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FOREIGN AID LEGISLATION: TIME FOR A NEW LOOK

*Michael H. Cardozo**

The misnomer "foreign aid" is what we call those measures whereby the United States helps itself by helping others.¹ Their constitutional sanction is the same as for social security and arms for our military forces, namely, the power to spend funds of the Treasury to "provide for the common defense and general welfare of the United States."² The statutory prototype is the wartime Lend-Lease Act,³ appropriately described in the heading as "An act to promote the defense of the United States." In every year since the end of World War II Congress has responded to the needs of a disrupted world with at least one new "foreign aid" act.⁴ Each one has authorized the use of funds of the U. S. Treasury to pay for goods and services needed by specified friends and allies around the globe who could not pay in foreign exchange. Each new law stemmed from a specific problem in our foreign relations. All were based on the same premise that strong and healthy friends are our best assurance of success in meeting threats to peace and making the United Nations work as an effective instrument of world collaboration.⁵ Still, no regular pattern of statutory form or administrative direc-

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¹ Cf. 3d Report to Congress on the Mutual Security Program, xiii (1952).

² U.S. CONST. ART. I, § 8; *Helvering v. Davis*, 301 U.S. 619, 640 (1937).

³ 55 STAT. 31 (1941), as amended, 22 U.S.C. §§ 411-423 (1946).

⁴ 1946: Continuation of certain lend-lease funds, Third Deficiency Appropriation Act, 1946, 60 STAT. 604 (1946).

1947: Greek-Turkish Aid Act, 61 STAT. 103 (1947), as amended, 22 U.S.C. 1401 (Supp. 1951); Relief Assistance Act, 61 STAT. 125 (1947), 22 U.S.C. § 1411 (Supp. 1951); Foreign Aid Act of 1947, 61 STAT. 934 (1947), 22 U.S.C. § 1411 note (Supp. 1951).

1948: Foreign Assistance Act of 1948, 62 STAT. 137 (1948), as amended, 22 U.S.C. 1501 (Supp. 1951).

1949: Mutual Defense Assistance Act of 1949, 63 STAT. 714 (1949), as amended, 22 U.S.C. §§ 1571 (Supp. 1951), hereinafter referred to in footnotes as "MDAA".

1950: Yugoslav Emergency Relief Assistance Act of 1950, 64 STAT. 1122 (1950), U.S.C. § 1558 (Supp. 1951); Act for International Development, 64 STAT. 204 (1950), as amended, 22 U.S.C. 1557 (Supp. 1951).

1951: India Emergency Food Aid Act of 1951, 65 STAT. 69 (1951), 50 U.S.C. APP. § 2311 (Supp. 1952); Mutual Security Act of 1951, 65 STAT. 373 (1951), as amended, 22 U.S.C. 1651 (Supp. 1951), hereinafter referred to in footnotes as "MSAam".

1952: Mutual Security Act of 1952, Pub. L. 400, 82d Cong., 66 STAT. 141 (1952), hereinafter referred to in footnotes as "MSA'52".

⁵ See Report of U.S. Senate Committee on Foreign Relations, SEN. REP. No. 1490, 82d Cong., 2d Sess. 12-17 (1952); speech of President Truman before the National War

tion has been followed. The result is that today the various laws on the subject form a legislative labyrinth sure to confound anyone who seeks to know the law of foreign aid.

The present maze of interlocked restrictions and directions, leaving a minimum of discretion to the executive branch, has its roots in a prolonged period of mistrust of the executive by Congress. Psychiatrists tell us that the child of suspicious and quarrelling parents is destined to be confused and indecisive in maturity. We should not be surprised, then, if a series of laws originally "begotten by a Democratic Administration, born out of a Republican-controlled Congress"⁶ are also confusing and may lead to indecision in administration. Students of our governmental processes are calling for a return of the relationship between president and Congress to its traditional balance.⁷ Walter Lippmann says that Congress has so "trespassed upon the prerogatives of the Executive" that now it is "important to restore to the presidency the prerogatives which it has lost."⁸

The coming of a new regime in Washington can be the signal for this restoration. With such a change there is a good chance to bring order out of the chaos of foreign aid legislation with a single new law that would reflect confidence by the legislators in the administration and would smooth the way to clarity and order in the statutory basis of one of the "central parts of our foreign policy structure."⁹ Such a law is needed, for until that happy day when trade replaces aid, we may expect that our economy and our arsenals will continue to be called on to bolster the security of the free world by counterweights to the imbalance of payments and by shipments abroad of the sinews of war. Even after the general programs of aid to whole areas and groups of countries are terminated, we must be ready for regular recurrences of the crises in individual countries that will call on our resources to cushion the effects of natural calamities and to prevent political disasters such as another envelopment by the iron curtain. Technical assistance is likely to continue as long as there are under-developed parts of the free world where our know-how can help to sow the seeds of peace and good will for the future.

