

FOIA MARKER

**This is not a textual record. This is used as an
administrative marker by the William J. Clinton
Presidential Library Staff.**

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Counsel Office

Series/Staff Member: Shelli Peterson

Subseries:

OA/ID Number: 21947

FolderID:

Folder Title:
Smith Language

Stack:

S

Row:

115

Section:

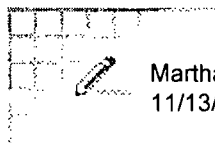
4

Shelf:

9

Position:

2



Martha Foley
11/13/99 02:07:30 PM

Record Type: Record

To: Michelle Peterson/WHO/EOP@EOP
cc:
Subject: Audits

----- Forwarded by Martha Foley/WHO/EOP on 11/13/99 02:07 PM -----

Rodney G. Bent
11/12/99 07:46:25 PM

Record Type: Record

To: Martha Foley/WHO/EOP@EOP
cc: Miles M. Lackey/NSC/EOP@EOP, Michael Casella/OMB/EOP@EOP, Cheryl C. Graczewski/OMB/EOP@EOP, Sheila Conley/OMB/EOP@EOP
Subject: Audits

Here's Cheryl's spadework, with the able assistance of Sheila Conley:

Per Office of Federal Financial Management, the right OMB circular is A-133, which applies to federal grants in the US. (It does not apply to grants to non-US based entities because it is sometimes difficult to find auditors overseas who can meet the requirements.)

A-133 can be found at: <http://www.whitehouse.gov/OMB/circulars/a133/a133.html>

Auditing Requirements

A-133 usually applies to audits of the use of Federal funds by non-Federal entities, whereas our problem here is an audit of non-Federal funds by non-Federal entities that are receiving AID grants. There are three levels, or options:

1. USAID could apply Government Auditing Standards (also known as the GAO yellow book) which is issued by the Comptroller General. The GAO yellow book has already been translated into other languages.
2. A tougher standard would be for USAID to adopt A-133. A-133 asks the auditors to offer positive assurances that federal funds were used properly.
3. A program specific audit could be done.

[RGB aside -- I think this last option may offer the most promise. The first two are more attuned to audits of Federal funds.]

Possible Auditors

Program funds could be used to hire independent auditors, although it may be difficult to find qualified auditors in some countries. *[RGB aside -- AID might have some idea which countries might have private auditors that are affiliated with US firms, and so would have some necessary credibility in doing the audits.]*

Sanctions/Penalties

1. If the organization is found to be non-compliant, the organization would be ineligible
 - a. for additional USAID population funding for one year or five years.
 - b. for USAID funding for any activities, not just population.
 - c. for any USG funding.
2. If the organization is found to be non-compliant,
 - a. a percentage of the grant could be withheld.
 - b. a percentage of the overhead could be withheld.
3. If the organization is found to be non-compliant, the grant funds must be refunded to USAID.

POSSIBLE MODELS FOR LIMITATIONS ON LOBBYING

26 U.S.C. § 4911 (Provides for a limit on the amount of lobbying by 501C(3) organizations)

- Covers only contacts to “influence legislation”, does not include contacts on nonlegislative matters.
- “Influence legislation” does not include the following
 - making available the results of nonpartisan analysis, study or research
 - providing technical advice/assistance in response to a request by the governmental body
 - “self-defense” appearances or communications
 - communications between the organization and its members with respect to legislation or proposed legislation of direct interest to the organization and members.
 - Other communications with government officials not designed to influence legislation.
- Grassroots lobbying is included, but is defined in regulations to require that the communication with the public must
 - refer to a specific legislative proposal
 - reflect a view on that proposal, and
 - encourage the recipient of the communication to take action with respect to the proposal.

26 U.S.C. § 162 (Denies income tax deductions of certain lobbying expenses for businesses)

- Grassroots lobbying is included in a less defined way: grassroots lobbying consists of communications with the public that attempt to develop a grassroots point of view by influencing the general public to propose, support, or oppose legislation. Communication does not have to encourage the public to take action with respect to a specific legislative proposal.

