Congress in section 311 is that (1) when a base closure or curtailment is at a foreign government's request, the host government should make the severance payments, and (2) the President should include in future agreements with any country a provision that would require the host government to make these payments under such circumstances.

RESULTS IN BRIEF

We conclude that section 311 does not apply to the Greek base closures because the crucial agreement, the 1983 Defense and Economic Cooperation agreement, which contains a termination provision, was entered into prior to the date section 311 became effective. As such, section 311 does not apply to the Hellenikon and Nea Makri closures. Furthermore, regarding Nea Makri, the historical record suggests its closure was a U.S. decision. The application of section 311 to the Hellenikon and Nea Makri closings illustrates several problems that I will address later in the testimony.

According to Air Force officials, severance and incentive payments will total approximately \$7.0 million for local nationals employed at the two bases. As of April 1991, the Air Force estimates that the

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Hellenikon closure will result in payments of \$4.8 million for about 250 to 300 local nationals--an average of approximately \$16,000 to \$19,000 per person. In addition, the major base contractor at Hellenikon, which employs about 730 local nationals, estimates it will pay \$1.4 million in severance payments. These estimates do not include payments for local nationals employed under six small DOD contracts; Air Force officials were unable to provide us with this estimate.

The 98 local nationals employed at Nea Makri have been paid a total of nearly \$858,000--an average of \$8,750 per person. Due to a retroactive pay raise, payments for Nea Makri may increase.

EVENTS LEADING TO THE CONCLUSION OF THE 1990 BASING AGREEMENT

At this point, I would like to briefly discuss the events leading up to Secretary Cheney's announcement on the base closures and the conclusion of the 1990 basing agreement.

In September 1983, the United States and Greece concluded a 5-year agreement authorizing the United States to use four major installations: Hellenikon, Nea Makri, Iraklion, and Souda Bay. Upon written notice, either party could terminate the agreement 5 years after the effective date, that is, December 1988. The United States would be allowed 17 months from the date of termination to carry out the withdrawal of U.S. personnel, property, and equipment from Greece.

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In November 1987, the U.S. and Greek governments began negotiating a new agreement. While the Greek government sought to reduce the U.S. presence, the U.S. government wanted a long-term agreement that would continue operations at the four bases.

On April 22, 1988, the Greek government informed the United States that it had decided to close Hellenikon. In internal communications, Air Force officials in Europe subsequently described the closure of Hellenikon as a "unilateral Greek decision" and "based on Greek demands." The U.S. military began intensively reviewing the feasibility of moving the Hellenikon operations to another location in Greece.

On July 13, 1988, as U.S. officials anticipated, the Greek government formally announced it would terminate the basing agreement when it expired. As a result, the United States would have until May 31, 1990--17 months from the date of termination--to leave all sites in Greece.

On September 5, 1988, the negotiations ended abruptly after the Greek government announced a "unilateral and irreversible 'decision' not to allow relocation of Hellenikon missions within Greece."

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In December 1988, the bilateral basing agreement terminated and the withdrawal period began.

The Joint Chiefs of Staff subsequently concurred with this negotiating position. However, the U.S. negotiator never formally

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presented the new position because the negotiations ceased when the Greek government changed in June 1989. The negotiations did not resume until May 1990. Until April 1990, Greece was governed by interim coalitions that lacked the authority to negotiate a new agreement.

Having earlier concluded that essential fleet support could be provided without Nea Makri, the Navy deleted funding for the installation from its fiscal year 1991 budget request. Navy officials wrote that it is "operationally feasible and fiscally responsible" to close Nea Makri.

On November 29, 1989, the National Defense Authorization Act of Fiscal Years 1990 and 1991, including section 311, became law.

On January 29, 1990, Secretary Cheney announced the closure of Hellenikon and Nea Makri, along with other overseas bases. In his letter to the Greek Minister of Defense, Secretary Cheney wrote that the closures were "part of the worldwide force structure adjustments necessitated by budget constraints."

Constantine Mitsotakis became Prime Minister in April 1990 and promptly resumed the basing negotiations. In July 1990, the governments signed a new agreement calling for continued key operations at Iraklion and Souda Bay and withdrawal from Nea Makri by

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September 30, 1990, and from Hellenikon by June 30, 1991. The agreement stated that the Hellenikon closing was a U.S. decision. Under the new agreement, the United States is transferring some Hellenikon operations within Greece at U.S. expense. Other key operations have been transferred outside of Greece.

