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U.S. ACTIONS REGARDING IRANIAN AND OTHER
ARMS TRANSFERS TO THE BOSNIAN ARMY, 1994-1995

REPORT

OF THE

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

together with
ADDITIONAL VIEWS



NOVEMBER 1996

*Final
SSCI
Report*

Printed for the use of the Select Committee on Intelligence

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U.S. ACTIONS REGARDING IRANIAN AND OTHER ARMS TRANSFERS TO THE BOSNIAN ARMY, 1994-1995

BACKGROUND

On April 5, 1996, the *Los Angeles Times* reported that "President Clinton secretly gave a green light to covert Iranian arms shipments into Bosnia in 1994 despite a United Nations arms embargo that the United States was pledged to uphold and the administration's own policy of isolating Tehran globally as a supporter of terrorism."¹ The Committee began an inquiry into the matter on April 7, 1996. This report summarizes the Committee's findings and recommendations.

NATURE OF THE INTELLIGENCE COMMITTEE'S INQUIRY

The Committee has held three public hearings, four closed hearings and six informal sessions. Testimony has been taken from: Director of Central Intelligence John M. Deutch; former Director of Central Intelligence R. James Woolsey; Deputy Secretary of State Strobe Talbott; former Assistant Secretary of State Richard Holbrooke; the Honorable Charles E. Redman (U.S. Ambassador to Germany and former Special Envoy to the Former Yugoslavia); the Honorable Peter W. Galbraith (U.S. Ambassador to Croatia); three other persons who served in the U.S. Embassy in Zagreb in 1994-1995; and legal officials from the Department of State and Department of Defense. Informal sessions have been held with some of the above persons and with: Secretary of Defense William Perry; Chairman of the Joint Chiefs of Staff General John Shalikashvili; Assistant to the President for National Security Affairs Anthony Lake; and Intelligence Oversight Board (IOB) Chairman Anthony S. Harrington. Formal and informal staff interviews have been held with Department of State, Department of Defense and intelligence personnel, and with the chairman and staff of the IOB.

On April 8, 1996, the Committee sent letters to the Secretary of State, the Secretary of Defense, the Attorney General, the Director of Central Intelligence, the Assistant to the President for National Security Affairs and the chairman of

¹James Risen and Doyle McManus. "U.S. OK'd Iran Arms for Bosnia, Officials Say," *Los Angeles Times*, April 5, 1996, p. A1.

the IOB, asking them to provide relevant materials to assist in the Committee's inquiry. These letters were supplemented by oral and written requests in the ensuing weeks. The Committee's staff has been able to review substantial material provided by the Central Intelligence Agency (CIA) and the National Security Agency (NSA) and smaller, but significant, amounts of material provided by the Department of State and Department of Defense (including finished intelligence products of the Defense Intelligence Agency), as well as some National Security Council documents. Even in October, over five months after the Committee's requests, departments and agencies continued to locate more documents responsive to those requests. This report presents the Committee's findings as of late September, shortly before the 104th Congress adjourned *sine die*.

In May 1996, the Committee sent letters to the Secretary of State, the Secretary of Defense, the Attorney General and the Director of Central Intelligence making clear that its interest extended beyond Iranian arms flows to Bosnia, to include arms shipments from other Islamic countries. On June 20, the Committee sent the Assistant to the President for National Security Affairs a lengthy list of document and interview needs. The NSC, CIA and the Departments of State and Defense attempted to compile still further documents responsive to the above requests. Response times have been slow, however, due largely to the volume of material that would have to be reviewed.

The Committee now judges that it is more important to issue a timely report to the American people on its findings and recommendations than to wait many more weeks or months for fuller information. More may be learned later on such matters as Ambassador Holbrooke's conversations with Bosnian and Croatian officials in September 1994, Defense Department actions to ensure that no improper assistance was provided to Bosnia or Croatia, and any U.S. discussions on Bosnia that may have occurred with Islamic countries other than Iran that were supplying arms to Bosnia.

The Committee has had discussions with White House officials regarding the status of National Security Council (NSC) and IOB documents, as well as certain materials referred to the White House by other agencies because they might be susceptible to an assertion of executive privilege. The Committee reminded the White House by letter of May 1, 1996, that executive privilege has been narrowly construed by the courts and that any claim of executive privilege must be made by the President himself on a document-by-document basis. The White House has yet either to claim executive privilege or to afford access to such materials as the IOB's report on its investigation, although a number of

documents were either shown or briefed to Committee staff or briefed to the Chairman and Vice Chairman. The Committee has not pursued this matter through any judicial process because such an effort would make it impossible to issue a timely report.

THE DEVELOPMENT AND CONSIDERATION OF COVERT ACTION

Ever since 1974, when the Hughes-Ryan amendment to the Foreign Assistance Act of 1961 was enacted, a presidential finding has been required to authorize covert actions by the CIA. Executive orders since 1978, as well as the new Title V added to the National Security Act of 1947 in 1991, effectively brought non-CIA covert action activities under the same regime. For over twenty years, then, the development and consideration of covert action proposals has been based upon a publicly-mandated White House (i.e., a National Security Council) decision process.

Since 1991, that decision process has been further specified in Title V of the National Security Act of 1947. Except in emergencies, when oral findings may be used for up to 48 hours, presidential findings must be in writing and may not confer retroactive authorization for covert activities. Findings also must specify each U.S. Government entity that will participate in any significant way in a program's implementation, must state whether any third party will participate in the program in any significant way, and may not authorize any violation of the Constitution or any U.S. statute.

There are no laws, however, specifying in any greater detail how the Executive branch should handle the process of considering and adopting presidential findings. Executive orders have sometimes specified particular officials who must be involved in this process, but the current order, Executive Order 12333 (1981), does not do so. Thus, the manner in which covert actions shall be proposed, developed and considered is a matter of Executive branch policy.

Discussions between State Department and intelligence personnel in 1993 and early 1994 demonstrated some confusion over the covert action approval process. One ambassador's comments appear to have left the impression that the ambassador did not know about the legal requirement for a presidential finding. One CIA officer, in turn, asserted a prohibition on CIA proposals of covert actions. While it might be wise to require that policy officials request the development of covert action options, CIA officials can, in fact, propose covert action initiatives to their policy counterparts in the NSC process.

The Committee found evidence of the preparation of covert action options by CIA and the Department of Defense in the summer and fall of 1994, but no evidence of any formal NSC-level deliberation on those covert options, although interviewees stated that there may have been inter-agency discussion on the fringes of formal meetings. There was a general paucity of documentation from agencies other than CIA, which made it difficult to determine how policy agencies viewed or handled these covert action options. The Committee knows from CIA documents that DCI Woolsey was encouraged by Agency personnel to oppose covert action options, but does not know whether he and other high officials rejected the covert options separately or handled (and rejected) them through informal discussions outside the formal NSC process. This lack of clear documentation is a serious concern. Without a paper trail, it is too easy for the policy process to be short-circuited and too difficult to maintain accountability.

Assistant Secretary Richard Holbrooke's efforts to assist the Bosnian Muslims illustrate how easily officials can come close to the line between traditional diplomacy and covert action. Ambassador Holbrooke supported an option (which was later rejected by Secretary of State Warren Christopher and the National Security Adviser) in which the Bosnian Government would accept a six-month suspension in any lifting of the arms embargo, in return for U.S. encouragement of third countries to violate that embargo and send more military equipment to Bosnia. There were allegations (which Ambassador Holbrooke denied) that he also discussed with foreign officials an option in which the United States would covertly provide funding and/or materiel to the Bosnian army.

Ambassador Holbrooke and other officials insist that *no aid was promised or provided to Bosnia or Croatia*. The Executive branch has not provided any documentation of Ambassador Holbrooke's conversations in early September 1994, however, although the NSC Staff did brief the Committee on documents regarding some discussions that he held later in that month. Based on this limited record, the Committee could not determine whether U.S. officials offered either support in implementing a larger arms pipeline or a *quid pro quo* to Croatia for agreeing to such increased arms shipments. The Committee found no evidence that the United States ever provided such support or any *quid pro quo* to Croatia, or encouraged any country other than Croatia to provide arms or military assistance in violation of the arms embargo, despite the fact that on September 27, 1994, Bosnia did publicly call for a United Nations resolution lifting the arms embargo that would incorporate a six-month delay. (Such a resolution was never adopted.) There is documentation of one instance in which a senior U.S. Government official in Croatia told a Croatian official that the United States did

not want Croatia to discontinue certain military resupply efforts in Bosnia, and there are unproved allegations of other similar instances.

