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The Case-Zablocki Act requires the Secretary of State to report international agreements concluded by all executive agencies to the Congress within 60 days after the agreement goes into effect. In response to a 1976 GAO report which identified weaknesses in the reporting system, the Department of State reemphasized the procedures under the act and set forth criteria for deciding what constitutes an international agreement.

Findings/Conclusions: Agencies have become more aware of their responsibilities under the act; reporting requirements have been clarified; and controls over the reporting of agreements have been improved. As a consequence, the overall level of reporting to the Congress has increased substantially. The Department of State's bureaus and offices were in substantial compliance with its internal procedures for handling international agreements, and the Agency for International Development (AID) now considers all signed agreements for submission to the Department. Other agencies have taken corrective actions to resolve weaknesses and to improve procedures. There is still a problem in timely transmission of agreements to the Congress, with AID responsible for a large number of late agreements. State Department

officials exercise considerable discretion in determining how criteria for determining what constitutes an international agreement should be applied, and their determinations of what agreements were "significant" were generally reasonable. Agreements entered into since enactment of the act with the Republic of Cuba and the People's Republic of China were all reported to the Congress. Amendments to the act should encourage better reporting on international agreements. (HTW)

8154

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REPORT BY THE

# Comptroller General

OF THE UNITED STATES

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## Reporting Of U.S. International Agreements By Executive Agencies Has Improved

The Case-Zablocki Act requires the Secretary of State to report international agreements concluded by all executive agencies to Congress within 60 days after they become effective.

The Chairman, Subcommittee on Separation of Powers, Senate Committee on the Judiciary, asked GAO to review executive branch compliance with the Act.

Federal agencies have become more aware of their Act responsibilities, reporting requirements have been clarified and controls have been improved since GAO's 1976 report on this subject.

Consequently, reporting to State's Office of Treaty Affairs has increased substantially although there is no absolute assurance that all agreements are reviewed by State.

State set forth criteria for determining what documents constitute international agreements but its officials exercise considerable discretion in applying these criteria. Although many arrangements were not forwarded to Congress, GAO found State's judgements reasonable.



ID-78-57

OCTOBER 31, 1978



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-110058

The Honorable Maryon Allen, Chairman  
Subcommittee on Separation of Powers  
Committee on the Judiciary  
United States Senate

Dear Madam Chairman:

In response to the request of the late Senator James B. Allen, previous Chairman of the Subcommittee, we examined the reporting of U.S. international agreements under the Case-Zablocki Act. To evaluate compliance with the Act, we reviewed the reporting procedures adopted by the Departments of State, Defense, Treasury, and Commerce; the Agency for International Development; and the Federal Aviation Administration. We also analyzed State's method for determining which international arrangements forwarded by other agencies constitute international agreements reportable under the Act. As requested, we also inquired about international agreements concluded with the People's Republic of China, Socialist Republic of Vietnam, and Republic of Cuba.

Although there is no complete assurance that all international arrangements are forwarded to State's Office of Treaty Affairs for review, we found greater awareness of agencies' reporting responsibilities and improved controls over the making of international agreements. For this reason, the overall level of reporting, both to the State Department and to the Congress, has substantially increased since our 1976 report on this subject.

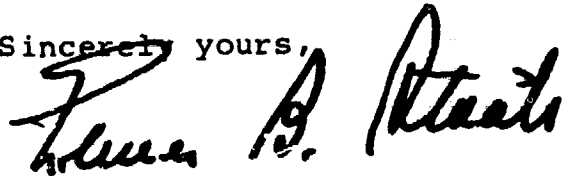
We also found that the Office of Treaty Affairs considers a substantial number of the documents forwarded by other agencies too trivial to be defined as international agreements under the Act. The Office of Treaty Affairs has considerable discretion in determining what constitutes an international agreement under the Act, but we found its judgments reasonable.

B-110058

We did not obtain written comments on the report but did discuss it with officials of the agencies involved and considered their views in finalizing the report.

As agreed with your Office, we plan to distribute this report to the agencies involved and to other appropriate congressional committees.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas A. Skates". The signature is written in a cursive style with a large, prominent initial "T".

Comptroller General  
of the United States

COMPTROLLER GENERAL'S  
REPORT TO THE SUBCOMMITTEE  
ON SEPARATION OF POWERS  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE

REPORTING OF U.S. INTER-  
NATIONAL AGREEMENTS BY  
EXECUTIVE AGENCIES  
HAS IMPROVED

D I G E S T

The Chairman, Subcommittee on Separation of Powers, Senate Committee on the Judiciary, asked GAO to review executive branch compliance with the requirements of the Case-Zablocki Act. The Act requires the Secretary of State to report international agreements concluded by all executive agencies to the Congress within 60 days after the agreement goes into effect. This is for the information of Congress rather than for its approval.

GAO reported to the Congress weaknesses in this reporting system within the executive branch in 1976. Subsequently, State reemphasized to departments and agencies the Case-Zablocki Act procedures and set forth criteria for deciding what constitutes an international agreement.

During this review, GAO noted that the agencies have become more aware of their responsibilities under the Act, reporting requirements have been further clarified, and controls over the reporting of agreements have been improved. As a consequence, the overall level of reporting to the Congress has increased substantially.

Although there is no absolute assurance that all international agreements were transmitted to State's Office of Treaty Affairs for consideration for subsequent reporting to the Congress, GAO found:

--State's bureaus and offices were in substantial compliance with its internal procedures for handling international agreements.

- The Agency for International Development now considers all signed agreements for submission to State.
- A new Department of Defense directive goes beyond the requirements of the Act and provides a complete procedure to assure that all agreements are properly authorized, negotiated and reported.
- Treasury practices appear generally adequate to comply with the Act, although opportunity to improve recordkeeping and monitoring of agreements exists.
- Commerce's proposed changes and their thorough implementation will greatly enhance its presently adequate reporting system.
- Corrective measures taken by the Federal Aviation Administration should resolve the recordkeeping weaknesses identified.  
(See ch. 3.)

Transmitting agreements to Congress after the 60-day deadline continues to be a problem. About one-third of all agreements transmitted since 1976 were tardy, most often because they were received late by State from other agencies. The Agency for International Development has been responsible for a large number of these late agreements. (See ch. 3.)

Although State set forth criteria for determining whether an arrangement or document constitutes an international agreement under the Act, State officials exercise considerable discretion in determining how these criteria apply on a case-by-case basis. Chief among these criteria is the significance of the arrangement, and "significance" may hinge on the political circumstances of the agreement or the identity of the party involved as well as the substance of the agreement itself. Therefore, while certain types of agreements generally are considered sufficiently significant to be reported and others too trivial,

State may make exceptions because of the particular context of an agreement. A substantial number of arrangements sent to State by other agencies were not transmitted to Congress because they were not considered sufficiently significant to be international agreements. From its review, GAO found State Department's determinations to be reasonable. (See ch. 4.)

GAO as requested also gave special attention to international agreements concluded by the United States with the governments of the Republic of Cuba, Socialist Republic of Vietnam, and People's Republic of China. Since enactment of the Act in August 1972, the United States has entered into five agreements with the Republic of Cuba and one with the People's Republic of China. There have been no agreements with the Socialist Republic of Vietnam. The agreements with Cuba and China were all reported to Congress under the Act. (See ch. 5.)

The Foreign Relations Authorization Act, Fiscal Year 1979, enacted October 7, 1978, (Public Law 95-426), amends the Case-Zablocki Act by providing for

- oral agreements to be reported to the Congress;
- a report on late transmittal of agreements;
- consultation with the Secretary of State or the President before an agreement is concluded by any agency;
- State to determine what constitutes an international agreement in the event of a disagreement within the executive branch; and
- the establishment of rules and regulations to carry out the Act.



GAO expects these amendments to encourage executive departments and agencies working through State to keep the Congress better informed of all international agreements. (See ch. 2.)

The report was discussed with officials of the agencies concerned and their comments are included. There were no significant disagreements.

## C o n t e n t s

	<u>Page</u>
DIGEST	i
CHAPTER	
1 INTRODUCTION	1
Scope of review	4
2 RECENT LEGISLATION AFFECTING INTERNATIONAL AGREEMENTS	5
The Case-Zablocki Act	5
New Legislation	7
Publication and registration	9
3 TRANSMISSION OF AGREEMENTS TO OFFICE OF TREATY AFFAIRS	11
State procedures are being substantially followed	11
Agency for International Development now reporting agreements	12
Defense issues new instructions	14
Treasury practices generally adequate	18
Commerce instructions to be improved	19
Federal Aviation Administration agree- ments may not be reaching State	21
Agreements submitted late to the Congress	22
Conclusions	24
4 STATE'S ROLE AS JUDGE OF SIGNIFICANT AGREEMENTS	26
Department of Defense	27
Department of the Treasury	30
Department of Commerce	32
Federal Aviation Administration	34
Intelligence agreements	36
Conclusions	37
5 STATUS OF AGREEMENTS WITH THE REPUBLIC OF CUBA, THE SOCIALIST REPUBLIC OF VIETNAM, AND THE PEOPLE'S REPUBLIC OF CHINA	39
Republic of Cuba	39
Socialist Republic of Vietnam	40
People's Republic of China	41

APPENDIX

Page

- I Letter dated January 17, 1978, from the  
Chairman, Subcommittee on Separation  
of Powers, Senate Committee on the  
Judiciary

43

ABBREVIATIONS

- AID Agency for International Development  
GAO General Accounting Office

## CHAPTER 1

### INTRODUCTION

At the request of the Chairman, Subcommittee on Separation of Powers, Senate Committee on the Judiciary, we reviewed executive branch compliance with the Case-Zablocki Act (Public Law 92-403, 86 Stat. 619, 1 U.S.C. 112b) and also considered agreements concluded by the United States with the governments of the People's Republic of China, Socialist Republic of Vietnam, and Republic of Cuba. (See app. I.) Enacted August 1972, the Act requires the reporting of U.S. international agreements to the Congress within 60 days after they become effective. This is for the information rather than the approval of Congress. The Act does not define "international agreement."