Lobbying Disclosure Act (Requires lobbyists to register and report on their activities)

- Covered nonlegislative contacts include the “formulation, modification, or adoption of a federal rule, regulation, Executive order or any other program, policy, or position of the United States Government.”
- Covers contacts only with federal officials, not contacts with local governments or grassroots lobbying

OPTION ONE

Limit lobbying to contacts made with government officials to influence legislation. (Modeled after IRC 4911, but without grassroots lobbying exclusion)

. . . no funds . . . until organization certifies that it will not . . . engage in any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

For purposes of this section, the term “influence any legislation” does not include –

- a. making available the results of academic or scientific analysis, study, or research;
- b. providing technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or subdivision thereof in response to a written request by such body or subdivision, as the case may be;
- c. appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties;
- d. any communication with a government official or employee, other than –
 - (i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation),
 - (ii) a communication the principal purpose of which is to influence legislation.

OPTION TWO

Limit both lobbying and grassroots lobbying with explicit exemptions.

. . . no funds . . . until organization certifies that it will not . . . engage in any attempt to influence any legislation through either an attempt to affect the opinions of the general public or any segment thereof or through any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

For purposes of this section, the term “influence any legislation” does not include –

- e. making available the results of academic or scientific analysis, study, or research;
- f. providing technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or subdivision thereof in response to a written request by such body or subdivision, as the case may be;
- g. appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties;
- h. any communication with a government official or employee, other than –

- (iii) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation),
- (iv) a communication the principal purpose of which is to influence legislation.

OPTION THREE

Limit both direct lobbying and grassroots organizing but leave definition less obvious and include “substantiality” test.

. . . no funds . . . until organization certifies that it will not . . . have a substantial¹ part of its activities involve carrying on propaganda, or otherwise attempting to influence legislation with respect to abortion, or involves participating in, or intervening in (including the publishing or distributing of statements), of any political campaign with respect to abortion.

NOTE: There is no statutory definition of “propaganda, or otherwise attempting, to influence legislation.” However, Treasury regulations provide a useful gloss. Thus, with this, we would need legislative history noting that it is intended to be comparable to the restrictions that exist on lobbying activity by tax exempt organizations under 501(c) 3 and 4911 (d)(1)

¹ Under 501(h), certain charities, including educational facilities and hospitals, can elect to use a mathematical test instead of the “substantial part” test. Under this test, all lobbying is limited to 20% of the first \$500,000, plus 15% of the next \$500,000, plus 10% of the third \$500,000, plus 5% of the additional expenditures, to a maximum allowable amount of \$1 million. Grassroots lobbying is subject to an additional limitation that it not exceed 25% of the overall permissible amount.

Issue: Where should funds “nicked” from the \$385 million population “account” be redirected?

Recommendation: These funds should be “earmarked” for post-abortion care. First option is to keep redirected funds under the population cap. Fallback option is to transfer funds to Child Survival account.

Discussion: Treating the consequences of unsafe abortion is supported by all parts of the political spectrum. Such an earmark keeps the funds in reproductive/maternal health but walls them off from population/advocacy area.

USAID can document that funds redirected to post-abortion care would be additive.

Redirecting the funds to Child Survival would reduce population cap and further enrage population community.

The Child Survival account is highly directed by House Appropriations staff who would most likely dictate that funds go to areas far outside reproductive health.

Issue: How many foreign NGOs and multilaterals receive USAID population funds?

Discussion: It is estimated that between 2,500 and 3,000 organizations receive population funds and/or contraceptives.

Issue: How many organizations would be excluded with a \$500,000 threshold?
With a \$250,000 threshold?

Recommendation: The first option would be to exclude all organizations receiving less than \$500,000. Second option would be a ~~\$250,000~~ ^{\$300,000} threshold.

Discussion: With a \$500,000 threshold, it is estimated that between 90 to 95 percent of the 3,000 organizations would be excluded. A ~~\$250,000~~ threshold would exclude from 65 to 75 percent.

Under either option, most national and highly visible ^{NGOs} ~~Egos~~ would be captured, e.g., all social marketing programs.

These estimates count contraceptives as a funding action, but do not count technical assistance that does not entail the transfer of money. Tiahrt includes technical assistance.

Issue: Can USAID handle metering and some form of certification conditionality for funding?

Recommendation: Metering should be dropped if funding is tied to certification.

Discussion: Currently, all USAID population funds are obligated based on an agency wide metering schedule that obligates 8.35 percent of the funds each month. Thus far, cash flow problems have been kept to a minimum, although many organizations have very short pipelines. Last year, there were 168 metering tranches to prime cooperating agencies, host country governments, U.S. governments and multilaterals. If any of these tranches are missed, it sets off a domino effect down the funding tree. Having a certification requirement would greatly complicate the pipeline analyses that are the underpinning of the metering schedule. Also, USAID and CA program staff are just about at the breaking point with the additional burden of Tiahrt.