College, Dec. 19, 1952, 28 DEP'T STATE BULL. 43, 44; First Semi-Annual Report to Congress on the Mutual Defense Assistance Program 15 (1950).

⁶ Surrey, *The Economic Cooperation Act of 1948*, 36 CALIF. L. REV. 509 (1948).

⁷ Cf. Remarks of Speaker Joseph W. Martin, Jan. 3, 1953, 99 CONG. REC. 12-13 (1953).

⁸ Syndicated article, N.Y. Herald-Tribune and other newspapers, January 15, 1953 (N.Y. Herald Tribune, Jan. 15, 1953, p. 21, col. 1).

⁹ THIRD REPORT TO CONGRESS ON THE MUTUAL SECURITY PROGRAM, p. x (1952).

THE MUTUAL SECURITY ACT

The Mutual Security Act of 1951,¹⁰ as amended in 1952,¹¹ has become the keystone of the foreign aid authorizations now on the books. The Lend-Lease Act, though not repealed, can no longer be used.¹² The United Nations Relief and Rehabilitation Administration (UNRRA) is dissolved.¹³ Similarly, the Post-UNRRA Relief Assistance Act¹⁴ and the Interim Aid Act of 1947¹⁵ are obsolete; both served to bridge a temporary gap. The earliest act still operative is the Greek-Turkish Aid Act of May 22, 1947.¹⁶ It is one of the components of the structure blanketed by the Mutual Security Act, which is essentially an authorization of additional appropriations to carry out the underlying laws. Through this technique of cross references the administration and Congress avoided the squabbles that a review of all the existing provisions would have produced. This is how it looks in a typical section of the Act:

Sec. 302. (a) In order to further the purpose of this Act through the strengthening of the area covered in section 301 of this Act [i.e., "the general area of China (including the Republic of the Philippines and the Republic of Korea)"] (but not including the Republic of Korea), there are hereby authorized to be appropriated to the President, for the fiscal year 1952, not to exceed \$237,500,000 for economic and technical assistance in those portions of such area which the President deems to be not under Communist control. Funds appropriated pursuant to authority of this section shall be available under the applicable provisions of Section 503 of this Act [which specifies the provisions of the Economic Cooperation Act that may be used after June 30, 1952 for economic aid and programs supporting the defense effort abroad] and the applicable provisions of the Act for International Development. In addition, unexpended balances of funds heretofore made available for carrying out the purposes of the China Area Aid Act of 1950, are hereby authorized to be continued available through June 30, 1952, and to be consolidated with the appropriation authorized by this section. . . .

Not the least confusing feature of this excerpt is that it applies only to the fiscal year 1952 and hence is now obsolete. The Mutual Security Act, contains, in addition, many new regulations and conditions for providing aid,¹⁷ and a new superstructure of administration by a Director for Mutual Security whose function it is to control

¹⁰ 65 STAT. 373 (1951), 22 U.S.C. 1651 (Supp. 1951).

¹¹ The Mutual Security Act of 1952, 66 STAT. 141 (1952).

¹² Section 3, as amended, withdraws the president's powers after June 30, 1946. 22 U.S.C. § 412 (1946).

¹³ 17 DEP'T STATE BULL. 106 (1947).

¹⁴ 61 STAT. 125 (1947), 22 U.S.C. § 1411 (Supp. 1951).

¹⁵ 61 STAT. 934 (1947), 22 U.S.C. § 1411 note (Supp. 1951).

¹⁶ 61 STAT. 103 (1947), 22 U.S.C. § 1401 (Supp. 1951).

¹⁷ See, e.g., §§ 511, 515, 523(e), 524, 529.

and coordinate the operations of the different agencies responsible for individual parts.¹⁸ A brief description of each of the statutory components should demonstrate the reasons why consolidation and rationalization by the new Congress is timely.