For purposes of the Case-Zablocki Act, international agreements are separated into two forms--treaties and other international agreements. There are no Federal statutes and few judicial decisions which define the two forms nor does international law make a distinction between treaty and international agreement. According to Department of State guidelines, whether a particular agreement should be a treaty or an international agreement is determined by the following legal and political variables.

1. The extent to which it involves commitments or risks affecting the Nation as a whole.
2. Whether it is intended to affect individual State laws.
3. Whether it can be given effect without the enactment of subsequent legislation by the Congress.
4. Past U.S. practice for similar agreements.
5. The preference of the Congress for a particular type of agreement.
6. The degree of formality desired for an agreement.
7. The proposed duration, need for prompt conclusion, and desirability of concluding a routine or short-term agreement.

8. The general international practice for similar agreements.

Some variables may point to a treaty and some to an international agreement. A particular agreement may involve conflicting considerations, so there is discretion to choose between treaty and international agreement. The only authoritative difference between the two forms is simply that treaties require approval by two-thirds of the Senate and international agreements do not.

The use of international agreements to bind the United States into relationships with other nations has been an important method of effecting foreign policy, especially since World War II. These agreements have frequently produced controversy and continue to be of concern to government officials, scholars, and interested citizens. Between 1946 and 1972, the United States concluded 6,227 agreements; 381 treaties and 5,846 international agreements. Since 1972, 1,995 international agreements have been transmitted to the Congress pursuant to the Act, as follows.

<u>Year</u>	<u>Number</u>		
	<u>Unclassified</u>	<u>Classified</u>	<u>Total</u>
1972	73	2	75
1973	268	12	280
1974	220	10	230
1975	272	11	283
1976	448	17	465
1977	454	32	486
1978 (as of May)	172	4	176
Total	<u>1,907</u>	<u>88</u>	<u>1,995</u>

Most international agreements are negotiated and signed by Department of State officials. On many occasions, however, other departments and agencies become involved in making agreements with foreign nations; sometimes they have a primary role and at other times a support or technical role. Agreements handled at the diplomatic level are usually signed by State officials; agreements of the agency-to-agency type are generally signed by officials from the pertinent department or agency. State files show that during 1976 and 1977 the preponderance of agreements were signed by State and the Agency for International Development and to some extent by Defense and other departments and agencies as follows.

<u>Department/Agency</u>	<u>1976</u>		<u>1977</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
State	209	44.9	235	48.4
Agency for International Development	145	31.2	125	25.7
Defense	34	7.3	39	8.0
Justice	14	3.0	7	1.4
Treasury	13	2.8	7	1.4
Nuclear Regulatory Commission	11	2.4	11	2.3
Federal Aviation Administration	1	0.2	6	1.3
Commerce	4	0.9	1	0.2
Other	34	7.3	55	11.3
Total	<u>465</u>	<u>100.0</u>	<u>486</u>	<u>100.0</u>

The Secretary of State has the responsibility for transmitting to the Congress the text of any international agreement to which the United States is a party no later than 60 days after the agreement has entered into force. Any department or agency which enters into an international agreement is responsible for transmitting the text of the agreement to the Department of State no later than 20 days after it has been signed.

In 1976, we reported to the Congress that certain agencies had not been submitting to the State Department or Congress all agency-level agreements. Our report, "U.S. Agreements With the Republic of Korea," (ID-76-20), dated February 20, 1976, noted 34 Korean agreements concluded after passage of the Case-Zablocki Act but never submitted by the agencies involved to the Department of State for review and possible transmittal to the Congress. The report therefore called for both improving reporting procedures and clarifying what constitutes an international agreement.

In March 1976, State sent to all its key personnel and to the General Counsels of other U.S. Government departments and agencies a memorandum reemphasizing Case-Zablocki Act procedures and setting forth the Department of State criteria for deciding what constitutes an international agreement.

In addition, the 34 Korean agreements were reviewed by State and all but one were determined not to be international agreements within the meaning of the Case-Zablocki Act. In most instances, State concluded that the agreements fell short of the level of significance required to constitute an international agreement.

#### SCOPE OF REVIEW

The Assistant Legal Adviser for Treaty Affairs, Department of State, is responsible for the transmission to Congress of all international agreements as required by the Case-Zablocki Act. To determine whether departments and agencies were transmitting all international agreements to State, we evaluated procedures for handling international agreements used by selected agencies. We also examined State's process for handling such agreements. Based on its established guidelines, State determines which arrangements are international agreements for Act purposes and transmits them to Congress. If an arrangement does not meet State's guidelines, it is not considered an international agreement. On a selected basis, we examined this process to determine the types of arrangements excluded by State.

We made our review in Washington, D.C., at the Departments of State, Defense, Treasury, and Commerce, the Agency for International Development, and the Federal Aviation Administration. Fieldwork was also performed in the Defense area at the Office of the U.S. Commander in Chief, Pacific, in Hawaii, and at the Office of the U.S. Commander in Chief, Europe, in Germany. We interviewed appropriate agency officials and reviewed agency documents, records, correspondence, and reports. We did not examine the processing of intelligence agreements because we were unable to work out arrangements with the Central Intelligence Agency to permit us to review their procedures.

## CHAPTER 2

### RECENT LEGISLATION AFFECTING

#### INTERNATIONAL AGREEMENTS

The Congress has periodically voiced concern that it is not being fully informed about international agreements concluded by the executive branch, particularly sensitive classified agreements sometimes involving security commitments. Although the executive branch's right to negotiate and conclude international agreements has seldom been questioned, the most appropriate way for Congress to participate in the process has been debated. These debates have escalated since World War II as the number of agreements has grown.

In the 1950s, Senator Bricker of Ohio made an unsuccessful attempt to upgrade the role of Congress in reviewing international agreements. His constitutional amendment, which fell one vote short of the two-thirds majority necessary for passage, required that legislation be enacted before treaties and international agreements became effective. A more modest attempt to increase congressional participation was a bill introduced by Senators Knowland and Ferguson in 1954, which required the President to report all international agreements to the Senate; the President was also given the option of sending classified agreements to the Senate Foreign Relations Committee only. This bill was adopted by the Senate in 1956 but failed to become law because the House took no action.

In the early 1970s, interest in establishing a reporting requirement was revived by the Senate Subcommittee on Security Agreements and Commitments Abroad which was established as a special Subcommittee by the Senate Foreign Relations Committee. The Subcommittee disclosed secret agreements concluded by the executive branch without congressional knowledge.

#### THE CASE-ZABLOCKI ACT

On August 22, 1972, Congress enacted the Case-Zablocki Act (1 U.S.C. 112b), which requires that the Secretary of State transmit the text of any international agreement other than a treaty to Congress within 60 days after the agreement



has entered into force. If the President determines that public disclosure of particular agreements would prejudice the national security, these agreements are to be transmitted to the international relations committees of both houses under an injunction of secrecy. Although the bill called for reporting of all international agreements, House report 92-1301 stated that the Congress "does not want to be inundated with trivia \*\*\* [but] it would wish to have transmitted all agreements of any significance." Nevertheless, the Act literally requires that all agreements be reported to the Congress.

Senate Committee on Foreign Relations report 92-591, dated January 1972, makes clear that the prime purpose of the Act was not to challenge executive branch use of international agreements to bind the United States but rather "only to deal with the prior, simpler, but nonetheless crucial question of secrecy." Prompted by the discovery by the Subcommittee on Security Agreements and Commitments Abroad of secret agreements with Ethiopia (1960), Laos (1963), Thailand (1964 and 1967), Korea (1966) and annexes to the Spanish bases agreement, the Committee reported that this Act was necessary to ensure that "the executive \*\*\* keep the Congress informed of all its foreign transactions including those of a 'sensitive' nature."

Noting that the executive branch has frequently withheld sensitive agreements, the Senate report pointed out that these agreements often involve military arrangements which may be "not only 'sensitive' but exceedingly significant as broadened commitments for the United States." The Committee therefore attached "the greatest importance to the establishment of a legislative requirement that all such agreements be submitted to Congress." To counter any executive branch objections on security grounds, the special provision on classified agreements was included.

In the 94th Congress, both House and Senate Committees held hearings to consider amendments to the Act which would expand congressional review of international agreements. The bills considered included various disapproval mechanisms, such as providing that an agreement would become effective unless both Houses passed a concurrent resolution of disapproval within 60 days. During hearings, the State Department took the position that no further legislation,

only greater consultation was necessary. It also contended that improvements in procedures governing reporting of international agreements had already increased the information available to Congress. No amendment to the Act was passed in the 94th Congress.

The findings of a 1977 Senate Foreign Relations Committee study proved to be a further impetus for strengthening the Act. The study found that 39 percent of the international agreements sent to Congress in 1976 were submitted late, nearly 50 percent of them because the State Department received the agreements from other agencies late or had not been notified that the agreements had gone into effect. To tighten the Act's reporting procedures, the Senate approved an amendment in May 1977 that required agencies to submit agreements to the State Department within 20 days after such agreements have been signed. This requirement was passed as an amendment to a supplemental appropriations bill in May of 1977, and became law on June 15, 1977, (Public Law 95-45, 91 Stat. 221, 224).