Issue: Should support to IPPF be stopped?

A Recommendation: (Of the options being considered, dropping funding to IPPF would have the least programmatic impact.) It should be a card we are willing to play.

Discussion: The International Planned Parenthood Federation (IPPF) is unlikely to agree to any of the conditions being discussed. They were one of the two organizations that refused to sign Mexico City.

IPPF has not been an effective organization for some years. USAID has dropped its funding from around \$17 million to \$5.8 million in FY 99. They also received \$2 million in contraceptives in FY 99. They are scheduled to get \$5 million in FY00.

IPPF is an important symbol for both sides of the abortion/family planning issue. Not funding them would be seen as a significant victory for the anti-pop groups and a stinging defeat for the pro-pop groups. If played, we should get a lot for this card.

Issue: What are the consequences of a \$20 million cut in the population "account" or cap? What is the minimum cut from USAID's perspective?

Recommendation: A \$20 million cut should be rejected. A \$5 million cut would be tolerable.

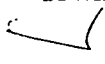
Discussion: In FY96, Congress cut the population account to \$356 million. However, using prior year funds, the Administration increased this amount to \$432 million. Since then, the population level has remained at \$385 million.

The \$385 million cap is attained with a combination of DA and non-DA funds. Since FY97, non-DA funds constitute a larger percent of the cap. In FY99, \$339 of the \$385 million was DA. The FY00 budget puts the DA amount at \$340.

Non-DA funds primarily go to former Soviet Union, Eastern Europe, Egypt, Jordan, and the West Bank. Haiti is also a large recipient. In general, though, these funds do not go to the neediest ~~are~~ most demographically important countries. Also, the non-DA countries are relatively well funded in population relative to the DA countries. For example, ESF countries have a \$0.33 per capita versus \$0.14 per capita of population funds.. It is

likely that any reduction in the population account would come from the DA and not non-DA accounts.

A reduction from the \$385 level would have more than programmatic consequences. The \$385 level is now considered a symbolic line-in-the-sand. A reduction of the population cap would alter the negotiation starting point for future years and perhaps lead to a downward budgetary spiral.



L A/K/S
J

UNCLASSIFIED

FAX TRANSMITTAL SHEET

Number of pages + cover

FROM: MARA RUDMAN

TELEPHONE: 202-456-9171

FAX NUMBER: 202-456-9170

	TO	PHONE	FAX NUMBER
1.	Martha Foley	Bill Marshall	
2.	Mr. Martha Foley		
3.			
4.		6 total pgs	
5.			
6.			

MARCH CONFERENCE REPORT

105TH CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES

{ REPORT
105-432

FOREIGN AFFAIRS REFORM AND RESTRUCTURING ACT

MARCH 10, 1998.—Ordered to be printed

Mr. GILMAN, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 1757]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1757), to consolidate international affairs agencies, to authorize appropriations for the Department of State and related agencies for fiscal years 1998 and 1999, and to ensure that the enlargement of the North Atlantic Treaty Organization (NATO) proceeds in a manner consistent with United States interests, to strengthen relations between the United States and Russia, to preserve the prerogatives of the Congress with respect to certain arms control agreements, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Foreign Affairs Reform and Restructuring Act of 1998".

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) **DIVISIONS.**—*This Act is organized into three divisions as follows:*

(1) **DIVISION A.**—*Foreign Affairs Agencies Consolidation Act of 1998.*

(2) **DIVISION B.**—*Foreign Relations Authorization Act, Fiscal Years 1998 and 1999.*

(3) **DIVISION C.**—*United Nations Reform Act of 1998.*

relations between the "Federal Republic of Yugoslavia and Montenegro" and the United Nations, that President Milosevic

of democratic institutions, independent news media and re-

ct for human rights throughout Yugoslavia" (Serbia and Montene-

rage free, fair, and equal condition in Serbia.

UNDER CHAPTER 4 OF PART II OF THE ACT OF 1961.

be made available under chapter 4 of the Act of 1961 (22 U.S.C. 2346; and), for fiscal years 1998 and activities under the Cuban Liberty and Democratic Control (LIBERTAD) Act of 1996 (22 U.S.C. 6001) and the Act of 1992 (22 U.S.C. 6001

THAT PERFORM OR PROMOTE ABORTION IN THE PEOPLE'S REPUBLIC OF CHINA.