THE GREEK-TURKISH AID ACT

In the spring of 1947 the British announced that they were no longer able to finance the military and other aid that had been flowing to Greece since the end of the fighting in World War II. It was a time when Soviet pressure on Turkey was worrying our diplomats, and Tito's Yugoslavia was still in Stalin's camp, on the Greek borders to the north. Congress responded with alacrity to President Truman's request¹⁹ for authority to take over the British job and send both military and economic aid to Greece and Turkey. The Act of May 22, 1947,²⁰ has a broad grant of power to the President with a minimum of restrictions and conditions. Administration is to be handled by such officer or agency as the President may direct; he gave it to the State Department.²¹ The recipients were required to permit U. S. officials and press representatives to observe the use of the assistance, to retain possession of articles unless the United States consented to delivery to another country, to provide for adequate security, and to avoid using any of the aid to make payments on loans from other countries. The first authorization was for \$400,000,000, part of which was to be advanced immediately out of Reconstruction Finance Corporation funds.

THE ECONOMIC COOPERATION ACT OF 1948

The European Recovery Program evolved from the joint action taken by the interested countries of Europe in response to Secretary Marshall's famous speech of June, 1947.²² After the European countries met and created the Committee of European Economic Cooperation, the executive branch of the U. S. Government organized a coordinated effort to prepare for the U. S. part in the program.²³ A key element in

¹⁸ §§ 501, 502 and 503.

¹⁹ 16 DEP'T STATE BULL. 534-537, 829-832 (1947).

²⁰ 61 STAT. 103 (1947), 22 U.S.C. 1401 (Supp. 1951).

²¹ Exec. Order 9857, May 23, 1947, 12 FED. REG. 3331 (1947), 22 U.S.C. § 1405 note (Supp. 1952).

²² 16 DEP'T STATE BULL. 1159-1160 (1947); SEN. DOC. NO. 111, 80th Cong., 1st Sess. 73 (1947).

²³ *Hearings before Committee on Foreign Affairs of the House of Representatives on U.S. Foreign Policy for a Post-War Recovery Program, etc., Part I*, 80th Cong., 2d Sess. 283-98 (1948).

this effort was the preparation of a draft of an authorizing bill for Congressional consideration. Such a draft was submitted to the 80th Congress by the President and formed the basis from which evolved the Economic Cooperation Act of 1948.²⁴ It became the first title in that year's omnibus Foreign Assistance Act,²⁵ which included aid for China,²⁶ the Children's Fund,²⁷ and more for Greece and Turkey.²⁸ The nature of the Economic Cooperation Act has been fully described in an article by Walter S. Surrey in the *California Law Review* of December 1948,²⁹ and its first year of operation is covered in an article by David M. Crawford in the *Yale Law Journal* for May 1949.³⁰ The purposes of the present article will be served by pointing out certain special features.

The Economic Cooperation Act differed from previous foreign aid acts in two significant respects. First, the emphasis was on permanent recovery, not military victory or emergency relief.³¹ Secondly, it was marked by the amount of detail it contained on the method of providing aid. Long provisions specified the techniques to be used in spending funds, such as the "letters of commitment", and in providing aid on credit terms.³² Unlike the British loan of 1946,³³ this program did not contemplate the delivery of funds directly to the participating countries. Nor were the techniques of procurement through U. S. Government agencies which characterized the major part of the lend-lease period, to be used.³⁴ This time private channels of trade were to be followed as far as possible,³⁵ with the U. S. Government dollars siphoned into the stream of commerce at a convenient point. Great care was taken to require that the domestic economy be protected against undue drains or exces-

²⁴ 62 STAT. 137 (1948), as amended, 22 U.S.C. 1501 (Supp. 1951), hereinafter referred to in footnotes as "ECA".

²⁵ 62 STAT. 137 (1948), 22 U.S.C. 1501 (Supp. 1951).

²⁶ Title IV, Foreign Assistance Act of 1948, note 25 *supra*.

²⁷ Title II, Foreign Assistance Act of 1948, note 25 *supra*.

²⁸ Title III, Foreign Assistance Act of 1948, note 25 *supra*.

²⁹ Surrey, *The Economic Cooperation Act of 1948*, 36 CALIF. L. REV. 509 (1948).

³⁰ Crawford, *United States Foreign Assistance Legislation 1947-1948*, 58 YALE L.J. 871 (1949).

³¹ See Statement of Secretary of State Marshall before the Committee on Foreign Affairs of the House of Representatives, Jan. 12, 1948. *Hearings on United States Foreign Policy for a Post-War Recovery Program, etc., Part I, op. cit. supra* note 23, p. 30.

³² ECA, § 111 (b)(1)(i) and (c).

³³ 60 STAT. 535 (1946), 22 U.S.C. 286l (1946).