#### NEW LEGISLATION

In May 1978, the Senate Committee on Foreign Relations approved Senate bill 3076, the Foreign Relations Authorization Act, Fiscal Year 1979, which included the following amendments to the Case-Zablocki Act. (The House authorization bill did not include similar amendments.)

1. Oral agreements are to be reduced to writing and reported to Congress. This provision is intended to ensure reporting of intelligence agreements and arrangements which are sometimes not reduced to writing.
2. If agreements are transmitted to Congress late, the President is to provide an explanation in an annual report.
3. No agreement is to be concluded or submitted without prior approval of the Secretary of State or the President; the purpose of this is to restore to State its traditional and proper role of coordinating negotiations between the United States and other countries.

4. In the event of disagreement within the executive branch, the Secretary of State determines whether an arrangement constitutes an international agreement within the meaning of the Act.
5. The President is to promulgate the rules and regulations necessary to carry out the Act; this should rectify the receipt of tardy agreements by the Congress, since the most frequent reason for late transmittals is that the Secretary receives such agreements late from other departments and agencies.

More controversial than the above proposed amendments is the "Treaty Powers Resolution," first introduced by Senator Clark in 1975. According to Senate bill 3076, section 502, the Resolution is designed to prevent the executive branch from circumventing the Constitutional requirement that two-thirds of the Senate approve all treaties involving foreign policy commitments. The Resolution calls on the President to consult with the Senate on the form as well as the content of international agreements. It then provides that the Senate, by simple resolution, can designate any international agreement as a treaty. Once such a designation is made, it would not be in order to consider any attempt to authorize or appropriate funds to carry out the agreement unless the Senate had previously given its advice and consent to ratification of the agreement. The agreement would then be subject to a point of order objection by a single senator. The Senate Committee intended that this Resolution would revive the Senate's constitutionally mandated role to provide "advice and consent" on any treaties entered into by the President.

In June 1978, the Senate passed Senate bill 3076, including the amendments relating to the transmission of international agreements to the Congress, but modified considerably the Treaty Powers Resolution. The substitution was a sense of the Senate resolution stating that the "President should, prior to and during the negotiation of such agreement seek the advice of the Committee on Foreign Relations as to whether it should be a treaty or an executive agreement."

At the conference in August 1978, the Senate and House conferees agreed to amend the Case-Zablocki Act but to drop the Treaty Powers Resolution. 1/ The conferees agreed to the Senate amendments concerning (1) reporting on late agreements, (2) judging what constitutes an international agreement, and (3) establishing rules and regulations to carry out the Act. For oral agreements, the conferees accepted the Senate amendment but noted in the conference report that the amendment is intended to codify the current executive practice of reducing oral agreements of consequence to writing. The conferees agreed to change the Senate amendment, that no international agreement be concluded without the prior approval of the Secretary of State or the President, to require prior consultation rather than approval. The amendments were included in the Foreign Relations Authorization Act, Fiscal Year 1979, Public Law 95-426, enacted on October 7, 1978. We believe that these amendments will encourage the departments and agencies working through State to keep the Congress better informed of all international agreements.

#### PUBLICATION AND REGISTRATION

Legislation also requires the publication and registration of treaties and other unclassified international agreements of the United States. An act of September 23, 1950, (64 Stat. 979, 1 U.S.C. 112a) requires that the Secretary of State annually publish a compilation of all treaties and international agreements entered into by the United States during each calendar year since enactment of the Act. Entitled "United States Treaties and Other International Agreements," this publication includes all treaties and international agreements and constitutes legal evidence in all U.S. courts. Prior to 1950, treaties and other international agreements of the United States were published in the United States Statutes at Large.

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1/September 8, 1978, the Senate passed a similar resolution cited as the "International Agreements Consultation Resolution," which is a sense of the Senate that "in determining whether a particular international agreement should be submitted as a treaty, the President should have the timely advice of the Committee on Foreign Relations through agreed procedures established with the Secretary of State."

Article 102 of the United Nations Charter requires that every treaty and international agreement entered into by a member of the United Nations be registered with and published by the Secretariat as soon as possible. Article 83 of the Chicago Aviation Convention of 1944 requires registration of aviation agreements with the Council of the International Civil Aviation Organization.

### CHAPTER 3

#### TRANSMISSION OF AGREEMENTS TO

#### OFFICE OF TREATY AFFAIRS

Any department or agency which enters into an international agreement is responsible for transmitting the text of the agreement to State's Office of Treaty Affairs. To determine whether that Office was receiving all international agreements, we examined the handling of such agreements by selected departments and agencies.

#### STATE PROCEDURES ARE BEING SUBSTANTIALLY FOLLOWED

State internal procedures provide for the negotiation, signature, publication, and registration of treaties and other international agreements of the United States within constitutional and other appropriate limits, including compliance with the Case-Zablocki Act. The procedures have been in effect for many years and provide an effective mechanism for controlling international agreements. The issuance of an "Action Memorandum," authorizing negotiations of an international agreement by a U.S. official, is central to the process for the orderly handling and control of treaties and other international agreements. The request to negotiate, accompanied by a legal memorandum, is addressed to the Secretary of State, the Deputy Secretary, or an Under Secretary, depending on the significance and subject matter of the particular agreement.

From the listing of unclassified agreements transmitted to the Congress during 1976 and 1977, we checked 35 (2 with the Federal Republic of Germany, 5 with Israel, 8 with Portugal, 11 with the Republic of Korea, and 9 with Thailand) and found that:

- Action memorandums had been prepared for 33 agreements. The other two related to the withdrawal from and closure of U.S. installations in Thailand. The U.S. Embassy in Thailand was instructed by other means to negotiate several technical-level agreements, including these two.

--23 agreements were covered by 3 blanket authorizations (used where a series of agreements of the same general type is contemplated) and 10 by specific authorization. The blanket authorizations covered agricultural sales under Public Law 480, the export of cotton, wool, and man-made fiber textiles to the United States, and cooperation in scientific activities.

There was substantial compliance with State's procedures for handling treaties and other international agreements. A few agreements were inadvertently omitted for consideration under the Case-Zablocki Act, but these matters were subsequently corrected.

State officials told us, however, that the authorization procedures were designed primarily to prevent lower level officials from negotiating international agreements without prior approval and that these procedures may not be followed for every agreement, especially those initiated by the President or Secretary of State. Consequently, there is no absolute certainty that all agreements are submitted for consideration under the Act.

#### AGENCY FOR INTERNATIONAL DEVELOPMENT NOW REPORTING AGREEMENTS

In February 1976, we reported to the Congress that certain agencies had not been submitting to State all their agency-level arrangements. The Agency for International Development (AID) was one of those agencies.

In correcting this, AID adopted new procedures for transmitting to State a copy of each agency agreement it signed with foreign governments or international organizations. These agreements are made pursuant to the Foreign Assistance Act and include bilateral agreements, grant and loan agreements, project agreements, and project implementation orders.

AID procedures require the head of every office to transmit to the General Counsel copies of each international agreement executed since June 30, 1975. The General Counsel reviews and transmits a copy of these agreements and the accompanying explanatory statements to State's Office of Treaty Affairs. From March 16, 1976, through December 31, 1977, 244 agreements were transmitted.

We were advised that, initially, AID transmitted all agreements to State but that these agreements became so numerous that State analyzed them during a test period and observed that only 30 out of approximately 980 involved assistance of \$1 million or more. State concluded that, with certain exceptions, agreements providing assistance of less than \$1 million lacked the significance that would warrant their transmittal to the Congress under the Case-Zablocki Act. State pointed this out to the Senate Foreign Relations Committee, explaining that many AID agreements involved small dollar amounts and that AID reports fully on its operations to the Congress.

In June 1976, the Committee approved a \$1-million limit for AID assistance agreements, except for those which establish new programs, furnish commodities or services on an advance-of-funds or reimbursement basis, or have significance for substantive reasons unrelated to amounts of money involved. Since July 1976, State has been forwarding agreements in these categories in addition to those involving assistance of \$1 million or more. The limit was also subject to the concurrence of the Chairman, House Committee on International Relations, which, we understand, was given informally pending a formal arrangement.

In the absence of a formal arrangement, AID has continued to receive from its overseas offices copies of every agreement signed by a representative of a foreign government or international organization, irrespective of the amount of assistance involved, as well as copies of all amendments and revisions of such agreements. We were advised that the mass of documents involved has imposed a heavy burden on AID and its overseas offices and has been the principal cause for the tardy transmittal to State of AID agreements which State has considered sufficiently significant to transmit to Congress.

In August 1978, AID instructed its overseas offices to limit their transmittal of assistance agreements to those which either meet the \$1-million cutoff test or have substantive significance for non-monetary reasons. These agreements will be transmitted by AID to State immediately after receipt from posts. We were advised that the new procedures will drastically reduce the number of agreements transmitted to AID and should enable it to make timely transmittals to State of the few documents which meet the significance test adopted.



AID is in a somewhat unique situation in that its annual program is detailed, project by project, and presented to Congress. After congressional approval, any changes to the program must be approved by the Senate Foreign Relations and House International Relations Committees.

We believe that AID's procedures are adequate and that, given the exceptions, the limit on reporting to Congress is appropriate.

#### DEFENSE ISSUES NEW INSTRUCTIONS

In November 1976, the Department of Defense issued new instructions governing the negotiation, conclusion, and reporting of international agreements. The new directive superseded a 1962 directive, which had required only that all signed agreements be sent to General Counsel, and was designed to create a Defense equivalent to State's comprehensive procedures for handling international agreements. Although Defense's General Counsel remains the central repository for international agreements, the new directive specifies the procedures to be followed by all Defense elements engaged in the negotiation and conclusion of international agreements. All agreements are to be forwarded to General Counsel within 15 days after their conclusion.