An August 1994 trip to Bosnia by the Director of Strategic Plans and Policy (J-5) on the Joint Staff of the Joint Chiefs of Staff illustrates how close U.S. officials came to crossing the line between exploring options with foreign officials and offering U.S. covert action. The American officer, in separate discussions with the head of UNPROFOR and with Bosnian leaders, including President Izetbegovic, moved seamlessly from exploring the implications of a unilateral lifting of the embargo to the question of whether one could rely upon the clandestine flow of embargo-breaking arms and thus avoid UNPROFOR's departure. The officer told the Committee that he had viewed this as an exploration of overt policy options; he had no authority to develop covert action options. But in one of the meetings the J-5 *expressed a willingness* to encourage greater third-party arms flows in violation of the U.N. arms embargo and/or to engage directly in covert embargo-busting. The officer twice told the Bosnian officials that he had no authority to promise anything, but the positive tone of his remarks on covert embargo-busting may well have given those officials a stronger impression than he intended.²

In 1995, by contrast, Executive branch consideration of covert action options was implemented in a much more orderly fashion. The options fed into a more regular process of inter-agency deliberation (and, as in 1994, were rejected). The covert action options of 1995 were clearly identified as such. Policy makers therefore discussed them with full knowledge of their legal obligations.

In 1994, however, rightly or wrongly, such options as the "no instructions" policy³ and the "Holbrooke initiative" *were not perceived as being covert action*. Policy makers therefore felt no legal obligation to use a formal decision process, to keep records of their decisions and actions or to seek legal counsel. They apparently also saw no need to involve the Secretary of Defense or the DCI in the decision or even to explain clearly what had been done. This

² As far as the Committee can determine, the U.S. Government did not implement any of the arms flow ideas explored by the J-5 in this meeting.

³The "no instructions" decision of April 1994, which is discussed later in this report, was to have U.S. Ambassador Peter Galbraith tell the President of Croatia that he had no instructions regarding U.S. reaction to the proposed resumption of Croatian transshipment of arms -- mostly from Iran -- to the Bosnian Muslims.

attitude toward the "no instructions" policy continued in 1995, when no policy official questioned the wisdom of inspecting arms that Croatia had seized on their way to Bosnia.

AVOIDING UNAUTHORIZED COVERT ACTION

CIA's reaction to talk of covert actions was largely defensive. The Agency is a generally cautious institution regarding covert action, especially among personnel who handle European or Eurasian affairs. In the wake of intermittent scandal over more than two decades, most CIA personnel want covert actions to be handled by the book, pursuant to explicit presidential and policy maker direction. Legal strictures in Title V of the National Security Act of 1947 and in Executive Order 12333 are reinforced by the memory of Iran-Contra and the sense that any out-of-channels activity is dangerous, if not illegal.

CIA contributions to the routine development and consideration of covert action options illustrate the Agency's institutional caution. In the summer of 1994, CIA personnel told the DCI that a covert operation would be costly and could not be kept secret for long. In 1995, CIA personnel again recommended that the DCI strongly oppose covert aid. These actions do not reflect an institution eager to take on covert action responsibilities.

CIA's institutional caution was equally evident in late 1993 and early 1994, when a senior U.S. Government official in Croatia indicated interest in a covert action to aid the Bosnian Muslims. At one point, the senior U.S. official suggested a covert action program in which the United States would let Croatia know that we would look the other way if they would let arms for the Muslims transit their territory on terms arranged between Zagreb and the parties involved. The senior U.S. official suggested that the Iranians could be the suppliers. A CIA official responded that such a proposal would have to come from the top down (i.e. from the NSC or White House), and also noted a series of policy concerns that such a covert action would raise. CIA added that those aspects of the proposal disguised to hide the U.S. hand would place it squarely into the covert action area. Executive branch lawyers would later be far from certain that such encouragement to a third party would constitute covert action, arguing that only actually supporting the foreign action through assistance, direction, direct participation or the like would constitute "covert action" under the law; but CIA officials erred on the side of caution.⁴

⁴See, however, the Committee's discussion later in this report of applicability of the National Security Act of 1947.

When the issue of looking the other way at Iranian arms flows through Croatia arose again in April 1994, this time as a question from Croatian President Franjo Tudjman, one CIA officer wondered, in an internal document, whether the U.S. Ambassador had encouraged Croatia -- if not Iran -- to adopt this approach. As far as the Committee can determine, the CIA officer was mistaken in this regard. Bosnian efforts to secure arms from third parties were well known, and there had been a previous history of Croatian transshipment of Iranian and other arms before the Croats and Bosnian Muslims had turned to fighting each other. It did not require any U.S. suggestion for this issue to arise after the fighting between Muslims and Croats ended. The Committee has found no evidence, moreover, of any U.S. officials having contact with Iranian officials. But the CIA's concern was legitimate, and was further fueled when one policy official asked intelligence personnel to engage in an activity that CIA concluded would have been illegal in the absence of a covert action finding. The official's request was rejected, and CIA became especially attentive to actions that might constitute an illegal covert action activity.

There have been both public and private allegations that CIA was "spying on" Department of State personnel.⁵ While CIA's concerns may have been overwrought, so are the allegations against the Agency. CIA was watching an issue that involved both intelligence and policy; there had already been attempts to involve the Agency in policy formulation or implementation; and CIA documents show that Agency personnel believed that illegal activity on the part of U.S. officials might be taking place. As far as the Committee could determine, moreover, CIA did not clandestinely spy on State Department personnel.

CIA's concerns led DCI Woolsey, on May 5, 1994, to question National Security Adviser Tony Lake, Secretary of State Warren Christopher and other officials about U.S. policy toward arms shipments. Deputy Secretary of State Strobe Talbott testified to the Committee that at the May 5, 1994, meeting, he explained to Director Woolsey "the essence of what had been decided" -- the U.S. response to Croatian President Tudjman's question and the rationale for that response. Testimony, interviews and CIA documents show, however, that neither Director Woolsey nor other participants in the meeting gained an understanding in the May 4 meeting that the United States Government had made an explicit

⁵See, for example, Tim Weiner and Raymond Bonner, "Gun-Running in the Balkans: C.I.A. and Diplomats Collide," *The New York Times*, May 29, 1996, p. A1; and Walter Pincus and David B. Ottaway, "Hill Panels May Enter Controversy Over CIA Action on Croatia Envoy," *The Washington Post*, June 2, 1996, p. A12.

decision not to oppose Croatian transshipment of Iranian arms shipments to Bosnia and that the "no instructions" instruction was an embodiment of that decision. Thus, Director Woolsey testified to the Committee, "I was never told that there had been any change in U.S. Government policy on this matter."

Much confusion might have been averted if Deputy Secretary Talbott or other State Department officials had adequately explained to Director Woolsey the new policy and their intent that Iranian arms be permitted to flow to Bosnia and Croatia. It would also have helped if State Department Headquarters had provided clearer instructions to Ambassador Galbraith.

The activities of the Director of Strategic Plans and Policy on the Joint Staff of the Joint Chiefs of Staff and of Ambassador Holbrooke in August-September 1994 prompted renewed concern on the part of CIA and other personnel. At least some of these concerns were, once again, overwrought. Thus, the officer apparently had no intent or authorization to promote a covert action, and reports of NSC consideration of covert actions were inaccurate. U.S. diplomats deny ever offering U.S. funds or equipment to Bosnia or Croatia, moreover, and the Committee has found no evidence that any tangible U.S. support was ever provided or that the United States encouraged any third party to supply arms to those countries.