³⁴ See FIRST REPORT TO CONGRESS ON OPERATIONS UNDER THE LEND-LEASE ACT, SEN. DOC. 66, 77th Cong., 1st Sess. 14 (1941).

³⁵ ECA §§ 111(b) and 112(h). See also Outline of European Recovery Program, submitted by the Dept. of State for the use of the Senate Foreign Relations Committee, p. 128. Dec. 19, 1947.

sive surpluses.³⁶ The first appropriation act provided that no more than market prices could be paid for certain commodities.³⁷ While concern over these matters was not new in such laws,³⁸ now the administrator was told in great detail just what measures of protection he should take. Even more significant, the conditions to which the participating countries had to agree were set out in full, leaving to the administrators little leeway when the conditions were "applicable".³⁹ The specific uses of "counterpart" funds, the local currency equivalent of U. S. assistance, were described, with the proviso that any residue remaining after four years would be subject to further Congressional action, although the funds were the property of the other countries.⁴⁰ The administration of the program was carefully delineated,⁴¹ even to the extent of requiring the Administrator and the Secretary of State to make no move in case of a dispute until the President resolved the issue.⁴² While this latter provision merely describes the proper normal relationship of two members of the executive branch operating on the same level, its inclusion in the Act was a reflection of the concern of Congress, expressed time and again during the hearings, lest the distrusted State Department interfere with the anticipated "business-like" administration of the Economic Cooperation Administration.

The Act contemplated a four year program, but with annual authorizations of new appropriations.⁴³ For the first year \$5,300,000,000 of aid was authorized; at least one billion had to be on a credit basis.⁴⁴

THE MUTUAL DEFENSE ASSISTANCE ACT

The furore that greeted the Administration's draft military assistance bill when it was submitted to Congress in 1949 is a true reflection of the distrusting atmosphere in which all the recent foreign aid bills have been considered.⁴⁵ Though the draft largely followed the form considered by members of the House Committee on Foreign Affairs for possible inclusion in the previous year's Foreign Assistance Act,⁴⁶ the executive

³⁶ ECA § 112.

³⁷ Foreign Aid Appropriation Act, 1949, § 202, 62 STAT. 1059 (1948).

³⁸ Cf. The Foreign Aid Act of 1947, §§ 4(2) and 4(4), 61 STAT. 934 (1947), 22 U.S.C. § 1411 note (Supp. 1951).

³⁹ ECA § 115 (b).

⁴⁰ ECA § 115 (b) (6).

⁴¹ ECA §§ 104-110.

⁴² ECA § 105(b).

⁴³ ECA §§ 122(a) and 114(c).

⁴⁴ ECA §§ 114(c) and 111(c)(2).

⁴⁵ N.Y. Times, July 26, 1949, p. 1, col. 6; July 27, 1949, p. 1, col. 8.

⁴⁶ See Statement by Congressman Vorys, 95 CONG. REC. 11894 (1949) and *Hearings before the Committee on Foreign Affairs on MDAA*, 81st Cong., 1st Sess. 76 (1949).

branch was charged with asking for a blank check. The Congressional committees soon filled in the blanks. The act as passed⁴⁷ permitted aid to the North Atlantic Treaty countries only where there were integrated plans for defense agreed by all the countries, and approved in person by the president.⁴⁸ So concerned were the members of Congress over the possibility that the president would misuse the authority granted by the Act that they refused to allow aid to be given to any country outside Europe and not actually named in the Act, unless it could be found to be in the "general area of China".⁴⁹ Not even articles to be paid for with "cash on the barrel-head" could be transferred to any other country unless it had "joined with the United States in a collective defense and security arrangement".⁵⁰ The inflexibility of the payment provisions proved embarrassing when it was found that they prevented even our good friend and neighbor, Canada, from getting certain much-needed military aviation supplies, of which the entire production in the United States had been pledged to the U. S. Government. Later amendments enlarged the authority to make such sales in special situations⁵¹ and expanded the authority to give emergency grant aid under unexpected circumstances,⁵² such as arose when a drought hit Yugoslavia. This Act, however, still contains no authorization of military aid for the Latin American countries. The Mutual Security Act is where we find funds to be used for military assistance in those nations, though "under the provisions of the Mutual Defense Assistance Act."⁵³

Certain specific prohibitions were written into this Act. The funds were not to be used for constructing factories outside the United States.⁵⁴ No aid could be given until the recipient countries, which had already bound themselves under Economic Cooperation Agreements, agreed to new conditions somewhat similar to those in the Greek-Turkish Aid Act.⁵⁵ Very detailed provisions concerning the valuation of articles transferred out of military stocks were included.⁵⁶ Unlike the Economic Cooperation Act, however, the specific techniques of procurement were

⁴⁷ The Mutual Defense Assistance Act of 1949, 63 STAT. 714, 22 U.S.C. 1571 (Supp. 1952).