Assistance Act of 1961 is amended by adding at the end the following new subsection:

SECTION 301. LIMITATION RELATING TO FORCED ABORTIONS IN THE PEOPLE'S REPUBLIC OF CHINA.—Notwithstanding section 614 of this Act or any other provision of law, no funds may be made available for the United Nations Population Fund (UNFPA) in any fiscal year unless the President certifies that—

(1) UNFPA has terminated all activities in the People's Republic of China, and the United States has received assurances that UNFPA will conduct no such activities during the fiscal year for which the funds are to be made available; or

(2) during the 12 months preceding such certification there have been no abortions as the result of coercion associated with the family planning policies of the national government or other governmental entities within the People's Republic of China.

(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population assistance to foreign private, nongovernmental organizations that perform abortions in any foreign country may be made available for such fiscal year: Provided further, That the limitation in the previous proviso includes all funds for programs and activities designed to control fertility or to reduce or delay childbirths or pregnancies, irrespective of the heading under which such funds are made available.

country concerning the circumstances under which abortion is permitted, regulated, or prohibited.

"(B) Subparagraph (A) shall not apply to activities in opposition to coercive abortion or involuntary sterilization.

"(3) APPLICATION TO FOREIGN ORGANIZATIONS.—The prohibitions of this subsection apply to funds made available to a foreign organization either directly or as a subcontractor or subgrantee, and the certifications required by paragraphs (1) and (2) apply to activities in which the organization engages either directly or through a subcontractor or subgrantee."

(b) Section 301 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new subsection:

"(i) LIMITATION RELATING TO FORCED ABORTIONS IN THE PEOPLE'S REPUBLIC OF CHINA.—Notwithstanding section 614 of this Act or any other provision of law, no funds may be made available for the United Nations Population Fund (UNFPA) in any fiscal year unless the President certifies that—

(1) UNFPA has terminated all activities in the People's Republic of China, and the United States has received assurances that UNFPA will conduct no such activities during the fiscal year for which the funds are to be made available; or

(2) during the 12 months preceding such certification there have been no abortions as the result of coercion associated with the family planning policies of the national government or other governmental entities within the People's Republic of China.

(c) The President may waive the provisions of section 104(h)(1) of the Foreign Assistance Act of 1961, as amended, pertaining to population assistance to foreign organizations that perform abortions in foreign countries, for any fiscal year: Provided, That if the President exercises the waiver provided by this subsection for any fiscal year, not to exceed \$356,000,000 may be made available for population planning activities or other population assistance for such fiscal year: Provided further, That the limitation in the previous proviso includes all funds for programs and activities designed to control fertility or to reduce or delay childbirths or pregnancies, irrespective of the heading under which such funds are made available.

DIVISION C—UNITED NATIONS REFORM

TITLE XX—GENERAL PROVISIONS

SEC. 2001. SHORT TITLE.

This division may be cited as the "United Nations Reform Act of 1998".

SEC. 2002. DEFINITIONS.

In this division:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee

DEVELOPMENT OF DEMOCRACY IN SERBIA

The House bill (sec. 1713) expresses a sense of Congress regarding the various methods and actions that can be taken to support the development of democracy in the Republic of Serbia. The Senate amendment has no comparable provision.

The conference substitute (sec. 1814) is similar to the House bill with modifications to consolidate the findings.

CUBA ASSISTANCE

The House bill (sec. 1901) makes \$2 million available for democracy programs in Cuba under chapter 4 part II of the Foreign Assistance Act of 1961.

The Senate amendment has no comparable provision.

The conference substitute (sec. 1815) is the same as the House bill.

FOREIGN ORGANIZATIONS THAT PERFORM OR PROMOTE ABORTION;
FORCED ABORTION IN CHINA

The House bill (sec. 2101)

The Senate amendment had no comparable provision.

The conference substitute (sec. 1816) combines House bill sections 2101 and 2102. Section 2101 concerns U.S. population assistance to foreign organizations that perform or promote abortions. Section 2102 concerns UN Population Fund (UNFPA) activities in the People's Republic of China in relation to forced abortions carried out in connection with the Chinese government's population program.

The conference substitute prohibits, inter alia, population assistance to foreign organizations that "engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited." Such practices include not only overt lobbying for such changes, but also such other activities as sponsoring, rather than merely attending, conferences and workshops on the alleged defects of the abortion laws, as well the drafting and distribution of materials or public statements calling attention to such alleged defects.