DCI Woolsey raised these renewed concerns with National Security Adviser Lake, as well as with Assistant Secretary Holbrooke, in October 1994. Director Woolsey's consultation with CIA lawyers and his advice that policy-making officials also seek legal guidance were especially useful. Although Executive branch lawyers concluded that no illegal activity had occurred, they highlighted how diplomatic discussions might quickly come close to the line. This, in turn, appears to have contributed to the conclusion by Secretary Christopher and the National Security Adviser that the United States should not actively encourage other countries to send arms into Bosnia.

Director Woolsey's concerns also led the White House to commission an investigation by the President's Intelligence Oversight Board, which began in November 1994 and was completed in May 1995. Although the chairman of the Intelligence Oversight Board appeared before the Committee and, with his staff, met with Committee staff to discuss and answer questions on the IOB investigation, the Committee was not permitted to see the IOB's report to the President. The Committee has been told that the IOB investigation focused on three particular questions: whether, in light of Ambassador Galbraith's and Ambassador Redman's comments to President Tudjman in April 1994, they had

provided direct assistance for arms shipments to Bosnia; whether either ambassador had intervened with Croatian officials to secure the release of an arms convoy in May 1994; and whether Ambassador Galbraith or Ambassador Holbrooke had offered arms or funding to Bosnia or Croatia (in light of concerns raised by CIA in October 1994). The IOB could not reach definitive conclusions as to what, in its judgment, had occurred in these episodes, but its report set forth what had probably occurred: no improper encouragement to President Tudjman; no intervention to help a convoy by Ambassador Galbraith, but probable intervention by Ambassador Redman without any belief that the convoy carried arms; and no offer of arms or funding in September 1994. The report included no specific recommendations, although it did contain some mild criticism of various agencies' conduct. Conclusions as to the legal implications of the IOB's findings were reportedly left to the White House counsel, who consulted with the chairman of the IOB and concluded that no U.S. actions constituted covert action or, therefore, required a presidential finding or congressional notification pursuant to section 503 of the National Security Act of 1947.

THE USE OF SECRET DIPLOMACY

Deputy Secretary of State Talbott testified to the Committee that policy makers in 1994 faced a difficult situation. They believed that the Bosnian Government was "on its last legs militarily and in some ways politically," and that it needed more arms to hold out against Serbian attacks (although U.S. intelligence agencies tended to believe that most of the Government of Bosnia's territory could be held without such assistance). They saw multilateral lifting of the arms embargo as impossible, given the fear on the part of European governments that this would lead to a wider war and threats to the safety of UNPROFOR forces. They feared that unilateral renunciation of the embargo would have the same effect, as well as violating the U.N. Charter by "actively and unilaterally supporting a violation of the arms embargo" and causing "severe strains with our allies who had troops on the ground in Bosnia as part of UNPROFOR and who naturally were giving priority to the safety of their own people on the ground." They considered the prospect of Bosnia and Croatia relying primarily upon Iran for military goods and assistance to be the most significant "downside." But, Ambassador Holbrooke testified to the Committee, "when the patient is on life support systems, you make sure that the oxygen gets through to the patient first. Then you worry about the source of the oxygen." And U.S. policy makers feared that if the United States were to encourage other countries -- no matter how quietly -- to themselves violate the embargo so as to reduce the Iranian role, the word would get out regarding U.S. encouragement and the results would be the same as if the United States had openly renounced the

embargo.

President Tudjman's question in April 1994 presented a challenge to U.S. policy makers, but they also saw it as an opportunity. By simply saying nothing, or by telling President Tudjman that the United States had nothing to say, the United States could refrain from encouraging violations of the embargo, but also refrain from stopping the flow of arms that it believed was essential to Bosnia's survival. It was also essential, however, to keep this policy secret so as not to prompt either Serbian reprisals or severe European reactions (such as a pull-out of UNPROFOR). Executive branch officials, and notably the National Security Adviser, decided that the best way to do this was to keep the "no instructions" decision very secret and to maintain no written record of its implementation.

According to the National Security Adviser, the decision on how to respond to Croatia's April 1994 query was made by the President, after being briefed by Mr. Lake and with the knowledge and support of senior State Department officials. But the Department of Defense and the CIA were not involved in that decision; and although subsequent development and consideration of policy options involved the full range of foreign policy and national security agencies, the "no instructions" policy was carried out principally, if not wholly, by Department of State personnel. Thus, discussions of the Iranian arms shipments in the Principals Committee of the NSC (notably in May 1994) left out any mention of the "no instructions" instruction. And Deputy Secretary Talbott did not explain the implications of the "no instructions" policy to DCI Woolsey when they met on May 5, 1994.

No written instructions were sent to Ambassador Galbraith on how to answer Croatian President Tudjman's question; rather, a Deputy Assistant Secretary of State called him on April 28, 1994, to relay the "no instructions" order and an NSC staffer who spoke with him the next day confirmed that those remained his instructions. National Security Adviser Lake told Ambassador Redman in early May, 1994, that it would not be necessary for him or Ambassador Galbraith to compose a cable on their implementation of the "no instructions" instruction. Deputy Secretary of State Talbott told Ambassador Galbraith on May 6, 1994, that a cable would be in order, but not until the Assistant Secretary or his deputy got back to Galbraith -- which was never done. The only detailed record of how the "no instructions" policy was implemented is contained in a memorandum for the record that Ambassador Galbraith wrote on May 6, 1994, and placed in his own files, which is also countersigned by his Deputy Chief of Mission.

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The consequences of these actions were, on one level, a complete success. While other countries and, indeed, the foreign and domestic press spoke of the United States turning a blind eye to Iranian arms flows, neither the Serbs nor the Europeans took the actions that the United States had feared would breed a wider and bloodier war.

The *unintended* consequences of this secrecy were also substantial, however. The failure to give Ambassador Galbraith written instructions led to what some officials saw as a security breach -- the ambassador's April 29 cable to State Headquarters on his first transmission of the "no instructions" reply to President Tudjman -- because Ambassador Galbraith did not understand that "no instructions" had, in fact, been adopted as U.S. policy. The lack of a written policy and the failure of policy makers to explain the "no instructions" decision clearly to DCI Woolsey led to continued CIA sensitivity to, and reporting on, the possibility of an illegal covert action, which itself led to State Department distrust of CIA personnel. The failure to inform the Joint Staff led to occasional confusion among high-ranking U.S. officers in Europe regarding whether there was a covert action program to support the Bosnian Government. Finally, on February 2, 1996, the NSC press office prepared inaccurate press guidance that the United States had "always" made clear we expected other countries to abide by the arms embargo.

The failure to keep other Executive branch officials properly informed of U.S. policy was accompanied by the failure to inform Congress. The Committee was not notified of the U.S. "no instructions" decision or of any subsequent actions to encourage the flow of arms to Bosnia.⁶ The Committee is not aware of any such notice to any other committee of the Senate or the House of Representatives, moreover, although the U.S. Ambassador to Croatia testified that as early as the summer of 1994, he told congressional visitors to Zagreb that the United States was not objecting to arms shipments. Aside from its legal implications, this failure to inform was surely unwise. At a minimum, the appropriate committees should have been informed of the "no instructions" policy. This was, by the Administration's own admission, a significant event. It was not traditional diplomatic activity.

The Central Intelligence Agency and other intelligence agencies were aware of Iranian arms shipments to Bosnia and reported regularly on them.

⁶Since the Executive branch never formally approved any covert action program to help the Bosnian Government, there was also no notification of Congress pursuant to section 503 of the National Security Act of 1947.

Appropriate committees of Congress received that reporting by early June 1994, if not sooner. Briefings of the Senate Intelligence Committee included straightforward discussion of the Iranian and other arms flows. No questions were asked regarding U.S. policy toward the arms flows, however, and no information was volunteered by intelligence briefers regarding the unannounced U.S. policy.

By keeping from Congress the full truth about U.S. policy, the Executive branch effectively limited Congress's ability to responsibly debate and legislate on the Bosnia issue. Congress was intensely interested in the Bosnia situation and was often sympathetic to the Executive branch's concerns about the situation; in the end, it passed legislation that closely paralleled the Executive branch's desire to let Bosnia get arms without openly violating the United Nations Charter. Without a clear understanding, however, of what the United States was, in fact, doing in the region, Congress came perilously close to passing precisely the legislation that the Executive branch wanted to avoid.