⁴⁸ MDAA, § 102(a).

⁴⁹ MDAA, § 303(a).

⁵⁰ MDAA, § 408(e).

⁵¹ Pub. L. 621, 81st Cong. 64 STAT. 373 (1950); MSA '51 § 525; MSA '52 § 8(b).

⁵² Pub. L. No. 621, note 51 *supra*, § 12(a); MSAam §§ 101, 202 and 401.

⁵³ MSAam § 401.

⁵⁴ MDAA, § 104.

⁵⁵ MDAA, § 402. Cf. Greek-Turkish Aid Act, § 3.

⁵⁶ MDAA, § 403(c).

not prescribed. It was recognized that much of the equipment would be transferred out of U.S. military stocks on hand or on order.⁵⁷ An important feature of the program is the authority to procure from "any source",⁵⁸ so that the funds can be used to buy in one country what is needed in another—an operation that has come to be called "offshore procurement".⁵⁹

The Mutual Defense Assistance Act authorized military aid in Iran, the Philippines, Korea and "the general area of China", as well as the North Atlantic Treaty countries.⁶⁰ It also authorized further appropriations under the Greek-Turkish Aid Act,⁶¹ the first of the cross references that have since become the standard in this type of law. For the first year of operations appropriations of slightly over \$1,300,000,000 were made available,⁶² plus permission to transfer out of existing stocks of "excess equipment" up to a value of \$450,000,000.⁶³

AID IN THE GENERAL AREA OF CHINA

The tangled web of legislation authorizing aid to China has done nothing to clarify the issues in the endless debate over why we are confronted by "the present situation in China". Large deliveries of aid continued to flow to China under the Lend-Lease Act for almost a year after V-J Day.⁶⁴ A special act was passed in July, 1946, to authorize the delivery of just 271 naval vessels to the Chinese.⁶⁵ Lend-Lease was followed by relief contributions through UNRRA, which furnished more aid to China than almost any other country.⁶⁶ Next came the Relief Assistance Act of 1947,⁶⁷ including China with the neediest of the countries of Europe. Six months later came the Foreign Aid Act of 1947,⁶⁸ providing primarily for "interim aid" for Austria, France and Italy until the Marshall Plan could be put into full operation, but including China as well. Finally a China Aid Act was passed, appearing as

⁵⁷ Hearings before House Committee on Foreign Affairs on MDAA, *op. cit. supra* note 46, p. 48.

⁵⁸ MDAA, § 401.

⁵⁹ FIRST REPORT TO CONGRESS ON THE MUTUAL SECURITY PROGRAM 18 (1951).

⁶⁰ MDAA Title III. In 1950 Aid to Iran was put under Title II with Greece and Turkey. Pub. L. No. 621, 81st Cong., 2d Sess. §§ 5, 6, 64 STAT. 373 (1950).

⁶¹ MDAA, § 201.

⁶² The sum of authorizations in MDAA, §§ 102, 103, 201, 302, 303.

⁶³ MDAA, § 403(d).

⁶⁴ 21ST REPORT TO CONGRESS ON LEND-LEASE OPERATIONS 9-10 (1946); 23d Report, 17 (1946).

⁶⁵ 60 STAT. 539 (1946).

⁶⁶ 12th REPORT TO CONGRESS ON THE OPERATIONS OF UNRRA 35 (1948).

⁶⁷ 61 STAT. 125 (1947), 22 U.S.C. § 1411 (Supp. 1952).

⁶⁸ 61 STAT. 934 (1947), 22 U.S.C. § 1411 note (Supp. 1952).

Title IV of the Foreign Assistance Act of 1948,⁶⁹ which had the Economic Cooperation Act as Title I.