DIVISION C—UNITED NATIONS REFORM

GENERAL PROVISIONS

SHORT TITLE

The House bill has no similar section.

The Senate bill (Sec. 2001) names this division the "United Nations Reform Act of 1997."

The conference substitute (Sec. 2001) is identical to the Senate bill.

DEFINITIONS

The House bill has no similar section.

The Senate bill (Sec. 2002) defines the terms: appropriate congressional committee, designated specialized agency, secretary gen-

eral, United Nations member, United Nations.

The conference substitute (Sec. 2003) is identical to the Senate bill.

NONDELEGATION OF CERTIFICATION

The House bill has no similar section.

The Senate bill (Sec. 2003) expresses a sense of Congress that the State may not delegate the authority to certify.

The conference substitute (Sec. 2003) is identical to the Senate bill.

TITLE XXI—AUTHORIZATION OF APPROPRIATIONS

ASSESSED CONTRIBUTIONS TO THE UNITED NATIONS ORGANIZATION

The House bill (Sec. 1102) provides for \$987,590,000 in fiscal year 1998 and \$987,590,000 in fiscal year 1999.

The Senate bill (Sec. 2101) provides for \$900,000,000 in fiscal year 1998 and \$900,000,000 in fiscal year 1999.

The conference substitute (Sec. 1102) provides for \$900,000,000 in fiscal year 1998 and \$900,000,000 in fiscal year 1999.

NO GROWTH BUDGET

The House bill has no similar section.

Of the funds authorized, the House bill requires that the Secretary of State certify that no action has been taken to increase the United Nations 1998-1999 budget during that period without finding a way to reduce the United Nations budget during that period.

The conference substitute (Sec. 1102) requires that the Secretary of State certify for a no growth budget to become law.

INSPECTOR GENERAL

The House bill has no similar section.

The Senate bill (Sec. 2101) requires that the Secretary of State certify that the Office of Inspector General continues to function as an independent entity and requires the Director of the OIG to certify to the Secretary of State on the adequacy of his resources to audit each program, project, or activity that it has the authority to audit.

The conference substitute (Sec. 2101) is identical to the Senate bill. This section is identical to the Senate bill.

Sec. (a) **RESTRICTION ON ASSISTANCE TO FOREIGN ORGANIZATIONS THAT PERFORM OR ACTIVELY PROMOTE ABORTIONS. -**

(1) **PERFORMANCE OF ABORTIONS. -**

Memo 3/24
Noted

(A) Notwithstanding section 614 of the Foreign Assistance Act of 1961, as amended, or any other provision of law, no funds appropriated or otherwise made available in this Act for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest.

(B) Subparagraph (A) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country.

1/24

(2) **LOBBYING ACTIVITIES. -** (A) Notwithstanding section 614 of the Foreign Assistance Act of 1961, as amended, or any other provision of law, no funds appropriated or otherwise made available in this Act for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited.

001-30 1557 18.2 202 224 0766 P.03/04

(B) Subparagraph (A) shall not apply to activities in opposition to coercive abortion or involuntary sterilization.

.(3) APPLICATION TO FOREIGN ORGANIZATIONS.

- The prohibitions of this subsection apply to funds made available to a foreign organization either directly or as a subcontractor or subgrantee, and the certifications required by paragraphs (1) and (2) apply to activities in which the organization engages either directly or through a subcontractor or subgrantee.

(b) (1) LIMITATION RELATING TO FORCED ABORTIONS IN THE PEOPLE'S REPUBLIC OF CHINA. -

Notwithstanding section 614 of the Foreign Assistance Act of 1961, as amended, or any other provision of law, no funds appropriated or otherwise made available in this Act may be made available for the United Nations Population Fund (UNFPA) unless the President certifies that -

(A) UNFPA has terminated all activities in the People's Republic of China, and the United States has received assurances that UNFPA will conduct no such activities during the fiscal year for which the funds are to be made available; or

(B) during the 12 months preceding such certification there have been no abortions as the result of coercion associated with the family planning policies of the national government or other governmental entities within the People's Republic of China.

(2) As used in this subsection, the term "coercion" includes physical duress or abuse, destruction or confiscation of property, loss of means of livelihood, or severe psychological pressure.

(c) Not to exceed \$356,000,000 of the funds appropriated in title II of this Act may be made available for population planning activities or other population assistance.