The activities of Ambassador Holbrooke in September-October 1994, including his role in promoting the "Holbrooke initiative" (which he testified was actually proposed by Bosnian Prime Minister Haris Silajdzic), appear to have been only partially documented. Some meetings discussed in other agencies' reporting are not covered in diplomatic cables provided to this Committee, and while Ambassador Holbrooke has testified that all his actions on this matter were taken with the approval of Secretary of State Warren Christopher, the Department of State has not provided the Committee any documentation supporting that assertion. Ambassador Holbrooke did not seek legal review of his ideas, moreover, until DCI Woolsey suggested this in early October 1994, over two weeks after Holbrooke's discussions with visiting Bosnian and Croatian officials. The absence of written instructions or legal guidance bred a situation in which errors could readily occur and little mistakes could get out of hand. If this did not occur, it may have been due as much to the DCI's intervention as to the skill and care of State Department officials.

Finally, U.S. acceptance of Iranian arms flows to Bosnia and Croatia led to some difficult -- although, in the view of Ambassador Holbrooke and other officials, not unmanageable -- foreign policy consequences. While U.S. intelligence does not indicate that Iran increased its personnel in Bosnia as a result of its resumed arms role in 1994-1995, the Iranians surely did maintain and probably increased their influence in Bosnia. Iranian personnel trained Bosnians as well as supplying arms to them, and ties were forged with officials in the ruling party that reinforced Bosnia's transition from a multi-ethnic government

to one in which Moslem separatism parallels the ethnic stridency of the principal Bosnian Croat and Serb parties. In addition, Croatian officials for a time found it hard to reconcile U.S. support of Iranian arms flows to Bosnia with continued U.S. support for other United Nations arms embargoes (such as that against Libya) and opposition to Iranian support for terrorism. They remained less supportive of U.S. policy in these regards than one would wish until the increased U.S. role in NATO airstrikes and the peace talks gave Croatian officials more confidence that they could afford to alienate Iran.

ALLEGATIONS OF GREATER U.S. INVOLVEMENT

The Committee examined three episodes that were covered in the IOB investigation, in which U.S. involvement in the arms flow to Bosnia was alleged to have gone beyond the "no instructions" policy: Ambassadors Galbraith and Redman's comments to President Tudjman in April 1994; whether either ambassador had intervened with Croatian officials to secure the release of an arms convoy in May 1994; and, as discussed earlier in this report, whether Ambassador Galbraith or Ambassador Holbrooke had offered arms or funding to Bosnia or Croatia in September 1994. The Committee also inquired into the September 1995 U.S. inspection of rockets seized by Croatia.

Testimony to the Committee confirmed published reports that when Ambassador Galbraith delivered the "no instructions" message to Croatian President Tudjman in April 1994, he told him to note what he did not say, as well as what he did say. Ambassador Redman later told President Tudjman that the United States did not want to have to say "no" to the latter's question regarding the transshipment of arms into Bosnia. While these comments could be seen as going beyond the "no instructions" instruction, U.S. policy makers and the IOB concluded that they had not done so.

Committee witnesses and interviewees left open the possibility that Ambassador Redman (but not Ambassador Galbraith) had intervened at least to make Croatian officials aware that the detention of a Bosnian convoy by Bosnian Croats was having an impact on negotiations between Bosnia and Croatia in Vienna. The documentary record suggests, however, that Ambassador Redman, like Ambassador Galbraith, in fact *may not* have intervened in this matter. The Committee was also unable to find convincing evidence that the convoy contained arms, although that cannot be ruled out.

Regarding the September 1995 U.S. inspection of rockets that Croatia had seized on their way into Bosnia, Ambassador Holbrooke testified that Croatian

officials feared the rockets might have chemical-weapons warheads. The Committee examined this incident to determine whether U.S. activities relating to it constituted covert action undertaken without a presidential finding or required congressional notification under sections 501, 502 or 503 of the National Security Act of 1947. Witnesses and interviewees gave somewhat divergent accounts of the matter, and the documentary record provided to the Committee did not provide a complete account of U.S. decisions and actions. The Committee was unable to determine, in particular, whether U.S. officials undertook or used this inspection so as to encourage the flow of arms to Bosnia.

The Committee also inquired into several allegations that the U.S. military and/or the CIA were involved in improperly aiding the Bosnian Muslims, including allegations made by UNPROFOR and UN troops and by French, British and/or other European officials. Most of these charges were circulated in Europe and reported in European and American newspapers. The allegations included the following:

- (1) In March 1994, the French alleged that U.S. airdrops into Bosnia included arms;
- (2) A series of accounts alleged U.S. military and CIA involvement in covertly aiding the Bosnian Muslims appeared in Europe and later in American newspapers. A *London Times* article of August 14, 1994, titled "CIA plans to arms Bosnian Muslims," reported that "President Clinton ordered the Central Intelligence Agency (CIA) and the Pentagon to prepare a covert arms pipeline and weapons training programme for the Bosnian Muslims;" a November 1994 article in *The European*, a British weekly, claimed that EUCOM Deputy Commander General Charles Boyd had worked out a covert assistance program during a visit with the Bosnian Army's 6th Corps commander in the city of Gornji Vakuf;
- (3) On February 10 and 12 1995, UNPROFOR (United Nations Protection Force in Bosnia) personnel reported that mysterious late-night flights of single-engine and multi-engine transports landed at airfields in Tuzla and off-loaded large amounts of materiel;
- (4) Europeans claimed that a private American company of retired U.S. military officers, Military Professional Resources of Alexandria, Virginia, contracted first with the Croatian government and then with Bosnian Muslims to "promote leadership development" and was, in fact, acting on behalf of the U.S. Government;

(5) A team of retired U.S. officers led by retired General John Galvin, which trained senior staff of the Muslim-Croat army, was alleged to be acting on behalf of the U.S. Government; and

(6) Armed military personnel dressed in American uniforms (and, in some reports, with difficult-to-obtain U.S. military equipment), as well as U.S. special forces personnel, were reported to have been seen in Bosnia at various times.

Finally, one United States Senator recalled that when the Nunn-Mitchell amendment ending U.S. enforcement of the arms embargo against Croatia and the Bosnian Muslims was being considered in a defense authorization conference, Admiral Jeremy Boorda stated that the U.S. Navy picket in the Adriatic Sea was not enforcing the embargo against those countries, but only against the Serbs. As the Senator recalled it, Admiral Boorda said that the Navy was searching only those vessels bound for a port generally associated with arms flows to the Serbian side.

The French allegation of U.S. airdrops appears to be false. Both the Department of Defense and the Central Intelligence Agency investigated this incident and concluded that there was no activity of this sort. These conclusions were supported in informal sessions with Secretary of Defense Perry, Joint Chiefs of Staff Chairman Shalikashvili and National Security Adviser Lake, and in open testimony by former Assistant Secretary Holbrooke. The Committee was unable to find documentation of the internal investigations or to locate Defense Department personnel involved in them, however, so this conclusion is necessarily tentative.

Allegations regarding U.S. military or CIA involvement in the arms flow also appear to be false. The CIA has categorically denied these charges, and personnel who looked into them have confirmed that no evidence of any CIA involvement was found. With regard to the allegation that General Boyd made a secret deal with the Bosnian Muslims in Gornji Vakuf, Ambassador Holbrooke testified that he was with General Boyd on that trip and that there were no secret discussions at all, adding: "I am here again today, under oath, Mr. Chairman, to assure you that the stories were obviously not true. Had they been true, we would have been in violation of the law, and we don't do that sort of thing." The Committee was unable to track down every possible manner in which CIA or other U.S. personnel might have encouraged arms flows, however, without engaging in a much lengthier investigation.

The Department of Defense investigated the Tuzla allegations, both as part of a NATO investigation and for U.S. policy makers. While the documentation of that investigation is scant, its conclusions -- as reported both to the public and, in private briefings, to U.S. officials -- were that there was no air activity that would suggest arms deliveries and certainly no U.S. involvement. DoD and CIA documents on the Tuzla incidents that the Committee has seen, as well as the recollections of both CIA analysts and senior Defense Department officials, strongly support the conclusion that there was no U.S. role in any clandestine military airlifts.