The China Aid Act of 1948 authorized \$338,000,000 of aid to be furnished under the same general techniques and conditions as were prescribed in the Economic Cooperation Act for the countries of Europe.⁷⁰ In addition, there was a special provision for \$125,000,000 "for additional aid to China through grants, on such terms as the President may determine and without regard to the provisions of the Economic Cooperation Act of 1948". As the language of the provision indicates, this was understood to be for military aid of such kinds as the Chinese themselves might select, with a minimum of interference from the U. S. Government.⁷¹

In the following year, 1949, the funds appropriated under the China Aid Act were continued for about one more year.⁷² Military aid to China was embraced in the Mutual Defense Assistance Act in a new broad grant to the President, significantly differing from the circumscribed powers given in the case of Europe and other areas. "In consideration of the concern of the United States in the present situation in China", \$75,000,000 was provided as an additional emergency fund for the President to be expended without detailed accounting "to accomplish in that general area" the policies of the Act.⁷³ A similar amount for the same purpose was authorized the next year.⁷⁴ It is well to note that these funds were available for any type of aid, not simply military. This became important when economic emergencies arose in such parts of the "general area of China" as India.⁷⁵ Several other legislative steps for China aid were taken in 1950. Authority to use the old China Aid Act funds was once more extended;⁷⁶ they had not been spent because there was trouble in getting any aid to China at all. Later in the same year the China Area Aid Act of 1950 once more extended the use of the funds, for use in areas "not under Communist control", and, to the extent of \$8,000,000, in any areas of China stricken by "natural calamity", to be distributed on humanitarian grounds through the American Red Cross.⁷⁷ Other parts of the funds were to be used for

⁶⁹ 62 STAT. 158 (1948), 22 U.S.C. § 1541 (Supp. 1952).

⁷⁰ China Aid Act, §§ 402, 403.

⁷¹ *Id.* at § 404(b).

⁷² Pub. L. No. 47, 81st Cong., 1st Sess. § 12, 63 STAT. 55 (1949).

⁷³ MDAA § 303(a).

⁷⁴ PUB. L. No. 621, 81st Cong. 2d Sess., § 8, 64 STAT. 373 (1950).

⁷⁵ 1ST REPORT TO CONGRESS ON THE MUTUAL SECURITY PROGRAM, 34 (1951).

⁷⁶ Far Eastern Economic Assistance Act of 1950, § 2, 64 STAT. 5 (1950), 22 U.S.C. 1543 note (Supp. 1952).

⁷⁷ 64 STAT. 202 (1950).

Chinese students in the United States. In 1951, aid to China, which now meant the Chinese on Formosa, was authorized by a series of cross references in Title III of the Mutual Security Act.⁷⁸ Section 301 of that Act authorized about half a billion dollars "in order to carry out in the general area of China the provisions of subsection (a) of section 303 of the Mutual Defense Assistance Act of 1949, as amended", and continued the availability of funds previously appropriated for the same purpose, namely, military aid. Economic and technical assistance to China was authorized out of funds to be appropriated under section 302(a) of the Mutual Security Act and spent under the Economic Cooperation Act and the Act for International Development for the "strengthening of the area covered in section 301 . . . not under Communist control."⁷⁹ Whence came the expression, "a Chinese puzzle"?

THE ACT FOR INTERNATIONAL DEVELOPMENT

When President Truman described his famous "Point Four"⁸⁰ as the way to share our techniques and skills with the rest of the world, we were already doing a good deal of this under existing legislation. The Institute of Inter-American Affairs had been in operation for three years,⁸¹ carrying out in the other American Republics the good neighbor policy of sharing our technical knowledge. The Smith-Mundt Act of 1948⁸² had provided for educational exchanges on a wide scale. A program of student and research exchanges had been authorized under the Fulbright Act⁸³ by means of the local currencies generated from sales of surplus equipment left overseas by our armed forces. The Economic Cooperation Act specifically authorized aid in the form of "technical information and assistance,"⁸⁴ and of course technical assistance in the military field was being provided under the Mutual Defense Assistance Act.⁸⁵ The scope of all these, however, was limited to some special field, and the Act for International Development⁸⁶ was needed to authorize the "exchange of technical knowledge and skills" in all fields with people anywhere in the world whose economic and social progress was of interest to the United States.

⁷⁸ 65 STAT. 373 (1951), as amended, 22 U.S.C.A. § 1547 (Supp. 1952).

⁷⁹ MSA '51 § 302.

⁸⁰ 20 DEP'T STATE BULL. 123, 125 (1949).

⁸¹ Under the Institute of Inter-American Affairs Act, 61 STAT. 780 (1947), 22 U.S.C. 281 (Supp. 1952).

⁸² 62 STAT. 6 (1948), 22 U.S.C. 1431 (Supp. 1952).

⁸³ 60 STAT. 754 (1946), 50 U.S.C. APP. § 1641 (1946).

⁸⁴ ECA § 111(a)(3).

⁸⁵ MDAA § 411(d); FIRST REPORT, *op. cit. supra* note 5, p. 40.