- (d) The President may waive the application of the provisions of subsections (a) and (b) (with the exception of subsections (a)(2)(A) and (a)(2)(B), and subsection (a)(3) as it applies to said subsections) to funds appropriated in this Act if he determines and certifies to the appropriate committees of the Congress that such provisions are not in the national interest of the United States.
- (e) Subsection (c) shall have force and effect only upon the exercise of the waiver authority provided in subsection (d).

OLC's

suggestion

MUST HAVE:

- Change subsection (d) as follows:
 - (d) The President may waive the application of the provisions of subsections (a) and (b) ~~(with the exception of subsections (a)(2)(A) and (a)(2)(B), and subsection (a)(3) as it applies to said subsections)~~ to funds appropriated in this Act if he determines and certifies to the appropriate committees of the Congress that application of such provisions would are not be in the national interest foreign policy interests of the United States.

BETTER:

- Include redlined addition in beginning of provisions (a)(1)(A) and (a)(2)(B):

"Notwithstanding section 614 of the Foreign Assistance Act of 1961, as amended, or any other provision of law, but subject to subsection (d) of this section, no funds appropriated . . ."
- Change subsection (d) further as follows:
 - (d) The President may suspend the application of the provisions of subsections (a) and (b) to funds appropriated in this Act if he determines and certifies to the appropriate committees of the Congress that application of such provisions would not be in the foreign policy interests of the United States. Such suspension shall take effect on the date of execution, and continue in effect for such period, as the President may determine, and shall be certified to the Congress prior to public release by the President.

Sec. (a) RESTRICTION ON ASSISTANCE TO FOREIGN ORGANIZATIONS THAT PERFORM OR ACTIVELY PROMOTE ABORTIONS. -

(1) PERFORMANCE OF ABORTIONS. -

(A) Notwithstanding section 614 of the Foreign Assistance Act of 1961, as amended, ⁽¹⁾ or any other provision of law, no funds appropriated or otherwise made available in this Act ⁽²⁾ for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest.

(B) Subparagraph (A) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country.

(2) LOBBYING ACTIVITIES. - (A) Notwithstanding section 614 of the Foreign Assistance Act of 1961, as amended, ⁽³⁾ or any other provision of law, no funds appropriated or otherwise made available in this Act ⁽⁴⁾ for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited.

(B) Subparagraph (A) shall not apply to activities in opposition to coercive abortion or involuntary sterilization.

.(3) APPLICATION TO FOREIGN ORGANIZATIONS.

– The prohibitions of this subsection apply to funds made available to a foreign organization either directly or as a subcontractor or subgrantee, and the certifications required by paragraphs (1) and (2) apply to activities in which the organization engages either directly or through a subcontractor or subgrantee.

(b) (1) LIMITATION RELATING TO FORCED ABORTIONS IN THE PEOPLE'S REPUBLIC OF CHINA. –

Notwithstanding section 614 of the Foreign Assistance Act of 1961, as amended, or any other provision of law, no funds appropriated or otherwise made available in this Act may be made available for the United Nations Population Fund (UNFPA) unless the President certifies that –

(A) UNFPA has terminated all activities in the People's Republic of China, and the United States has received assurances that UNFPA will conduct no such activities during the fiscal year for which the funds are to be made available; or

(B) during the 12 months preceding such certification there have been no abortions as the result of coercion associated with the family planning policies of the national government or other governmental entities within the People's Republic of China.

(2) As used in this subsection, the term "coercion" includes physical duress or abuse, destruction or confiscation of property, loss of means of livelihood, or severe psychological pressure.

(c) Not to exceed \$356,000,000 of the funds appropriated in title II of this Act may be made available for population planning activities or other population assistance.

- (d) The President may waive the application of the provisions of subsections (a) and (b) (with the exception of subsections (a)(2)(A) and (a)(2)(B), and subsection (a)(3) as it applies to said subsections) to funds appropriated in this Act if he determines and certifies to the appropriate committees of the Congress that such provisions are not in the national interest of the United States.
- (e) Subsection (c) shall have force and effect only upon the exercise of the waiver authority provided in subsection (d).

SENSE OF THE CONGRESS REGARDING COSTS OF THE

PARTNERSHIP FOR PEACE PROGRAM AND NATO EXPANSION

SEC. 580. It is the sense of the Congress that all member nations of the North Atlantic Treaty Organization (NATO) should contribute their proportionate share to pay for the costs of the Partnership for Peace program and for any future costs attributable to the expansion of NATO.