Regarding Military Professional Resources of Alexandria and the Galvin team, the Committee asked the Intelligence Oversight Board what the Board was able to determine about reports of former U.S. military officers engaging in military support activity in Bosnia and Croatia. The IOB responded that it had heard reports of U.S. private citizens engaging in military support activity in Bosnia or Croatia, but found no U.S. Government nexus to those people. General Galvin's 15-man fact-finding mission was accused of engaging in training, but the Board found no evidence of that. This issue was also discussed with numerous witnesses who appeared before the Committee. No one was able to provide any evidence supporting European allegations of covert military support activity by any of these individuals. It must be noted that Military Professional Resources of Alexandria has received a contract to train and equip Bosnian-Croat Federation forces.

The Committee has seen no documentation of Executive branch inquiries or investigations in this matter, however, and has not conducted a full investigation of its own. The Committee has heard an allegation that at least one former U.S. military person who hired himself out as a free-lance trainer in Bosnia may have convinced U.S. personnel, falsely, that he was a U.S. intelligence employee and thereby obtained unusual access within the U.S. Embassy in Sarajevo. CIA has stated -- as did several interviewees -- that the U.S. Government has no relationship with that individual.

The Committee asked several interviewees about allegations from United Nations and UNPROFOR troops that there were armed military personnel dressed in American uniforms and U.S. special forces personnel operating in Bosnia. These included an incident in which a Canadian officer observed "U.S. military personnel off-loading an American aircraft." These reports have not been substantiated. A possible explanation for the sighting of U.S. special forces personnel was provided by Lt. Colonel Richard Herrick, a former U.S. Defense

Attaché in Zagreb, who once made a duty-related visit to the Bosnians in his uniform -- which has a Special Forces badge -- and ran into some UNPROFOR personnel there. Soon thereafter, there was a rumor of a U.S. Special Forces officer training Muslim forces.

Committee staff asked General Wesley Clark, former Director of Strategic Plans and Policy on the Joint Staff, whether he knew of any U.S. Navy policy, or even latitude, before the Nunn-Mitchell amendment went into effect, not to search suspect vessels in the Adriatic that were bound for ports associated with arms flows to Croatia or the Bosnian Muslims. General Clark denied this in the strongest terms and specifically recalled that he had reviewed the blockade instructions in November 1994, in preparation for the entry into effect of the Nunn-Mitchell amendment, and that there had been no leeway for selective enforcement in the instructions. He was confident that, had there been such selective enforcement, he would have known about it. He also firmly believed that U.S. allies would not have stood for such selective enforcement before November 1994.

The Committee did not review U.S. Navy documentation or interview officers who participated in the blockade in 1994, so it cannot resolve the conflict between Admiral Boorda's reported comments and General Clark's recollection. One possible explanation for the comments that Admiral Boorda reportedly made is that after a few ships were seized, very few vessels entered the Adriatic with arms bound for Croatia or the Bosnian Muslims. Thus, while the naval blockade apparently continued to cover all ships suspected of carrying arms to the former Yugoslavia, its impact was probably felt differentially by the Serbian side. Perhaps Admiral Boorda was only trying to make that point.

In sum, the Committee found no tangible evidence that U.S. military forces or the CIA provided material support or training to Croatia or to the Bosnian Muslims. The Committee cannot be totally sure, however, in light of the limited documentary record and the Committee's inability to locate and interview personnel who investigated various allegations.

SIGNIFICANT FACTS AND ANALYSIS REGARDING U.S. ACTIONS

SIGNIFICANT FACTS

The "no instructions" policy: In April 1994, Croatian President Tudjman asked the U.S. Government what its view would be if Croatia resumed transshipment of arms to Bosnia (which U.S. officials knew would come

primarily from Iran). National Security Advisor Tony Lake told the Committee that the U.S. decision to have Ambassador Galbraith reply that he had "no instructions" was taken in the belief that this would likely result in Croatia going ahead with the resumed arms flow, and with that specific intent.

Although the instructions were "no instructions," Ambassador Galbraith also told President Tudjman "to focus not only on what I had said yesterday, but what I had not said." Ambassador Redman later explained that "we don't want to be put in a position of having to say no."

U.S. officials were fully aware that such arms flows would violate United Nations Security Council binding resolutions that the United States had voted for and by which this country was still bound.

The National Security Advisor had the instructions to Ambassador Galbraith transmitted orally, rather than by cable. On May 2, 1994, the National Security Advisor told Ambassador Redman that a cable on his meeting with President Tudjman would not be necessary (which instruction was relayed by Redman to Ambassador Galbraith). On May 6, 1994, Deputy Secretary of State Strobe Talbott told Galbraith that a cable would be in order, but not until the Assistant Secretary or his deputy got back to Galbraith -- which never occurred.

Also on May 6, at the suggestion of his Deputy Chief of Mission, Ambassador Galbraith prepared and kept for himself a memorandum for the record regarding the key events, which the Deputy Chief of Mission countersigned, attesting to its accuracy. This memorandum states that in the May 6 phone conversation between Ambassador Galbraith and Under Secretary Talbott, Ambassador Galbraith explained that "anything short of a statement that the Croats should not facilitate the flow of Iranian arms to the Bosnians would be understood as a US green light." As Galbraith later testified to the Committee, "They would interpret this then that we had not objected, that we had, in essence, given them a green light. No matter what we said, this was how they would in fact interpret it."

Encouragement of Croatian military resupply in Bosnia: A memorandum for the record by a senior U.S. Government official in Croatia indicates that, in early 1995, after consultation with another U.S. official, he encouraged a military resupply effort that Croatia was conducting in Bosnia by reassuring Croatia that any international reaction would be limited and that the United States did not want Croatia to stop.

Inspection of long-range rockets: In late summer of 1995, a shipment of long-range rockets bound for Bosnia was held by the Croats, who, according to U.S. Government cables, threatened to stop transferring any arms shipments to Bosnia. A senior Croatian official approached Assistant Secretary Holbrooke and Ambassador Galbraith with an offer for the United States to inspect the aircraft carrying the "missiles" for chemical warheads. Two such inspections occurred, both involving the use of U.S. Government personnel. They determined that there were no chemical warheads on the rockets, although the rockets were probably capable of being fitted with such warheads.

According to one report, a senior U.S. Government official in Croatia was determined to prevent this incident from leading to a cut-off of arms shipments to Bosnia. A senior Croatian official said that U.S. officials pressured the Croats to release the rockets to Bosnia. A second Croatian official identified the senior U.S. official -- who denied the allegation -- as the person who applied such pressure. According to these allegations, this led to the release of the rockets despite the normal practice of Croatia taking a 30-percent cut of the arms flow.

ANALYSIS

Section 503(e) of the National Security Act defines "covert action" as "an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly." Certain activities are exempted from the definition, including "traditional diplomatic or military activities."

Although the activities surrounding the "no instructions" policy were conducted primarily by diplomats, the Committee believes that the interchange between the United States Ambassador to Croatia and the Croatian President in April 1994 did not constitute traditional diplomatic activity, at least as that term is understood by most Americans.⁷ Traditional diplomatic activity may include

⁷The law does not define "traditional diplomatic activities". The Senate Report on the Fiscal Year 1991 Intelligence Authorization bill (which contained the amendments to Title V of the National Security Act of 1947 adding the definition of covert action) states that this exception in the definition includes:

the use of diplomatic channels or personnel to pass messages and conduct negotiations between the United States and other governments or foreign entities. Traditional diplomatic activities, in this context, include activities long understood and accepted to be diplomatic in nature, including the use of private citizens as intermediaries. They do not include activities that cannot reasonably

secret meetings with foreign heads of state. It is also traditional to consider the conversations during those meetings privileged. Moreover, it may be frequent in that type of diplomatic activity to espouse a policy different from publicly announced policy. But it was not traditional diplomatic activity to: (1) give a response to a foreign head of state which effectively contradicted stated U.S. policy on isolating a country, in this case Iran, against which U.S. law imposed sanctions; (2) implicitly turn a blind eye to activity that violated a United Nations Security Council resolution which the United States had supported and was obligated to obey; and (3) direct a U.S. Ambassador not to make a written report of a conversation with a foreign head of state.