THE ADMINISTRATION DETERMINED THAT SECTION 311 DOES NOT APPLY TO THE
BASE CLOSURES IN GREECE

Both the Defense and State Departments take the view that section 311 does not apply to the Greek base closures because it was a U.S. decision to close Hellenikon and Nea Makri. According to the Office of the Secretary of Defense, although the Greek government gave notice of termination of the 1983 agreement, "they proposed to open negotiations on a new agreement so such notice did not result in the closure of facilities. Therefore, the notification by the Secretary of Defense that Nea Makri and Hellenikon would be closed is considered to be a unilateral voluntary action by the United States and thus not subject" to section 311. In this connection, the 1990 agreement states that the closing of Hellenikon was a U.S. decision. In drawing their conclusion, neither DOD nor State prepared any written opinions.

The assertion in the 1990 agreement clouds the issue of whether the United States left voluntarily or left at the Greek government's request. Nevertheless, for the reasons given below, we conclude that section 311 does not apply.

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GAO FINDS THAT SECTION 311 IS INAPPLICABLE

Our conclusion that section 311 does not apply to the Greek base closures is based on the 1983 agreement being the operative agreement. The 1983 agreement, which included a termination provision, was entered into before section 311 became effective. The 1983 agreement states that it can be terminated upon written notice of either party 5 years after the agreement becomes effective, and it allows the United States 17 months from termination to withdraw from Greece. After the agreement terminated in December 1988, the United States was obligated under that agreement to withdraw within the specified 17 months.

Although the 1990 agreement was concluded after the 1983 agreement and specifically addresses the Hellenikon and Nea Makri closures, the anticipated termination of the 1983 agreement provoked the subsequent negotiations and termination of that agreement led to the conclusion of the 1990 agreement. As the closures really resulted from the termination of the 1983 agreement, for the purposes of applying section 311 the 1983 agreement is the one to consider. Since that agreement was concluded prior to section 311's enactment, it constitutes an excepted agreement under section 311. Accordingly, section 311 does not exempt the United States from making severance payments to Greek nationals whose employment ends as a result of the Hellenikon and Nea Makri closures.

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Regarding Nea Makri, we also point out that the negotiating history suggests its closure was a United States decision.

SECTION 311 ALTERNATIVES AND OTHER ISSUES

If the Congress wants to ensure that severance payments are not made in cases such as Hellenikon, it could prohibit DOD from using any appropriations for severance pay in specific situations. For example, Congress could preclude DOD from making severance payments to Greek nationals losing jobs at Hellenikon as a result of the upcoming closure. In the future, Congress could conduct its own inquiry or require an executive branch report on the circumstances surrounding particular base closures to explain whether severance payments were warranted.

Another issue concerns the treatment of contractors. Contractors are generally required to make wage and other payments to foreign nationals, and the United States then reimburses the contractors. Where section 311 applies, DOD is prohibited from reimbursing the contractor regardless of the date of the contract. If a contractor refuses to make severance payments to its employees, Greek employees or their unions may sue the contractor in foreign courts. The contractor may well lose. Further, if the contract does not specifically grant the United States relief from severance payments when the host government requests a base closure, the contractor may sue the U.S. government for reimbursement.

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One remedy would be to allow reimbursement of severance costs under contracts entered into before the effective date of section 311-- November 29, 1989. This remedy has two benefits: (1) it would protect contractors whose contracts with the United States include reimbursement for severance payments regardless of the situation, and (2) it could reduce litigation in foreign courts against contractors and potential suits by contractors against the United States.

These issues aside, there are at least three strategic and political reasons why it may be in the interest of the United States to make severance payments in Greece and other countries, regardless of the reason for closure. First, in the NATO SOFA and the bilateral basing agreement the United States agreed to follow Greek labor laws, which call for severance payments. Thus, if the United States does not make severance payments, it will be violating international agreements. This could provoke the Greek government to take action against the United States. For example, the Greek government could decide to no longer honor other provisions of the agreement.

This could lead to the unraveling of the agreement, harming U.S. strategic and political interests.

Second, as a result of a U.S. refusal to pay, Greek employees or their unions may sue the United States in Greek courts. It is doubtful that a Greek court would affirm section 311 when faced with Greek

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citizens who are challenging the U.S. government and an international agreement obligating the United States to make severance payments.

Third, the United States may encounter severe labor problems if it refuses to pay. This is particularly true in Greece where there is a history of labor strikes that sometimes lead to violence and the United States intends to continue operations in other parts of the country.

Mr. Chairman and Mrs. Chairwoman, this concludes my formal statement. I will be happy to answer any questions.

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