In this directive, Defense's broad definition of an international agreement encompasses any agreement reduced to writing and concluded and signed by a U.S. and foreign representative, regardless of the form or content. Although the definition includes the State criterion that agreements signify the intention of the parties to be bound by international law, there is no requirement that an agreement be of significance. In case of doubt, Defense personnel are to assume that international exchanges are agreements to be forwarded to General Counsel.

The role of General Counsel is confined to sending all such arrangements to State, leaving to State the responsibility for determining which of these are international agreements to be sent to Congress. The broad definition, coupled with Defense's limitation on its own role, was designed to ensure that all potential international agreements were forwarded to State for review. According to Defense personnel, this new directive largely formalized already existing practices.

In July 1977, implementing instructions delegated authority to negotiate and conclude agreements in particular categories. Since then, the Joint Chiefs of Staff, the individual services, several defense agencies, and the unified commands in the field have issued further instructions informing personnel of the new requirements.

The July 1977 instruction establishes essentially two categories of agreements. For agreements of political-military importance or those to be signed at the diplomatic level, approval of the Assistant Secretary of Defense, International Security Affairs, or one of his deputies is required. For technical, operational, or working-level agreements, logistical support arrangements, military data exchange, or other implementing arrangements, authority has been delegated to the individual services, Joint Chiefs of Staff or other appropriate defense agencies.

The significant political-military agreements appear to be least affected by the new instructions and continue to be authorized on a case-by-case basis by the Department of State in close coordination with concerned International Security Affairs regional or functional offices. Actual negotiations are usually conducted in the field by U.S. Embassy and local Defense Department personnel, relying on State for continuing policy guidance and on Defense for technical negotiating support. Defense personnel suggest that any major military agreement is likely to be handled at the diplomatic level or by a specially designated interagency team as was, for example, the SALT agreement.

Although no special provisions exist for tracking international agreements, desk officers within International Security Affairs monitor all activities affecting their countries through the daily cable traffic. Any item of importance on a potential or ongoing negotiation of an international agreement would be flagged by the desk officer for appropriate action or attention at a higher level. A request to the Assistant Secretary of Defense, International Security Affairs, for authority to negotiate and conclude a politically significant international military agreement is to include a draft text of the proposed agreement, a fiscal memorandum showing estimated costs, and a legal memorandum identifying the legal authority. Like the State Department's action memorandum, these documents provide decisionmakers with the relevant information and will be prepared generally by the office with primary responsibility for negotiating the agreement. Within each of the services,

agreements of political-military significance are routed to International Security Affairs through the office handling political-military affairs.

The individual services, however, generally act in a lead capacity only for relatively minor technical or working-level agreements concluded by field personnel. Authority to negotiate these types of agreements/arrangements has been delegated to the individual services, who have each issued their own implementing instructions to guide their personnel; the Navy was the last service to issue instructions in April 1978. Delegation of this authority is not intended to widen substantive responsibilities but only to confirm current practices. Commanders are responsible for judging whether an agreement falls into these categories or whether it is of significant political-military importance and therefore requires approval at a higher level.

To control and report international agreements concluded by the individual services in the Pacific Command, the Commander-in-Chief, Pacific, established the International Agreements Control System, a computerized inventory of agreements of military interest. This system was in effect prior to the new directive. To ensure that all agreements are reported, the Staff Judge Advocate informs personnel of reporting requirements and reviews local procedures, and the computerized listing is checked against locally maintained files twice a year. From a check of Pacific Air Force files, we found that the Command's agreements' inventory was not complete. Since all agreements are to be sent directly to the Defense General Counsel as well as to the Command, these agreements may have been reported to the State Department; but, because State does not keep all agreements received, it was not possible to make a final determination.

In March 1978, as a result of the new directive, the European Command established a central repository for all agreements; copies are also to be sent directly to the Defense General Counsel. Because each service has only recently received its new instructions, the European Command repository is not yet complete and personnel are only now becoming aware of the reporting requirements. The Air Force, for example, is still deciding whether agreements should be included as of January 1, 1976, or January 1, 1978. To

ensure that all agreements are reported, the European Command will need to establish some kind of periodic check of this new inventory.

The chief mechanisms for monitoring compliance with the new instructions are the recordkeeping requirements. Prior to beginning negotiations, written approval must be obtained from the appropriate level. This creates a written record of action taken which could then be scrutinized by other elements within Defense. Requiring appropriate coordination within Defense on international agreements also ensures that other offices will be informed and could question the level at which approval was granted in particular cases. The regulation, however, does not designate any one office as responsible for making such a check.

Within each service, requests for authorization to negotiate agreements are to be funneled to a central office of record. The office with primary responsibility for negotiating the agreement, however, retains the negotiating history for future reference. The central offices of record also are responsible for monitoring compliance with the new directive. To ensure that the new instructions are being followed, we understand that the Pacific Command's Office of Staff Judge Advocate checks reporting on agreements during inspection and orientation trips. The U.S. Army Command in Europe is also considering making a review of compliance with the Case-Zablocki Act part of annual inspections conducted by the Inspector General. To ensure full reporting, all the services will need to adopt some kind of periodic check by either Judge Advocate or Inspector General personnel. The new directive ensures that, in the future, records will show at what level a particular agreement was authorized, and the appropriateness of a particular approval could then be checked. Defense personnel told us that, generally, field personnel were interpreting their prerogatives conservatively and were taking responsibility only for agreements clearly within their delegated authority.

In general, the new directive has regularized procedures for making international agreements. By adopting an inclusive definition of international agreement, Defense has attempted to ensure that all agreements, however minor, are sent to the State Department. The authorization and reporting procedures also may have helped to increase the awareness among Defense personnel of international agreements. It will also now be possible to identify the level

at which an agreement was approved and to retrieve records at a future date if inquiries are made, which previously could not always be done. The procedures also are designed to distinguish between major and minor agreements so that approval authority is exercised at the appropriate level. Ultimately, however, the system relies on the judgment of individuals as to whether an agreement is potentially politically significant and, therefore, merits the attention of high-level policymakers.

#### TREASURY PRACTICES GENERALLY ADEQUATE

Treasury's Assistant General Counsel for International Affairs has primary responsibility for coordinating Case-Zablocki Act matters with the Department of State's Office of Treaty Affairs. However, his role is limited to international agreements concluded by the Under Secretary for Treaty Affairs, the Assistant Secretary for International Affairs, and the Assistant Secretary for Economic Policy. In addition, he handles most of the agreements negotiated by the Secretary of the Treasury. We concentrated our review efforts on agreements handled by these offices because they are responsible for the majority of Treasury's international agreements. Other Treasury legal offices which are sometimes involved with international agreements coordinate directly with the Office of Treaty Affairs. These offices include the U.S. Customs Service, Office of Foreign Asset Control, Internal Revenue Service, Comptroller of the Currency, Office of Tariff Affairs, and Bureau of the Mint.

The Assistant General Counsel generally handles about 10 to 20 international agreements each year. Treasury, unlike other agencies, has made its own determinations as to what constitutes an international agreement for Act purposes. Treasury has viewed State as an intermediary with responsibility to forward Treasury agreements to Congress. However, only one agreement was deemed by Treasury to be a non-agreement for Act purposes, and State's Office of Treaty Affairs was informed of the decision and subsequently agreed.

Treasury's determinations as to what constitutes an international agreement were based on criteria established and provided by State's Office of Treaty Affairs. Treasury maintains no internal or departmental guidance on its Act responsibilities. One agency official explained

that such a document would be of marginal value because Treasury handles relatively few international agreements. For the same reason, the Assistant General Counsel has not established a formal inventory system to administer or monitor international agreements expressly for Act purposes. His Office simply maintains a file for each agreement, which includes correspondence with and documents from the Office of Treaty Affairs. The Office's only assurance that it receives all agreements from the offices it oversees is that all agreements have legal implications which inherently cause General Counsel involvement.

Typically, when Treasury decides an international arrangement is an agreement for Act purposes, a memorandum is prepared explaining the decision and transmitting the agreement to State's Office of Treaty Affairs. This procedure is followed for both classified and unclassified agreements.

During our review, we noted that a Saudi Arabia project agreement, effective April 12, 1977, failed to reach the Office of Treaty Affairs for transmittal to Congress. Apparently, the agreement was sent from Treasury to State's Saudi Arabia desk officer who in the past had channeled similar agreements to the Office of Treaty Affairs. Neither Treasury nor State could determine why this particular agreement failed to reach State's Office of Treaty Affairs. Once we notified the Office of Treaty Affairs of this agreement, it immediately obtained a copy from the desk officer and assured us it would be forwarded as soon as possible to Congress.

#### COMMERCE INSTRUCTIONS TO BE IMPROVED

Commerce's General Counsel has primary responsibility for coordinating Case-Zablocki Act matters with the Department of State's Office of Treaty Affairs as explained in Commerce's administrative order, "Treaties and Other International Agreements." The order prescribes policies and procedures for the authorization, negotiation, and conclusion of treaties and other international agreements and the reporting of such agreements to the Secretary of State. It requires that Commerce officials in all units (1) notify the General Counsel, prior to the commencement of any negotiations that may lead to a treaty or an international agreement, of such pending negotiations and the authority under which they are to be conducted,

(2) provide the full text of any proposed agreement to the General Counsel for review and approval prior to the conclusion of any negotiation, and (3) transmit five copies of any proposed agreement to the General Counsel immediately upon its conclusion. Further, the General Counsel must immediately transmit four copies of any such agreement to State's Office of Treaty Affairs.