⁸⁶ 64 STAT. 204 (1950), 22 U.S.C. 1557 (Supp. 1951).

Much in this Act reflects credit on the Congress that accepted it and the Executive that proposed it. It is a self-contained unit, depending to a minimum on other laws. The details are primarily grants of power rather than restrictions. The President is left free to designate the administering agency. He has chosen the State Department.⁸⁷ The duration of the Act is not limited; it looks to a long term program rather than a prompt termination.⁸⁸ Its emphasis is on the imparting of knowledge rather than the transfer of materials and equipment. It is happily free from conditions that lead other countries to fear our meddling in their internal affairs. The application to these operations of the troublesome requirements of section 511 of the Mutual Security Act, exacting political promises from recipients, spoiled an otherwise fine record. Originally funds were appropriated directly for operations under this Act, but since 1951 they have been included in the funds for the whole foreign aid program authorized in the Mutual Security Act.⁸⁹ Even in a general consolidation of foreign aid laws, the Act for International Development might be left standing.

KOREA

The ordeal of Korea is reflected in the special little maze of legislation that has authorized U. S. aid in that embattled peninsula. A typical twist in the labyrinth is subsection (e) of section 303 of the Mutual Security Act, as amended:

(e) The functions of the Administrator for Economic Cooperation under the provisions of section 3 of the Far Eastern Economic Assistance Act of 1950, as amended (22 U. S. C. 1551) shall hereafter be performed by such departments or agencies of the Government as the President shall direct.

In the early post-V-J Day period relief shipments to Korea went under the military program of "Government and Relief in Occupied and Liberated Areas", known widely as "GARIOLA"—now GARIOA. These shipments were provided out of funds appropriated to the Defense Department and its components.⁹⁰ The Mutual Defense Assistance Act of 1949 authorized military aid to Korea, along with Iran and the

⁸⁷ Exec. Order No. 10159, 15 FED. REG. 6103 (1950), 22 U.S.C. § 1557g note (Supp. 1951).

⁸⁸ Statement of Dr. Henry G. Bennett at the *Hearing before the Senate Committees on Foreign Relations and Armed Services on the Mutual Security Program*, 82d Cong. 1st Sess. 414 (1951).

⁸⁹ General Appropriation Act, 1951, 64 STAT. 758 (1950); Mutual Security Appropriation Act, 1952, 65 STAT. 730 (1951).

⁹⁰ Supplemental Appropriation Act, 1953, Pub. L. 547, 82d Cong., 66 STAT. 141 (1952).

Philippines, in Section 301. Under the "general area of China" provisions of Section 303(a) of that Act, some economic aid was possible, but Congress in that year failed to authorize the broader Korean aid program urgently requested by the Administration.⁹¹ In 1950, however the Far Eastern Economic Assistance Act authorized \$60,000,000 for economic aid to Korea,⁹² and in the next year another \$100,000,000 was added.⁹³ By this time, of course, the fighting had started, and all plans for aid were disrupted. Nonetheless, another \$45,000,000 of aid was authorized in the Mutual Security Act of 1951, to be spent through the United Nations Korean Reconstruction Agency.⁹⁴ During the ensuing year, nothing could be spent out of this grant, and it has been extended to June 30, 1953.⁹⁵ In the meantime, the funds originally provided for Chinese students in the U. S. have been made available for Korean students as well.⁹⁶

OTHER FOREIGN AID ACTS

In the light of the circumscribed powers given by the various Congresses to the executive branch, it is not surprising that a myriad of individual aid acts have been needed to meet special situations. When drought in 1950 caused a threat of famine in Yugoslavia, it was recognized to be wise statesmanship to respond promptly to calls for aid from the only anti-Soviet communist nation. The first crisis was met during Congressional recess by using the emergency provisions of Section 408(c) of the Mutual Defense Assistance Act to send food measured by the needs of the Yugoslav armed forces.⁹⁷ In December Congress passed the Yugoslav Emergency Relief Assistance Act of 1950, authorizing the use of \$50,000,000 of ECA funds for food for Yugoslavia.⁹⁸ The conditions to be exacted were not unlike those for other countries receiving economic aid.⁹⁹ The fiscal contortions that this program required are testimony in themselves to the troubles stemming from inflexibility in a field where a crisis can be so dire.

⁹¹ Message of the President, June 7, 1949, CONG. REC. 7358 (1949). The resulting bill was defeated in the House on January 19, 1950 (96 CONG. REC. 681 (1950)), but later a revision was adopted (96 CONG. REC. 1767-1785 (1950), 96 CONG. REC. 1800 (1950)).