In considering the law on covert action, some may argue that a diplomatic activity is either traditional or a covert action. There are many forms of non-traditional diplomatic activity, however, only one of which is covert action within the meaning of section 503(e) of the National Security Act of 1947, as amended (50 U.S.C. § 413(e)). To be a covert activity, it must influence political, economic, or military conditions where it is intended that the role of the U.S. Government will not be apparent or acknowledged publicly.

Given the facts available at this time, the Committee is unable to reach agreement as to whether the actions of the U.S. Government, in addition to satisfying other elements of the definition in section 503(e), were designed to influence the Croats to allow the flow of Iranian arms into Bosnia, which would constitute a covert action, or simply intended to allow events to proceed without U.S. influence.

It appears that the parties directly involved in the arms shipments had agreed upon this plan without any U.S. involvement. Croatia, Bosnia and Iran each had their own reasons to want to resume this arms pipeline. Based on the information available to the Committee at this time, it seems unlikely that the United States initiated this proposal. Administration officials have admitted that

be considered to be diplomatic in character, despite characterizations by some administration officials, such as the covert sales of arms to Iran. Such an operation went well beyond the traditional and accepted definition of diplomacy because of the means employed (e.g., financial transactions).

This language does not answer the question of whether U.S. actions regarding the "no instructions" policy constituted traditional diplomatic activities. Clearly not every use of diplomatic channels or personnel to pass messages is exempt from being judged a covert action under the law. A diplomatic conversation in which, for example, a third party is given instructions for undertaking a covert action on our behalf is not exempt from the definition merely because it is implemented by a diplomat.

they were concerned about the military situation in Bosnia, but they have testified that they did not want to encourage any countries to supply arms in violation of the embargo for fear that such an action would cause our allies to withdraw their troops. When Croatian officials brought the proposed arms flow to the attention of U.S. officials, they did not ask whether they should go forward, but simply whether the U.S. would object. Ambassador Galbraith apparently urged Washington to send a clearer signal of encouragement, but his proposal was not accepted. If U.S. policymakers believed the arms would flow without any need for U.S. encouragement, their response of "no instructions" can be seen as simply a decision not to intervene to stop the flow. No encouragement was needed.

On the other hand, there is little doubt the United States wanted the arms flow to proceed. They may have viewed the Croatian request as an indication that the Croats would not proceed without encouragement from the United States, in which case their response of "no instructions" would provide that encouragement while preserving deniability for the U.S. Government. This view is buttressed by the conversations, following the delivery of the "no instructions" response, in which Ambassadors Redman and Galbraith urged President Tudjman to listen to what was not said and told him that the United States did not want to have to say no. One policy official's request to U.S. intelligence to bolster the message through its own channels also seems to reflect a concern that Croatia needed additional encouragement. In the end, U.S. officials seem to have decided that "no instructions" was indeed sufficiently encouraging, with Ambassador Galbraith saying it would be perceived as a "green light."

The U.S. decision to send personnel to Croatia to inspect rockets bound for Bosnia is similarly subject to varying interpretations. It may have been simply a straightforward effort to determine whether chemical weapons were being shipped into Bosnia. It was certainly, at least in part, an opportunity to examine a rocket in which the United States had some interest. But it may also have been designed to ensure that Croatia would not shut down the arms pipeline.

The Committee was particularly troubled by documents provided by the State Department in late August and September. Not only do these documents raise questions as to what additional relevant information may remain undiscovered, they also contain new information about U.S. actions. For example, one of these documents is a memorandum recording a senior U.S. official in Croatia's conversations with a Croatian official in early 1995 regarding a military resupply effort that Croatia was conducting in Bosnia. The Croatian official described this ongoing effort and expressed concern over possible international reaction. The U.S. official consulted another U.S. official

and then reassured the Croatian official that any such reaction would be limited. When the Croatian official said that his country could not afford to stop the military resupply effort, the U.S. official replied that the United States did not want Croatia to stop.

The Croatian official clearly wanted to continue the resupply effort and did not appear to need any encouragement from the U.S. official. On the other hand, the U.S. official did encourage him and it appears the United States was prepared to take action to limit international reaction to the resupply effort. Whether they actually did take any such action is unknown.

In the end, the Committee was unable to reach agreement, given the available facts, as to which of these interpretations of the events surrounding the "no instructions" policy is more accurate: that U.S. actions, in addition to satisfying other elements of the definition in section 503(e) of the National Security Act of 1947, were intended to influence the Croats to allow the flow of Iranian arms into Bosnia, which would constitute a covert action; or that they were simply intended to allow events to proceed without U.S. influence. While additional facts or time may provide a basis for agreement in the future, the Committee is not reaching a conclusion on this issue at this time in the interest of coming out in a timely fashion with a bipartisan report that informs the public of the facts uncovered by this inquiry and provides guidance and recommendations for future action.

APPLICABILITY OF THE NATIONAL SECURITY ACT OF 1947

In the course of the Committee's inquiry into the events surrounding the flow of Iranian and other arms into Bosnia, some current and former Executive branch officials have made statements which the Committee believes do not reflect accurate interpretations of the laws governing intelligence activities. For example, some witnesses have asserted that the requirement in Title V of the National Security Act of 1947 for the President and agency heads to "ensure that the intelligence committees are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity" does not impose an obligation to notify Congress of any of the intelligence information produced by those intelligence activities. This unreasonably narrow reading of the statute is not consistent with the general understanding of the applicable provisions or with past practice. This Committee cannot be fully and currently informed of intelligence collection activities if it is not provided insights into the information those activities produce. How much of that information must be provided to Congress is an issue that the committees and

the Director of Central Intelligence have worked out over the years and that continues to be refined as the interests and needs of the oversight bodies change over time.

In addition, in the course of the Committee's inquiry, some Executive branch officials have asserted that a request to another country to conduct a covert action on behalf of the United States would not constitute a U.S. covert action under Section 503 of the National Security Act of 1947, as amended. They base this argument on the fact that, as originally passed by Congress as part of the Intelligence Authorization Act for Fiscal Year 1991, section 503 contained a provision in the definition of "covert action" stating that U.S. requests to third countries to conduct a covert action on behalf of the United States would be deemed to be a covert action, but the provision was dropped after then-President George Bush pocket-vetoed the bill based in part on his objection to the provision. Executive branch officials argue that the absence of the so-called "third party request" provision in the version of section 503 that was later enacted means that U.S. requests to third parties to take certain actions do not constitute a U.S. covert action. This Committee does not agree that the effect of the Bush veto was to exempt all U.S. requests to third parties from the law regarding the approval and reporting of covert actions.

The Committee notes that the definition of "covert action" in section 503 was part of an extensive revision of the intelligence oversight provisions in Title V of the National Security Act. These revisions were intended to clarify and tighten the law governing covert actions in the aftermath of the Iran-contra scandal. The "third party request" provision was added in conference by House conferees and was intended "to prevent the conduct of a covert action at the specific request of the United States that bypasses the requirements for Administration review, presidential approval, and consultation with the intelligence committees."

In a November 30, 1990, Memorandum of Disapproval setting forth his reasons for refusing to sign the Intelligence Authorization Act for Fiscal Year 1991, President Bush stated that he was:

particularly concerned that the vagueness of this [third party request] provision could seriously impair the effective conduct of our Nation's foreign relations. It is unclear exactly what sort of discussions with foreign governments could constitute reportable "requests" under this provision, and the very possibility of a broad construction of this term could have a chilling effect on the ability of our diplomats to conduct

highly sensitive discussions concerning projects that are vital to our national security.

Thus it appears that what was at issue was not whether actual formal requests to third parties would constitute a covert action but, rather, what kinds of discussions might be deemed to constitute a request. The Chairmen of both congressional intelligence committees had previously written to the President to state that the provision was not intended to preclude "informal contacts and consultations which would be required prior to the United States officially requesting a third country or private citizen to undertake such [covert action] activities on its behalf." Apparently, however, President Bush was not sufficiently reassured by this letter to overcome his concern regarding the statutory language.