These procedures appear adequate and imply a high degree of centralized and systematic control by Commerce of its responsibilities under the Act. We found, however, that these procedures are loosely followed in that some offices contact the Office of Treaty Affairs directly without coordinating with their General Counsel; although the agreements receive the full attention of the Office of Treaty Affairs, such actions result in inadequate recordkeeping and monitoring of international agreements by General Counsel.

For example, the National Technical Information Service has directly coordinated informally with State's Office of Treaty Affairs on a number of international agreements instead of allowing the General Counsel to handle this coordination as outlined in administrative orders. Also, an employee in the National Oceanic and Atmospheric Administration, said that he and others in his office have dealt directly with the Office of Treaty Affairs; he also stated he was not aware of the pertinent instruction.

While the General Counsel is aware that the order is not being followed to the letter on an agencywide basis and agrees there is room for improvement, he is confident that Commerce is complying with its responsibilities under the Act.

The administrative order is currently under revision. While the existing order requires the General Counsel to transmit international agreements to the Office of Treaty Affairs immediately, the proposed order will also address the 20-day statutory requirement. Other key changes will centralize Commerce's functions under the Act and strengthen monitoring practices. The General Counsel will identify international agreements to be forwarded to the Office of Treaty Affairs and maintain a central repository for all international agreements. A liaison relationship between each operating unit and the General Counsel will be established for monitoring purposes.

FEDERAL AVIATION ADMINISTRATION  
AGREEMENTS MAY NOT BE REACHING STATE

The Federal Aviation Administration's Office of International Aviation Affairs is the office primarily concerned with the Administration's agreements involving services/material to be provided to foreign parties, governments, or international organizations. This Office is responsible for negotiating, executing, and administering agreements with foreign governments, international organizations, and other Federal agencies, such as Defense, State, and AID if the services/material are for the benefit of foreign or international recipients.

Until March 1976, the Administration was virtually unaware of its responsibilities under the Act. It assumed that, since the Department of State and/or various U.S. Embassies were aware of its international agreements in the negotiating process, it was not necessary to forward agreements to the Office of Treaty Affairs expressly for compliance with the Act. State's Office of Treaty Affairs contributed to this erroneous assumption by failing to address the matter with the Administration until March 1976, nearly 4 years after enactment of the Case-Zablocki Act.

Since the Administration became aware of its responsibilities, its policy has been simply to forward all international agreements, including related message traffic, correspondence, and other material, to State's Office of Treaty Affairs through the Office of International Aviation Affairs' budget section.

The Administration states that it forwards all international agreements to the Office of Treaty Affairs. This position, however, could not be substantiated by our review because the Administration does not maintain written guidance on its responsibilities under the Act nor comprehensive records identifying what has been sent to State. Also, interactions or coordination between the Administration and State on Act matters are sometimes recorded on telephone memoranda or not at all. The Office of Treaty Affairs does not keep the Administration informed as to which agreements are sent to Congress, so, the Administration can only assume, based on State requests for background statements or certified copies of specific agreements, which agreements are sent to Congress. We understand that agreements are generally accumulated for about a month and then sent to



State, with no form of recordkeeping or monitoring as to what or when a given agreement was sent.

Administration officials acknowledged that their record-keeping practices had been remiss but stated that recent corrective action had resolved these weaknesses. Transmittal documents to the Office of Treaty Affairs are now being prepared regularly, listing each agreement. We agreed that consistent use of these documents should give the Administration an acceptable level of control to properly accomplish its responsibilities under the Act.

#### AGREEMENTS SUBMITTED LATE TO THE CONGRESS

Transmitting agreements to Congress after the 60-day deadline continues to be a problem. Since 1976, the computer staff of the Senate Committee on Foreign Relations has monitored Case-Zablocki Act unclassified agreement submissions quarterly to determine the number of and reason for late transmittals. The percent of late agreements has decreased only moderately, from 39 percent of all agreements transmitted in 1976 to 32 percent in the first half of 1978. However, about 25 percent of the 145 tardy agreements transmitted during 1977 were submitted 2 weeks or less after the 60-day deadline.

From information supplied by the Department of State, the staff categorized the reasons for late transmittals as (1) late transmittal from the agencies or from posts abroad, (2) adoption of a broadened definition of what constitutes an international agreement, (3) lack of a suitable copy, (4) oversight, and (5) no reason supplied.

According to the staff study, the reason for almost 25 percent of late submissions in 1976 was that certain agreements were not previously considered to be international agreements according to the Act. In 1976, the Office of Treaty Affairs emphasized to other Federal agencies that the Act applied not only to diplomatic-level agreements concluded by State Department officials but also to agreements signed by agency-level officials who could also bind the United States. As agency personnel began to realize their agreements were potentially reportable under this expanded definition, they submitted not only new agreements and the most recent extension or renewal agreements but also original agreements which may have been concluded a year or two previously. By the second quarter of 1978, this reason was

cited for only 2.6 percent of the late transmittals, which may reflect the increased awareness among agency personnel of the Act's requirements. Another reflection of this fact is that the number of agreements submitted over a year late decreased from 8 percent in 1976 to less than 2 percent in the first half of 1978.

The reason most frequently cited by State for late agreements, however, is late transmittal from other agencies. In 1976 and 1977, the Department of State considered other agencies responsible for almost half of the late agreements; in the first half of 1978, 66 percent of the tardy agreements were late for this reason. Although State negotiates the largest number of agreements, only a few are submitted late to the Office of Treaty Affairs.

The Agency for International Development, however, sent almost half of its agreements to State in 1977 either after the Act's 60-day deadline or too close to the deadline to allow sufficient time for processing. Next to State, AID is responsible for the largest number of agreements sent to Congress; for example, 125 out of a total of 454, or 28 percent of all unclassified agreements in 1977, were AIDs. In that same year, 61, or 42 percent, of the 145 late agreements were AID agreements submitted after 60 days or too close to the deadline for the Office of Treaty Affairs to process. AID therefore accounted for a disproportionate number of late agreements.

The chart below compares agency performance for 1977, categorizing as tardy those agreements where agencies submitted their agreements after 60 days or too close to the deadline to allow the Office of Treaty Affairs sufficient processing time. We prepared the chart based on the computer staff study and information supplied by the State Department.

<u>Agency</u>	<u>Number of tardy agreements where agency was responsible</u>	<u>Total number of unclassified agreements submitted to Congress</u>	<u>Percent tardy</u>
State	7	229	3
AID	61	125	49
Defense	6	22	27
Federal Aviation Administration	3	6	50
Treasury	1	4	25
Commerce	0	1	0
Others	<u>16</u>	<u>67</u>	24
Total	<u>94</u>	<u>454</u>	

As shown, except for State, most agencies submitted at least a quarter of their agreements late. AID and the Federal Aviation Administration both submitted half of their agreements late. Between January and mid-May 1978, AID submitted 64 percent of its agreements late while Defense submitted 4 out of 5, or 80 percent, of its agreements late.

Although these statistics suggest lax agency performance in complying with the Act, it should be pointed out that the statistics reflect only those agreements sent to Congress rather than the total number of agreements submitted by agencies to the Department of State for review. As discussed in chapter 4, the Department of State judges many of the agreements sent by other agencies to be non-reportable under the Act because of their insignificance and selects only a few for submission to Congress. Although agencies have increased awareness of the Act's requirements, agreements continue to be submitted late largely because of delayed transmittal from other agencies.

#### CONCLUSIONS

Since we last reported in February 1976, we noted an increased awareness of agencies' responsibilities under the Act, a further clarification of reporting requirements, and improved controls on the reporting of agreements. As a consequence, the overall level of reporting to State's Office of Treaty Affairs has substantially increased. However, there is no absolute assurance that all agreements were transmitted for consideration for reporting to the Congress.

We found substantial compliance by State's bureaus and offices with internal procedures for handling international agreements. These procedures provide an effective mechanism for controlling agreements.

AID now considers all signed agreements with foreign governments or international organizations as international agreements; it previously had not been submitting agency-level agreements to State. In August 1978, AID adopted new procedures which may drastically reduce the number of agreements received from its overseas offices by confining transmittals to those which State will transmit to the Congress. We were advised that the resultant decrease in administrative burden should enable more timely AID transmittals in the future.

The new Defense directive goes far beyond the requirements of the Case-Zablocki Act and provides a complete procedure to assure that all international agreements are properly authorized, negotiated, and reported. Defense has had only limited experience with its new directive, and field personnel have only recently been informed of the new reporting requirements.

Treasury's practices to fulfill its responsibilities under the Act appear generally adequate in view of the relatively few agreements handled. However, we believe there is opportunity here for improving recordkeeping and monitoring of agreements.

Current practices by some offices within the Department of Commerce are effectively circumventing the General Counsel as the central point for the Department's responsibilities under the Act, thus providing little assurance that all Commerce agreements are being properly coordinated with State. We believe, however, that the proposed changes to Commerce's orders and their thorough implementation will greatly enhance its adequate reporting system and serve to overcome current recordkeeping and monitoring problems.

Since March 1976, the Federal Aviation Administration's policy has been to forward all international agreements and related correspondence to State's Office of Treaty Affairs. The Administration's actions supporting this policy were at best marginally adequate in view of the lack of organized recordkeeping and monitoring of agreements. Corrective measures taken by the Administration should resolve the recordkeeping weaknesses identified.