FOREIGN ORGANIZATIONS THAT PERFORM OR PROMOTE ABORTION OVERSEAS; FORCED ABORTION IN THE PEOPLE'S REPUBLIC OF CHINA

SEC. 581. (a) Section 104 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new subsection:

“(h) RESTRICTION ON ASSISTANCE TO FOREIGN ORGANIZATIONS THAT PERFORM OR ACTIVELY PROMOTE ABORTIONS.—

“(1) PERFORMANCE OF ABORTIONS.—

“(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period

for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest.

“(B) Subparagraph (A) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country.

“(2) LOBBYING ACTIVITIES.—(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited.

1
2 "(B) Subparagraph (A) shall not apply to ac-
3 tivities in opposition to coercive abortion or involun-
4 tary sterilization.

5 "(3) APPLICATION TO FOREIGN ORGANIZA-
6 TIONS.—The prohibitions of this subsection apply to
7 funds made available to a foreign organization either
8 directly or as a subcontractor or subgrantee, and the
9 certifications required by paragraphs (1) and (2)
10 apply to activities in which the organization engages
11 either directly or through a subcontractor or sub-
12 grantee."

13 (b) Section 301 of the Foreign Assistance Act of
14 1961 is amended by adding at the end the following new
15 subsection:

16 "(i) LIMITATION RELATING TO FORCED ABORTIONS
17 IN THE PEOPLE'S REPUBLIC OF CHINA.—Notwithstand-
18 ing section 614 of this Act or any other provision of law,
19 no funds may be made available for the United Nations
20 Population Fund (UNFPA) in any fiscal year unless the
21 President certifies that—

22 "(1) UNFPA has terminated all activities in
23 the People's Republic of China, and the United
24 States has received assurances that UNFPA will
25 conduct no such activities during the fiscal year for
which the funds are to be made available; or

1 "(2) during the 12 months preceding such cer-
2 tification there have been no abortions as the result
3 of coercion associated with the family planning poli-
4 cies of the national government or other govern-
5 mental entities within the People's Republic of
6 China.

7 As used in this section, the term 'coercion' includes phys-
8 ical duress or abuse, destruction or confiscation of prop-
9 erty, loss of means of livelihood, or severe psychological
10 pressure."

11 This Act may be cited as the "Foreign Operations,
12 Export Financing, and Related Programs Appropriations
13 Act, 1998".

Passed the House of Representatives September 4,
1997.

Attest:

ROBIN H. CARLE,
Clerk.

FALL '97

LANGUAGE

Possible compromise on Mexico City/UNFPA language:

The Senate recedes to the House with the following amendment:

Add at the end of subsection 581:

(c) The President may waive the provisions of section 104(b)(1) of the Foreign Assistance Act of 1961, as amended, pertaining to population assistance to foreign organizations that perform abortions in foreign countries, for fiscal year 1998; Provided, that if the President exercises the waiver provided by this subsection, not to exceed \$300 million may be made available for population planning activities or other population assistance for fiscal year 1998; Provided further, that the limitation in the previous proviso includes all funds for programs and activities designed to control fertility or to reduce or delay childbirths or pregnancies, irrespective of the heading under which such funds are made available. 356

Include the following language in the Statement of Managers:

Activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited. This language is intended to bring an end to practices by which organizations perceived as the representatives of the United States in implementing family planning programs in foreign countries are also perceived as prominent supporters of changes in the abortion laws of such countries. Such practices include not only overt lobbying for such changes, but also such other activities as conferences and workshops having among their principal themes the alleged defects in the abortion laws, as well the drafting and distribution of materials calling attention to such alleged defects.

[All other language in section 581 to remain identical to House-passed bill.]

United States Senate
COMMITTEE ON FOREIGN RELATIONS

FAX TRANSMITTAL SHEET

DATE: 2-4

TO: MARA RUDMAN

FAX NUMBER: _____

ADDRESSEE'S PHONE NUMBER: _____

FROM: BRIAN MCKEON

FAX NUMBER: (202)228-3612

SENDER'S NUMBER: (202)224-3953

NUMBER OF PAGES (INCLUDING COVER PAGE): _____

COMMENTS: _____



**FOREIGN ORGANIZATIONS THAT PERFORM OR PROMOTE ABORTION OVERSEAS;
FORCED ABORTION IN THE PEOPLE'S REPUBLIC OF CHINA**

SEC. ____ (a) Section 104 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new subsection:

**(h) RESTRICTION ON ASSISTANCE TO FOREIGN ORGANIZATIONS THAT
PERFORM OR ACTIVELY PROMOTE ABORTIONS-**

(1) PERFORMANCE OF ABORTIONS-

(A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the pregnancy were carried to term or in cases of forcible rape or incest.