Subsequent attempts to refine the legislative language to clarify this aspect of the definition of covert action failed. When a second version of the Intelligence Authorization Act, Fiscal Year 1991 was passed by Congress on July 31, 1991, neither the final bill nor the accompanying conference report addressed the issue of third party requests. Instead, the conference report stated that:

the conferees...do not intend that the new definition exclude any activity which heretofore has been understood to be a covert action, nor to include any activity not heretofore understood to be a covert action. The new definition is meant to clarify the understanding of intelligence activities that require presidential approval and reporting to Congress; not to relax or go beyond previous understandings.⁸

The Committee does not agree that this legislative history should be interpreted as evidence that requests to third parties to conduct covert action are not covered by the definition of covert action. There is a legitimate concern that the definition of covert action should not include preliminary discussions with foreign countries that are not designed to influence events, but merely to explore feasibility, potential willingness, and the like -- such as have been acknowledged by Ambassador Holbrooke. This does not mean, however, that an actual request to a third country, whether explicit or conveyed through indirection, would never be a covert action. In the Committee's view, the Bush veto did not have the effect of creating an exclusion for an activity that would otherwise be a covert action, merely because it is implemented through a request to a third country.

⁸*Intelligence Authorization Act, Fiscal Year 1991, Conference Report, House of Representatives Report No. 102-166, 102nd Cong, 1st Session, July 25, 1991, p. 28.*

INTERNATIONAL LEGAL IMPLICATIONS

On September 25, 1991, the United Nations Security Council, acting under Chapter VII of the U.N. Charter, adopted Resolution 713, imposing a "general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia." Resolution 713 was subsequently applied to all former Yugoslav republics, including Croatia and Bosnia-Herzegovina, even after these states became members of the United Nations as independent countries in May, 1992. On December 15, 1991, the Security Council established a sanctions compliance committee, made up of members of the Security Council, to review reports on member states' implementation of the arms embargo, consider information regarding violations of the embargo, and recommend to the Security Council appropriate measures in response to embargo violations. Resolution 724 called upon all states to cooperate fully with the sanctions compliance committee on overseeing the effective implementation of the arms embargo. On February 7, 1992, Resolution 740 expressed concern at indications that the arms embargo was not being fully observed and again called upon all states to cooperate fully with the sanctions compliance committee, including reporting any violations.

The Committee is not aware of any reports filed by the United States with the U.N. Sanctions Committee regarding what the U.S. Government knew about the flow of Iranian arms through Croatia and into Bosnia. Moreover, acquiescence in the flow of arms -- particularly when presented with a clear opportunity to object -- is not consistent with the obligation "to cooperate fully...on overseeing the effective implementation of the embargo." Certainly any effort to encourage the flow of arms would have been inconsistent with these resolutions.

Violations of United Nations resolutions do not constitute violations of U.S. law. There were a number of executive orders implementing these resolutions, however, and Section 5 of the United Nations Participation Act of 1945, codified at 22 USC § 287c, provides criminal penalties for noncompliance with a Presidential order that seeks to comply with a United Nations Security Council Resolution.

Based on the facts available to the Committee at this time, there does not appear to have been a violation of any of these executive orders. Executive Order 12846, 58 FR 25771 (April 25, 1993), however, tightens sanctions against the former Yugoslavia and harmonizes these and prior sanctions with U.N. Security Council Resolution 820 of April 17, 1993. Among other things, EO

12846 prohibits:

[a]ny dealing by a US person relating to the importation from, exportation to, transshipment through the U.N. protected areas in the Republic of Croatia and those areas of the Republic of Bosnia-Herzegovina under the control of Bosnian Serb forces, or activity of any kind that promotes *or is intended to promote* such dealing." [Emphasis added.]

Thus, any evidence of U.S. officials encouraging, or "promoting," the exportation to Bosnia of arms could reflect a violation of EO 12846. The Committee does not have sufficient information to conclude that U.S. officials engaged in such encouragement or promotion, although there are allegations of this.

RECOMMENDATIONS

The Committee found three areas in which administrative or legislative actions appear to be required. The first area is the need for written records of secret foreign policy decisions. The second area relates to keeping the intelligence committees informed of intelligence activities. The third area relates to keeping Congress informed of significant changes in foreign policy.

Recommendation No. 1: The Executive branch, especially the White House and the Department of State, should make a written record of every significant foreign policy decision, and especially of those decisions that reflect a change in policy; and it should ensure that adequate mechanisms are in place to generate and protect communications that are particularly sensitive.

The lack of a written codification of the "no instructions" decision resulted in confusion on the part of Ambassador Galbraith, CIA officials and U.S. military officers. The consequences of this confusion included Ambassador Galbraith sending an undesired cable to State Department Headquarters (which exposed the "no instructions" issue to more people than policy makers wanted), as well as the CIA engaging in extensive reporting on possible illegal covert actions (which led, in turn, to State Department distrust of CIA personnel).

The Committee realizes that some officials viewed the "no instructions" decision as not signaling a significant change in policy. Those officials conceded, however, that it was viewed as an "important" decision and that it was intended to result in Iranian and other arms flows to Bosnia in violation of a United Nations embargo; and the matter was significant enough to be taken to the President for a

final decision.

National Security Adviser Lake's reason for telling Ambassador Redman that no written record was needed was the fear that any written record would lead to a leak that would prompt European reaction. As Deputy Secretary of State Strobe Talbott testified to this Committee:

Another reason that diplomatic transactions and internal deliberations do not end up on paper is because of the extreme sensitivity of the subject matter. What goes down on paper is more likely to come out in public, in inappropriate and harmful ways, harmful to the national interest.

It is precisely this approach -- leaving the *most* sensitive decisions unwritten -- that the Committee believes is unwise and dangerous. Such records can (and should) be kept as secret as is necessary to protect the national security, and the risks that are involved in reducing significant decisions to writing are far outweighed by the inefficiency that results from doing without any authoritative statement of such decisions.

To the extent that written records of decisions and actions are foregone because the Department of State lacks an efficient system for generating and handling tightly-held cables, that, too, should be corrected. Former DCI James Woolsey noted that "Even NODIS cables in State are very widely disseminated," and a former State Department official indicated that this was why Ambassador Galbraith's NODIS cable of April 29, 1994, was viewed as a security problem. While there is a tightly-held ROGER channel for some sensitive communications from an ambassador, there is no way for an embassy to send a sensitive diplomatic cable to a very limited set of addressees. The absence of a truly limited channel for diplomatic cables is an anachronism, left over from the days in which diplomacy was seen as a more open activity. It unnecessarily limits the flexibility of ambassadors and senior officials in their handling of sensitive issues, and it should be remedied promptly.

Recommendation No. 2: The Executive branch should keep the Committee "fully and currently informed" of the substantive content of intelligence that is collected or analyzed by U.S. intelligence agencies.

Section 501 of the National Security Act of 1947 states: "The President shall ensure that the intelligence committees are kept fully and currently informed of the intelligence activities of the United States...." In the course of its inquiry, the Committee was informed that Executive branch lawyers view this

provision as not applying to the *substantive content* of intelligence that is collected or analyzed by U.S. intelligence agencies. The Committee has always interpreted the term "fully and currently" in that provision to mean informing Congress regarding, *inter alia*, the substance of the intelligence. It is hard to envisage how the intelligence committees could be kept *fully* informed of U.S. intelligence activities without being told what has been learned from those activities. The Committee has been provided much intelligence over the years, often at the Intelligence Community's initiative, and has rarely had difficulty in obtaining intelligence reporting that it requested.

Nevertheless, as Executive branch lawyers have highlighted an interpretation of the law under which there is no legal obligation to inform Congress of the substance of intelligence, the Committee wishes to make clear its belief that the Executive branch bears an obligation to keep the intelligence committees "fully and currently informed" of the substance of intelligence, as well as of the process. This still allows for agreement between the Executive branch and the committees on the expected level of specificity in reporting, just as exists regarding other aspects of "intelligence activities" today.

Recommendation No. 3: The Executive branch should inform Congress of significant secret changes in U.S. foreign policy.