Late transmittal of agreements to the Congress is a continuing problem. Since 1976, about a third of all agreements have been transmitted after the 60-day deadline established by the Act. This late transmittal is partly a result of the broadened definition of international agreement adopted in 1976 by State and partly due to delayed transmittals by other agencies. AID, in particular, has been responsible for a large number of these late agreements. Agencies continue to be slow in getting their agreements to the Office of Treaty Affairs for review.

CHAPTER 4  
STATE'S ROLE AS JUDGE  
OF SIGNIFICANT AGREEMENTS

The Case-Zablocki Act requires the Secretary of State to transmit all international agreements to Congress, but does not define "international agreement." The only congressional guidance was the House Report's statement that Congress was interested in receiving "significant" material but did not want to be deluged with "trivia."

As part of its internal procedures, the State Department established five guidelines for determining whether an international exchange constitutes an international agreement.

1. Intention of the parties to be bound in international law.
2. Requisite specificity (the commitment must be defined sufficiently so as to be legally enforceable).
3. Two or more parties must be involved in the arrangement.
4. Form.
5. Significance.

Based on these guidelines, the Office of Treaty Affairs decides which international arrangements forwarded by the various agencies are international agreements to be transmitted to Congress. Arrangements which the State Department determines do not meet all five criteria are not considered international agreements and therefore are not sent to Congress. By State's definition, for example, trivial arrangements are not international agreements.

Identifying "significance" is most often the key factor in determining whether particular arrangements are international agreements. The guidelines do not specify what level of significance must be reached before a particular arrangement becomes an international agreement. In a 1973 letter to other agencies, however, the Acting Secretary of State described some characteristics indicative of significant and therefore reportable international agreements. Such

agreements should (1) be of political significance, or (2) involve a substantial grant of funds or extension of credit, or (3) commit the United States to expenditures extending beyond a fiscal year or requiring new appropriations, or (4) involve substantial ongoing cooperation, such as scientific, technical, and informational exchanges. Nevertheless, the guidelines are not comprehensive and imply that judgments will have to be made on a case-by-case basis.

Prior to March 1976, State basically reported to the Congress only diplomatic-level exchanges which satisfied the above criteria; such exchanges are primarily the responsibility of the State Department. In March 1976, however, State sent a memorandum to all agencies emphasizing that the Case-Zablocki Act also applied to agency-to-agency and implementing agreements concluded by agencies other than State. In cases where implementing agreements are clearly anticipated and provided for in a prior "umbrella" agreement, State may not consider it necessary to transmit the agreement.

Since State's internal procedures provide an effective mechanism for controlling international agreements concluded by its officers, we concentrated our review efforts on agreements of other departments and agencies. The following sections describe how the Office of Treaty Affairs has handled its function of judging which international agreements should be reported to the Congress.

#### DEPARTMENT OF DEFENSE

The agreement inventory systems established by the European and Pacific Commands show that 449 agreements of military interest were concluded between January 1976 and May 1978. 1/ The Department of State selected 79 of these classified and unclassified agreements, or about 18 percent, to be reported to Congress. The majority of Defense agreements were judged by State to be too trivial for reporting to Congress.

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1/Since these commands have cognizance over military affairs in 90 percent of the geographic areas of the world, it can be assumed that this number is close to the total number of Defense agreements. Included in these inventories are not only Defense-signed agreements but also some military-related agreements signed by State.

To ensure that all military agreements of potential significance were transmitted to the State Department for review, Defense adopted a broad inclusive definition of international agreement in its directive, which appears to have effectively included not only reportable significant agreements but also a large number of detailed basically procedural military arrangements between the United States and its allies.

In comparing the reported and excluded agreements, we found certain patterns in the types of agreements considered significant enough to be reported to Congress. The Office of Treaty Affairs may make exceptions to the categories described below because of the political significance of a particular agreement.

In general, the State Department considers agreements on coproduction of weapons systems, transfer of defense equipment, and cooperative research, development, and testing of major weapons systems all sufficiently significant to be reported to Congress. Coproduction agreements, for example, are considered significant because when the United States transfers its military technology, another nation achieves the capability to manufacture a U.S.-designed defense item. Similarly, in transferring defense equipment through loan or lease agreements, the United States adds to the defense capability of another nation. Joint efforts to develop major weapons systems involve the United States in substantial cooperation in a particular activity and such efforts may also involve considerable expenditures of U.S. funds.

After consultation with State, Defense decided that (1) foreign military sales contracts, (2) military credit agreements, (3) leases under 10 U.S.C. 2667 (U.S. excess property), and (4) contracts made under the Armed Services Procurement Regulation are not international agreements and would not be submitted to State because they are governed by local rather than international law. Also excluded were NATO Standardization Agreements because only routine, low-level standardization is implemented in this way.

The most common type of arrangement excluded by the State Department is memorandums or minutes of meetings signed by U.S. and foreign representatives, who sit on joint committees which handle the day-to-day management of relations between U.S. base personnel and host country nationals. For example, 61 percent of the 337 agreements concluded in the Pacific Command region since 1976 dealt with the turnover or joint

use of land or facilities associated with U.S.-controlled bases, matters routinely handled by joint committees. Joint committees were formally established under Status of Forces Agreements and Mutual Defense Treaties negotiated with the Republic of Korea, Republic of China and Japan in the early postwar period. U.S. representatives also participate in committees performing similar functions in Spain and Iceland. In the Federal Republic of Germany, individual base commanders make similar procedural arrangements.

These joint committee type of memorandums typically provide for joint use of a particular facility by host country personnel and U.S. base personnel, grant permission for a local individual to use some portion of base property, or provide for minor construction activities, and are basically minor procedural arrangements. Although the Office of Treaty Affairs generally considers these arrangements too trivial for submission to Congress as international agreements, the Office wishes to continue to review the documents in case an international agreement is concluded during such sessions. The Office of Treaty Affairs receives memorandums from the committees meeting in the Republic of Korea, Republic of China, and Japan, and from individual base commanders in the Federal Republic of Germany, but not from committees meeting in Spain and Iceland. If this material were routinely forwarded to the Office of Treaty Affairs, the volume of Defense agency-level arrangements would increase considerably.

Other essentially procedural arrangements affecting U.S. relations with local governing authorities, like mutual fire protection and police entry agreements, are also excluded because of their insignificance. Labor-management agreements between local base employees and U.S. military representatives are excluded because one of the parties to the agreement is a local union rather than a government. Although such agreements may play a role in preventing friction between the local populace and U.S. military base personnel, these arrangements are part of the day-to-day management of U.S. military affairs abroad rather than significant international agreements.

Another type generally excluded by the State Department is joint exercise arrangements which typically concern one-time actions rather than ongoing cooperation. Such exercises also are frequently conducted without the exchange of formal written agreements. Routine logistical arrangements, such



as fuel exchange agreements, are also now considered excludable implementing arrangements, although several fuel exchange agreements were reported to Congress before their routine form was realized.

For some types of agreements, there is no particular presumption as to significance. The scope of activity, political significance of the country, timing, and extent to which it is prefigured in a prior "umbrella" agreement are all indications of significance in an agreement. For this reason, some agreements of a particular type are reported, whereas others of the same type are excluded. For example, mapping agreements are transmitted if the numbers and types of exchanges involved are considered significant. Similarly, training agreements are included if the sizes, missions, and countries involved are significant. And again, while most data-exchange agreements are considered too minor for reporting, the Office of Treaty Affairs reviews them in case the scale or sensitivity of the information exchanged merits reporting.

Logistical support agreements are another major area where judgmental factors come into play. For example, only some agreements on co-use of bases are reported to Congress. In general, the Office of Treaty Affairs includes broad overall agreements on the co-use of bases with a particular country while excluding more specific implementing logistical support arrangements dealing with a particular base.

Also, special conditions attached to sale of a particular defense item may or may not be reported to Congress under the Act. If the conditions are included in the foreign military sales contract itself, the agreed conditions would be excluded because arms sales are considered contracts rather than agreements. On the other hand, if the conditions are outlined in an exchange of notes or comparable document, the agreement would probably be reported if the Office of Treaty Affairs were aware of its existence.

#### DEPARTMENT OF THE TREASURY

From January 1976 through February 1978, Treasury coordinated 9 classified and 19 unclassified international agreements with State's Office of Treaty Affairs.

All the classified agreements relate to Treasury's responsibilities concerning the Exchange Stabilization Fund. The Gold Reserve Act of 1934 established a fund to be operated

by the Secretary of the Treasury for the purpose of stabilizing the exchange value of the dollar; section 10 authorizes the Secretary to deal in gold and foreign exchange and other credit and securities instruments.

The unclassified agreements involved:

--11 project agreements for providing technical assistance to Saudi Arabia. Treasury's legal authority to negotiate these agreements is derived from Section 607 of the Foreign Assistance Act of 1961, as amended. As the lead agency for the United States-Saudi Arabian Joint Commission on Economic Cooperation, Treasury received a broad grant of authority from AID in June 1975 to negotiate various types of reimbursable technical assistance agreements with the Saudi Arabian Government.

--3 agreements concerning procurement for the Kama River Truck Complex in the Soviet Union.

--2 agreements establishing research and development funds with Israel.

--1 agreement concerning amending the Charter of the Inter-American Development Bank.

--1 multilateral agreement establishing a steering group to study the compensation systems of the World Bank and the International Monetary Fund.

Of the 28 Treasury agreements transmitted to State, 25 have been sent to Congress, including the 9 classified agreements. One Saudi Arabian agreement is in process of transmittal and one of the Israeli agreements has not yet entered into force but is to be forwarded to Congress as soon as it becomes effective. The one agreement deemed by Treasury not to be an agreement under the Act involved a new international "Arrangement on Guidelines for Officially Supported Export Credits." Treasury determined that the arrangement was a voluntary understanding not intended to be legally binding. State's Legal Adviser reviewed and agreed with Treasury's determination.