(B) Subparagraph (A) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country.

(2) LOBBYING ACTIVITIES- (A) Notwithstanding section 614 of this Act or any other provision of law, no funds appropriated for population planning activities or other population assistance may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not, during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in any activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited.

(B) Subparagraph (A) shall not apply to activities in opposition to coercive abortion or involuntary sterilization.

(3) APPLICATION TO FOREIGN ORGANIZATIONS- The prohibitions of this subsection apply to funds made available to a foreign organization either directly or as a subcontractor or subgrantee, and the certifications required by paragraphs (1) and (2) apply to activities in which the organization engages either directly or through a subcontractor or subgrantee.

(b) Section 301 of the Foreign Assistance Act of 1961 is amended by adding at the end the following new subsection:

(i) LIMITATION RELATING TO FORCED ABORTIONS IN THE PEOPLE'S REPUBLIC OF CHINA- Notwithstanding section 614 of this Act or any other provision of law, no funds may be made available for the United Nations Population Fund (UNFPA) in any fiscal year unless the President certifies that--

(1) UNFPA has terminated all activities in the People's Republic of China, and the United States has received assurances that UNFPA will conduct no such activities during the fiscal year for which the funds are to be made available; or

(2) during the 12 months preceding such certification there have been no abortions as the result of coercion associated with the family planning policies of the national government or other governmental entities within the People's Republic of China.

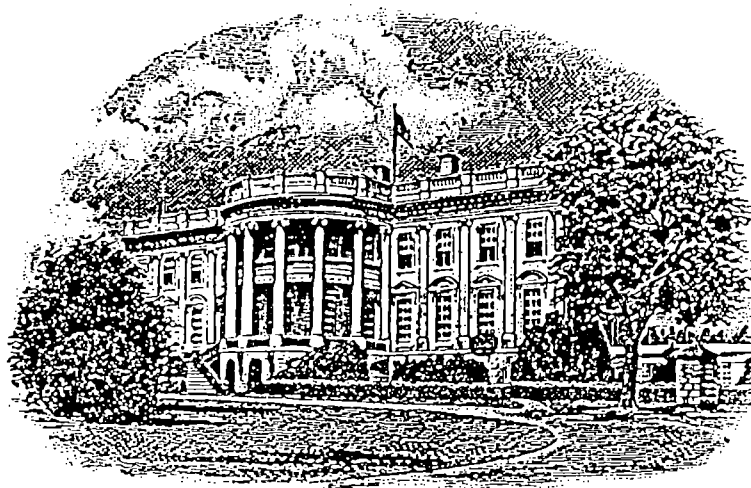
As used in this section, the term 'coercion' includes physical duress or abuse, destruction or confiscation of property, loss of means of livelihood, or severe psychological pressure.

(c) The President may waive the provisions of section 104(h)(1) of the Foreign Assistance Act of 1961, as amended, pertaining to population assistance to foreign organizations that perform abortions in foreign countries, for any fiscal year; Provided, that if the President exercises the waiver provided by this subsection for any fiscal year, not to exceed \$356 million may be made available for population planning activities or other population assistance for such fiscal year; Provided further, that the limitation in the previous proviso includes all funds for programs and activities designed to control fertility or to reduce or delay childbirths or pregnancies, irrespective of the heading under which such funds are made available.

Include the following language in the Statement of Managers:

Activity or effort to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited. Such practices include not only overt lobbying for such changes, but also such other activities as conferences and workshops having among their themes the alleged defects in the abortion laws, as well the drafting and distribution of materials calling attention to such alleged defects.

The White House



Office of Counsel to the President
Facsimile Transmission

Date: _____

To: Congressman Keene

Facsimile Number: _____ Total Pages: 4

From: Bill Marshall

Phone: 202-456-_____

Return Fax: 202-456-7931

Note: ATTACHED ARE TWO DOCUMENTS RELATED
TO MEXICO CITY. I'm LOOKING FORWARD
TO BREAKFAST TOMORROW - BILL

The documents accompanying this facsimile transmittal sheet are intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received the information in error, please immediately notify the sender at the telephone number above.