A more difficult issue of reporting to Congress relates to those cases in which a significant change in U.S. foreign policy is determined and implemented in secrecy. In the matter of the "no instructions" decision, U.S. policy changed from one of telling other countries that the United Nations arms embargo must be obeyed to one of looking the other way as arms flowed from Iran and other countries into Bosnia and Croatia. While the impact of that policy change was publicly visible, the fact that the U.S. Government had decided consciously not to oppose such arms flows and had conveyed that decision to Croatian officials was never notified to Congress by policy makers in Washington. At a minimum, the appropriate committees should have been informed of the significant foreign policy change embodied in the "no instructions" instruction.

The Committee believes that the national interest would be far better served by an arrangement under which such significant secret changes in U.S. foreign policy were conveyed to appropriate Members of Congress. One possibility would be to notify the intelligence committees, which are used to handling sensitive notifications and could be given the duty to inform such other Members of Congress as might be specified by the law or a memorandum of agreement with the Executive branch. The committees' charters -- Senate

Resolution 400 (94th Congress) and House Rule XLVIII -- already provide for the intelligence committees to include some members of four other committees in the national security field, thus encouraging attentiveness to the concerns of those other committees. The charters also offer special protection to sensitive information by requiring that "[n]o Member of the Senate [House] who, and no committee which, receives any information...[from the intelligence committee] shall disclose such information except in a closed session of the Senate [House]."

There are also other options for notifying Congress of significant secret changes in U.S. foreign policy. One possibility would be to notify directly the members or leadership of the intelligence committees, foreign relations committees, armed services committees, defense appropriations subcommittees, and/or other relevant congressional bodies. Another option would be to notify the leadership of each House of Congress. A third option would be for Congress to designate a "contact group" of senior Members that could meet to receive such notifications.

Executive branch officials have testified that their concern in the case of the "no instructions" decision was that European countries might find out about the decision and decide to withdraw UNPROFOR forces from Bosnia. Based on twenty years of experience in handling sensitive notifications, the Committee believes that means can be crafted to ensure that such notifications are handled with complete security. The Committee also believes that information security is best guaranteed by an atmosphere of trust and cooperation between the legislative and executive branches of government, rather than by impediments to the sharing of information that is both of interest to the Congress and relevant to legislative issues before it.

**ADDITIONAL VIEWS OF DISSENTING SENATORS
JOHN GLENN, RICHARD H. BRYAN AND BOB GRAHAM**

We oppose the Committee *Report on U.S. Actions Regarding Iranian and Other Arms Transfers to the Bosnian Army, 1994-1995* because we disagree with the analysis contained in this Report. The evidence developed by the Committee inquiry to date clearly indicates that there was no covert action related to the transfer of Iranian arms to Bosnia.

Certainly, United States diplomatic actions surrounding the situation in Bosnia were not routine. This difficult situation was compounded by what may have been excessive secrecy in the Executive Branch regarding its policy towards Bosnia, a failure to keep Congress formally informed of an emerging United States policy, and a failure of the Executive Branch to keep adequate records of its activities and decisions. While the Committee Report examines these issues, we do not agree with the Report's analysis on the question of whether a covert action occurred, and the conclusion that United States officials went beyond "traditional diplomatic activity."

NO COVERT ACTION

Section 503(e) of the National Security Act defines "covert action" as "an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly." Certain activities are exempted from the definition, including "traditional diplomatic or military activities." Our analysis of the facts as collected by the Committee clearly indicate that the activities of the Administration did not constitute covert action under this definition.

TRADITIONAL DIPLOMATIC ACTIVITY

The Committee Report states that "the interchange between the United States Ambassador to Croatia and the Croatian President in April 1994 did not constitute traditional diplomatic activity, at least as that term is understood by most Americans." While the public's definition of the term "traditional

diplomatic activity" can be disputed, the Senate's understanding of this term is clear. We rely on the definition in the Senate Report on the Fiscal Year 1991 Intelligence Authorization Bill. (Senate Report 102-85, pp. 45-46) This definition describes precisely the exchange between Ambassador Galbraith and President Tudjman when it defines the term as "the use of diplomatic channels or personnel to pass messages and conduct negotiations between the United States and other governments or foreign entities."

Moreover, Committee witnesses who addressed this issue consistently described the exchange as traditional diplomatic activity. For example:

Morton Halperin, former Department of Defense and National Security Council official: *"... the action here was standard diplomatic activity..."*

Lloyd Cutler, former counsel to President Carter and President Clinton: *"...this was, at most, a diplomatic communication."*

John Deutch, Director of Central Intelligence: *"In my judgment it was a secret diplomatic exchange, which happens a million times a day..."*

The Honorable Peter Galbraith, Ambassador to Croatia: *"This was... in my view, purely a diplomatic exchange..."*

The Honorable Strobe Talbott, Deputy Secretary of State: *"... we felt this to be at the time a genuinely and purely diplomatic exchange, a confidential diplomatic exchange."*

The Committee's lengthy inquiry into this issue clearly shows that no covert action occurred in relation to the Iranian arms transfers to Bosnia. Because covert action was one of the fundamental issues to be addressed when this inquiry was requested by then-Senate Majority Leader Robert Dole, we do not understand why the Committee failed to make a judgment on this issue.

ADDITIONAL VIEWS OF SENATOR JOHN KERRY

In undertaking an inquiry into the matter of Iranian arms shipments to Bosnia, the central question facing the Senate Select Committee on Intelligence was whether or not U.S. Government officials had engaged in an unauthorized covert action to encourage those shipments. The Committee could not reach agreement on this point and the Committee Report fails to answer this critical question. By not taking a stand on the issue of covert action the Report sows doubt where none should exist, and leaves a strong impression that the activities of U.S. diplomats may have crossed the line into the realm of covert action. The facts as outlined in the Report clearly indicate that the U.S. policy of not objecting while Iranian arms flowed to Bosnia was not a covert action.

While the Report takes no position on the issue of covert action, it concludes that the events surrounding the delivery of the "no instructions" message to President Tudjman were "not traditional diplomatic activity." The Report bases this conclusion primarily on the substance of the policy rather than the activities associated with delivering the message. The Report describes the episode as "not traditional diplomatic activity" because the "no instructions" message meant that the United States in effect turned a blind eye to activity that violated a United Nations Security Council resolution and because that activity involved Iran, a country sanctioned under U.S. law.

Certainly the policy of standing mute while Iranian arms flowed to Bosnia had significant ramifications and was highly unusual both in substance and in execution. The United States normally does not and should not condone violations of U.N. Security Council resolutions, and three successive U.S. administrations have attempted to isolate Iran for its support of international terrorism. Actions contrary to these public policies contained notable risks and consequently they cannot be considered part of normal, everyday U.S. diplomacy. However, by stating categorically that this exchange was "not traditional diplomatic activity" the Report could lead readers to the false conclusion that it was covert action -- a conclusion I do not support.

The term "traditional diplomatic activity" is not defined in statute. The Report purports to use it as it "is understood by most Americans" rather than in a

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specific legal context. The term is used, however, in Section 503 of the National Security Act of 1947. This Section defines covert action and specifically excludes "traditional diplomatic activity" from the definition. Since the Report uses the term in the context of an analysis of possible covert action, readers might incorrectly assume that the Report has concluded that the actions of U.S. diplomats in this case are not covered by the legal exemption for "traditional diplomatic activity."

Although I disagree with the tone of the Report regarding covert action, I endorse its findings concerning the inadequacy of communication between Executive branch agencies, and between the Executive branch and Congress. Much of the confusion and suspicion surrounding events in Croatia and Bosnia in 1994 could have been avoided if the Defense Department and the Intelligence Community had participated in the decision making process leading up to the "no instructions" response. At the very least, State Department and National Security Council officials should have adequately explained the decision to their counterparts in these other agencies.

As the Report points out, the failure to keep Congress completely informed limited our ability to responsibly debate and legislate on the Bosnia issue. Congress cannot fulfill its responsibilities when critical information is not shared. Additionally, the Administration should have consulted with the Congress and explained the risks associated with the tacit acceptance of Iran, one of the world's most dangerous states, as the supplier of arms. The two branches of government must act cooperatively on matters affecting our national security.

SSCI
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