## DEPARTMENT OF COMMERCE

Since January 1976, Commerce has formally coordinated 14 unclassified international agreements with State's Office of Treaty Affairs. The organizational units involved with these 14 agreements include the Patent and Trademark Office, National Technical Information Service, National Oceanic and Atmospheric Administration, National Bureau of Standards, and Maritime Administration.

### Patent and Trademark Office

The Patent Office entered into one agreement with the International Bureau of the World Intellectual Property Organization to act in a research capacity under the Patent Cooperation Treaty. Initially, the Patent Office believed this agreement was outside the scope of the Case-Zablocki Act. After an initial review by State's Legal Adviser, a determination was made that the agreement should be sent to Congress. Later, the Patent Office was informed that further review determined that the agreement was not within the scope of the Act. This decision was based on the point that the agreement was an implementing agreement clearly contemplated by the Patent Cooperation Treaty. The agreement conformed to guidelines set out in the Treaty and annexed regulations. Therefore, this agreement was not sent to Congress.

### National Technical Information Service

The Service entered into two agreements with the Soviet Union, signed in February 1977 and March 1978, concerning the English translation and publication of Soviet books, journals, and articles.

The February 1977 agreement authorized the Service to translate, publish, and sell many copyrighted Soviet scientific and technical journals and selected articles. This was supplemented by a March 1978 agreement in which the United States agreed to pay the Soviets royalty fees on these translations in return for the copyright license. Both agreements were coordinated with State's Legal Adviser, who subsequently sent them to Congress.

### National Oceanic and Atmospheric Administration

The Administration was responsible for two international agreements, one with Chile and one with Iran. To increase

meteorological information from Chilean weather stations and to improve Chile's long-term commitment to the World Weather Watch program, the United States made an agreement to establish a cooperative program involving weather watch stations. The agreement was effected by notes exchanged between the American Embassy and the Chilean Foreign Office during 1977 and became retroactively effective on January 1, 1977. A similar agreement to improve and modernize the Iranian Meteorological Service was signed in November 1977. Both agreements were coordinated with State's Legal Adviser, who subsequently sent them to Congress.

### National Bureau of Standards

The Bureau was responsible for six international agreements, two with the Republic of Korea and four with Brazil. The agreements with Korea provide scientific, technical, and administrative assistance on a reimbursable basis to the Korea Standards Research Institute to enhance its standardization and measurement capabilities. Expenditures under the agreements are financed from an AID loan. The four agreements with Brazil include one basic agreement and three amendments to provide scientific and technical advice and assistance on a reimbursable basis to the State of Sao Paulo's Secretariat of Culture, Science and Technology to support a collaborative program which will enhance Brazil's scientific and technological capabilities. U.S. assistance and services are financed by an AID loan. All six agreements were coordinated with State's Legal Adviser, who subsequently sent them to Congress.

### Maritime Administration

The Administration was responsible for three international agreements, all concerning access to ocean carriage of government-controlled cargoes.

- An agreement with Brazil extended the basic agreement for 3 years.
- An agreement with the Soviet Union regarding the carriage of cargoes between the United States and the Soviet Union became effective in January 1976.
- An agreement with Argentina also concerned equal access to government-controlled cargoes and was signed in March 1978.

The three agreements were coordinated with State's Office of Treaty Affairs; those with Brazil and the Soviet Union have been sent to Congress, and the Argentina agreement will be sent as soon as it enters into force.

Of the 14 Commerce agreements reviewed by State's Office of Treaty Affairs, 13 were considered sufficiently significant to be transmitted to Congress.

FEDERAL AVIATION ADMINISTRATION

We were not able to readily identify international agreements transmitted to State's Office of Treaty Affairs by the Administration because of inadequate recordkeeping and monitoring. (See ch. 3.) However, we did obtain a May 1978 report by the Administration identifying currently active arrangements, as summarized below by categories. These arrangements are in effect for only short periods of time, generally less than 5 years.

<u>Category</u>	<u>Number of agreements</u>
Advisory assistance	<u>18</u>
Support services:	
Flight inspection	23
Exchange and repair of equipment	5
Procurement	17
Loans of equipment	6
Aircraft calibration	5
Airworthiness inspection of parts	<u>2</u>
	<u>63</u>
Training:	
Countries	23
Agency for International Development	9
International Civil Aviation Organization	<u>35</u>
	<u>67</u>
Total	<u>148</u>

The Administration told us that it typically handles between 300 and 400 arrangements each year. From January 1976 through May 1978, however, the Office of Treaty Affairs transmitted only 8 to Congress under the Case-Zablocki Act.

--One flight inspection agreement with Cape Verde, effective in November 1976, provides the Director of Civil Aviation with flight inspection services for site evaluation and air navigation aids.

--Five advisory assistance agreements. Three agreements with Korea assist the Korean Civil Aviation Bureau in expanding Kimpo International Airport and became effective in September 1975, May 1976, and December 1977.

One with the Dominican Republic, effective in May 1976, provided the Central Bank with technical services for the Puerto Plata International Airport and facilities project.

One with Iran, effective in June 1977, was primarily to help modernize its National Airspace System.

--Two procurement agreements. One with Bolivia, effective in August 1976, provides parts and repair services to its Administration of Airports and Navigation Services. One with Pakistan, effective in December 1976, provides parts and repair services for air navigation equipment to the Department of Civil Aviation.

We checked three 1977 agreements to determine why they were not sent to Congress. The Office of Treaty Affairs could locate only one of the three agreements in its file, and it could not be precisely determined whether the two missing agreements were sent to State by the Administration or whether State had inadvertently misplaced the documents.

The agreement on file, signed in December 1977 with Iran's Ministry of War and Civil Aviation Organization, provides for assistance to perform aircraft calibration of the flight inspection system on two Falcon-20E jets. State's Legal Adviser explained that this agreement was not sent to Congress because of its level of significance and because it related to another agreement which was transmitted.

Since we had obtained copies of the two missing documents during our review work, we provided them to the Office of Treaty Affairs. One agreement was signed in October 1977 with the Republic of Costa Rica's Ministry of Public Works and Transportation for loan of air traffic control equipment. State's Legal Adviser told us that this agreement was not sent to Congress because it lacked sufficient significance. The other agreement, signed in February 1977 with the Republic of Venezuela's Ministry of Communications, provides technical assistance to develop and modernize Venezuela's civil aviation infrastructure. State's Legal Adviser informed us that this agreement was sufficiently significant and should have been sent to Congress and therefore will be sent as soon as possible.

State's Office of Treaty Affairs considers virtually all of the Administration's international arrangements too trivial to report to the Congress.

#### INTELLIGENCE AGREEMENTS

We did not examine the processing of intelligence agreements. In our discussions with State and Defense officials, however, we were advised that the bulk of the intelligence agreements were made prior to the Case-Zablocki Act and that some are oral, made simply with handshakes, but tend to be written down if they are specific. The Office of Treaty Affairs has received intelligence agreements for review from the Central Intelligence Agency since 1976 and from the Defense Intelligence Agency since late 1975. Intelligence agreements were included in the 49 classified agreements sent to Congress during 1976 and 1977.

Agreements from the Central Intelligence Agency are handled under special procedures. In the Senate, the agreements are delivered to the Senate Foreign Relations Committee, which studies them before transmitting them to the Intelligence Committee for storage. In the House, the agreements are delivered to the House International Relations Committee and reviewed by the Chairman, the Ranking Minority Member, and the Staff Director, and then returned to the Agency. The Committees, we understand, are satisfied with this process and have had no problems to date.

Since late 1975, the Defense Intelligence Agency has acted as a focal point and central repository for written intelligence agreements concluded by all Defense components except the National Security Agency which handles communications security agreements. Intelligence relationships tend to be formalized by written agreements only when information is exchanged on a recurrent rather than a one-time basis. As part of current efforts to define responsibilities for intelligence matters within Defense, a new instruction on the handling of intelligence agreements is being reviewed. Agreements transmitted to the Congress are handled under the procedures governing classified agreements.

### CONCLUSIONS

Since 1976, the State Department has reported to Congress not only diplomatic-level agreements but also those agency-to-agency level agreements which satisfy its stated criteria. The inclusion of such agreements, coupled with more extensive reporting by other agencies, has increased the number of international agreements reported to Congress from 230 in 1974 to 486 in 1977.

Considerable discretion is involved in the present reporting process. Because the Case-Zablocki Act does not define "international agreement," State officials, exercising their discretion, have established criteria to be used in determining whether an arrangement is an international agreement for purposes of the Act. Applying these criteria to a particular arrangement is another discretionary act. This increases the chances that some agreements whose subject matter might be of interest to Congress will not be reported. A substantial number of international arrangements were excluded.

Chief among State's criteria is the significance of the international arrangement, and "significance" may hinge on the political circumstances of the agreement or identity of the party involved as well as the substance of the agreement itself. Therefore, while certain types of agreements are generally considered sufficiently significant to be reported and others too trivial, the Office of Treaty Affairs may make exceptions because of the particular context of an agreement. These exceptions notwithstanding, the Office of Treaty Affairs is creating a body of precedents, especially in the Defense area, about the types of agency-level agreements deemed reportable under the Act.



For Defense Department agreements, we found that the more detailed the arrangement the more likely the Office of Treaty Affairs would consider it as merely an implementing arrangement rather than a reportable international agreement. General agreements that initiate new types of relationships are more likely to be reportable agreements. In cases where the United States has an ongoing defense relationship, as in base rights countries, the scale of the activity must be particularly large or unusual to merit reporting to Congress. In the case of any new military relationship, however, scale would not be a factor in determining reportability. Because political factors as well as the substance of the agreement are considered in determining significance, it is not possible to sharply delineate the types of agreements excluded and reported. In the case of military agreements, the Office of Treaty Affairs has included some relatively minor defense agreements as well as significant ones because of an interest in erring on the conservative side. In general, we found the judgments on Defense agency-level agreements reasonable.

The Departments of Treasury and Commerce are complying well with their responsibilities and appear to have reasonably good cooperation with the Department of State. Although the volume of their agreements is relatively low, the degree of significance has been high enough to warrant transmitting virtually all agreements to Congress.

The volume of Federal Aviation Administration agreements is considerable. Based on the number sent by State to Congress, however, relatively few warrant congressional attention. The Office of Treaty Affairs considers most of the Administration's technical assistance agreements to be routine in nature, involving small amounts of funds. State, therefore, generally considers these agreements too trivial to be sent to Congress. We consider State's position to be reasonable.

## CHAPTER 5

### STATUS OF AGREEMENTS WITH THE REPUBLIC OF CUBA, THE SOCIALIST REPUBLIC OF VIETNAM, AND THE PEOPLE'S REPUBLIC OF CHINA

Since enactment of the Case-Zablocki Act, the United States has entered into five agreements with the Republic of Cuba and one with the People's Republic of China, all of which have been reported to Congress under the Act. There have been no agreements with the Socialist Republic of Vietnam.

#### REPUBLIC OF CUBA

##### Fisheries

On April 27, 1977, the United States and Cuba signed an agreement to ensure effective conservation, optimum use, and regional management of fisheries of mutual interest off the U.S. coasts and to establish a common understanding of fishery management procedures under U.S. law. The agreement was negotiated under the terms of the Fishery Conservation and Management Act of 1976 (Public Law 94-265, April 13, 1976, 90 Stat. 331).

##### Interest sections

On May 30, 1977, the United States and Cuba agreed to establish a U.S. Interest Section in the Swiss Embassy in Havana and a Cuban Interest Section in the Czechoslovakian Embassy in Washington to enhance communications between the two governments. The U.S. Interests Section is considered a part of the Swiss Embassy but is physically located in the old U.S. Embassy in Havana. The U.S. Section there, which has a Chief and a staff of nine, has proven useful as a means for communicating with Cuba on issues such as dual citizenship and protection cases. Both Sections benefit from the privileges and immunities under applicable international treaties governing diplomatic and consular relations and are authorized to conduct routine diplomatic and consular functions.

## Maritime boundaries

The United States and Cuba have negotiated two maritime boundary agreements. Signed on April 27, 1977, the first agreement created a simplified boundary for 1977 until a final boundary could be determined. The second agreement, signed on December 16, 1977, established a provisional boundary as of January 1, 1978, for a 2-year period pending Senate ratification of a treaty establishing a permanent boundary. Both agreements were negotiated pursuant to the Fishery Conservation and Management Act of 1976, Public Law 94-265, which, effective March 1, 1977, established a 200-nautical-mile fishery conservation zone off the U.S. coast.

## Hijacking

On February 15, 1973, the United States and Cuba signed an agreement for a 5-year period, essentially a reciprocity arrangement, to resolve legal and other issues relating to hijacking offenses, such as trial locations, penalties, applicable laws, physical integrity of properties, and innocent persons. Cuba has allowed this agreement to lapse, claiming the United States failed to abide by it in every instance.

## SOCIALIST REPUBLIC OF VIETNAM

The last U.S. agreement concluded with the Democratic Republic of Vietnam was in June 1973, and concerned implementation of the January 27, 1973, agreement on ending the war and restoring peace in Vietnam. The status of treaties and agreements with the Republic of Vietnam is under review. The United States has concluded no agreements with the Socialist Republic of Vietnam.

Since April 1975, there have been four meetings with Vietnam on normalizing relations. These meetings were held in Paris, with the last one in December 1977. Department of State participants in these talks have included the Assistant Secretary for East Asia, Deputy Assistant Secretary, Country Director, and representatives from the Offices of the Legal Adviser and Coordinator for Human Rights.

The talks, we understand, have been brief and addressed difficulties faced by both sides in normalizing relations-- the Vietnamese interest in reconstruction assistance and the

U.S. unwillingness to provide such assistance as a condition for normalization. Thus far, the United States has not proposed or staffed specific negotiating positions on possible future agreements but has expressed willingness to establish diplomatic relations without preconditions.

#### PEOPLE'S REPUBLIC OF CHINA

The United States has had only one international agreement with the People's Republic of China. The agreement, signed on October 28, 1974, involved exhibiting China's archeological finds in the United States as a means of promoting understanding and friendship between the peoples of both countries.

Under the agreement, China provided an archeological exhibit to the U.S. Government for display in the National Gallery of Art in Washington, D.C., and the Nelson Gallery-Atkins Museum in Kansas City, Missouri, from December 18, 1974, to June 7, 1975.

The agreement consisted of (1) an exchange of notes listing exhibited items and their valuations (approximately \$52 million), (2) a subsidiary agreement between the national committees of both governments setting forth certain exhibition details, and (3) a note of additional understanding. Pursuant to Public Law 93-287 (May 21, 1974, 88 Stat. 143) the U.S. Government guaranteed to indemnify the Chinese for any loss or damage to the exhibited items based on agreed valuations. An April 15, 1975, amendment to the initial agreement provided for an additional exhibition at the Asian Art Museum in San Francisco and extended the period until August 28, 1975. The agreement was negotiated under Sections 101-103 of the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright-Hays Act, 22 U.S.C. 2451-53).

This exhibition was implementing the Shanghai Joint Communique which, among other things, called for government facilitation of mutually beneficial exchanges between the two countries. The Communique resulted from a meeting in February 1972 between the President of the United States and the Chairman of the People's Republic of China. The Shanghai Communique is the basis for United States/Chinese relations, yet it is not considered an international agreement by the Department of State because it lacks binding commitments.

The Communique demonstrated that the leaders of the two countries could benefit by candidly expressing their views. Both agreed that, although essential differences exist between both countries' social systems and foreign policies, their relations should be conducted on such principles as sovereign respect, noninterference, and peaceful coexistence.

More recently, on the basis of an oral understanding, the United States and China established liaison offices, with representatives from both sides accorded diplomatic status. The U.S. liaison office is located in Peking, and has a staff of 33, including 3 persons in the political section performing both internal and external reporting, and 4 in the economic section plus an agricultural officer. These two sections are responsible for reporting and assisting American businessmen. Much of the reporting on China that was done from Hong Kong is now done in the Peking office.

Although agreements on family reunification, claim settlements, academic and cultural exchange, and economic matters could be negotiated in the future, the Chinese have reportedly stated that normal diplomatic relations must be established first.

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## United States Senate

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January 17, 1978

Hon. Elmer B. Staats  
 Comptroller General of the United States  
 General Accounting Office Building  
 441 G Street, N.W.  
 Washington, D.C. 20548

Dear Mr. Staats:

In 1975, the General Accounting Office prepared an audit for the use of the Subcommittee on Separation of Powers of the Committee on the Judiciary in which was reported the numbers and types of executive agreements being concluded with foreign powers and the extent of compliance by the executive branch with the executive agreements reporting requirements of the Case Act. The GAO focused its inquiry on United States executive agreements with the Republic of Korea, and its report concluded that "Congressional and State Department clarifications of the reporting requirements and improved control of agreements are needed."

As you may know, in response to the GAO report, certain steps have been taken to eliminate the problems uncovered in the initial GAO audit. Nevertheless, I am concerned that problems do still exist and that there is still room for further improvement. Accordingly, on behalf of the Subcommittee, I request that the GAO undertake to update its original audit of executive agreements reportable to the Congress under the Case Act and that, in this instance, the GAO concentrate on executive agreements concluded by the United States with the governments of the Peoples Republic of China, the Socialist Republic of Vietnam, and the Republic of Cuba. Specifically, as was done in the case of the earlier audit, the Subcommittee would appreciate being provided a summary of the extent of non-reporting of executive agreements with these particular countries together with an overall estimate of non-reporting with respect to executive agreements concluded by the United States with all nations. The period covered should be the period of time which has elapsed since the last GAO audit on this subject. Recommendations to the Subcommittee of means for insuring full compliance with the Case Act would also be appreciated and appropriate.

In studying the reporting of executive agreements to the Congress under the Case Act, the Subcommittee has noted that, under present procedure, executive agreements are frequently transmitted to the Congress

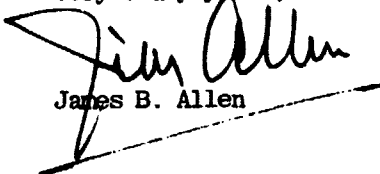
Hon. Elmer B. Staats  
Page Two  
January 17, 1978

without particular reference to the provisions of the Act, with the result that no precedent is established respecting the type of diplomatic correspondence which is properly subject to the requirements of the Act. The Subcommittee would, therefore, also find useful any suggestion of the GAO bearing on procedures to guarantee that executive agreements are identified as executive agreements reportable under the Case Act at the time of their transmittal to the Congress.

Should you have any questions regarding the scope of the inquiry desired, please contact Quentin Crommelin, Staff Director of the Subcommittee, or Melinda Campbell, Chief Clerk, for such additional information as you may need.

With kindest regards, I am

Very truly yours,



James B. Allen

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