⁹² 64 STAT. 5 (1950).

⁹³ Foreign Economic Assistance Act of 1950, § 107(b), 64 STAT. 202 (1950).

⁹⁴ MSA '51 § 303(a).

⁹⁵ MSA '52 § 5(d).

⁹⁶ MSA '51 § 302(b).

⁹⁷ ELEVENTH REPORT TO CONGRESS OF THE ECONOMIC COOPERATION ADMINISTRATION 40 (1951).

⁹⁸ 64 STAT. 1122 (1950), 22 U.S.C. 1558 (Supp. 1951).

⁹⁹ *Id.* at § 3.

India, another country where we are anxious about our popularity, ran out of the means to buy grain in 1951. Again the executive had to ask for authority and funds despite overwhelming support on Capitol Hill for the program.¹⁰⁰ Congress responded with the India Emergency Food Aid Act of 1951,¹⁰¹ permitting food aid only on credit terms. Interest on the loan was to be applied to student and other educational exchanges between the two countries.¹⁰²

The Palestine Refugee Aid Act of 1950 authorized a contribution of \$27,000,000 to the United Nations for assistance to the Arab refugees from the areas held by Israel.¹⁰³ Additional funds were authorized for this program in the Mutual Security Acts of 1951¹⁰⁴ and 1952.¹⁰⁵ A balancing special appropriation was, of course, made available for the use of Jewish refugees entering Israel.¹⁰⁶ Spain is the only other country to receive such evidence of special congressional affection.¹⁰⁷

Year after year as the foreign aid acts have been before Congress, the United Nations Children's Emergency Fund has made its appeal to the American heart. The first U. S. contribution came out of the appropriations for the Relief Assistance Act of 1947.¹⁰⁸ Under a changed formula for matching funds from other countries, further contributions were authorized in Title II of the Foreign Assistance Act of 1948. Additions have been provided from time to time under other Acts.¹⁰⁹

The funds for aid of an economic nature in the occupied areas—Germany, Austria and Japan,—have come in part from the GARIOA appropriations, sometimes to the Army and sometimes to the State Department. The appropriation Acts have peculiarities that are important to a full understanding of the foreign aid programs, such as rules for the use of counterpart funds and payment for relief packages.¹¹⁰ They too are part of the whole picture.

¹⁰⁰ Review of Bipartisan Foreign Policy Consultation since World War II, SEN. DOC. No. 87, 82d Cong., 1st Sess. 30 (1952).

¹⁰¹ 65 STAT. 69 (1951), 50 U.S.C. APP. § 2311 (Supp. 1951).

¹⁰² *Id.* at § 7.

¹⁰³ 64 STAT. 203 (1950), 22 U.S.C. 1556 (Supp. 1951).

¹⁰⁴ MSA '51, § 204.

¹⁰⁵ MSA '52, § 4(c).

¹⁰⁶ MSAam. §§ 205, 206.

¹⁰⁷ MSAam. 101(a)(1).

¹⁰⁸ *Op. cit. supra* note 4, § 1.

¹⁰⁹ Pub. L. 170, 81st Cong., 63 STAT. 412 (1949); Pub. L. 535, 81st Cong., § 501, 64 STAT. 209 (1950); Pub. L. 45, 82d Cong., 65 STAT. 52 (1951); MSA '52, § 12.

¹¹⁰ Supp. Approp. Act, 1952, Chapter IX, 65 STAT. 747 (1951).

PATCHWORK AS A SUBSTITUTE FOR CONFIDENCE

The crisis-by-crisis approach to foreign aid legislation, colored by lack of Congressional confidence in the executive, has developed a veritable crazy-quilt of separate laws.

To determine from the written record what sections apply to different activities has become so difficult that the field is now a sort of lawyer's paradise. It provides ideal problems for a law school course concerned with the mechanics of administering our foreign policy.¹¹¹ What law, for example, governs the provision of economic aid to Greece? In the Mutual Security Act we find Greece covered in Title II, headed "Near East and Africa". Does this put Greece in the Near East for the purpose of economic aid? The State Department's Bureau of Near Eastern, South Asian and African Affairs embraces Greece within its territory. One would be justified, then, in assuming that Section 203 of the Mutual Security Act, authorizing economic aid in Africa and the Near East, would include Greece. You must first, however, consider Title I, where Sections 101(a)(1) and (2) authorize aid to "countries which are parties to the North Atlantic Treaty." This now includes Greece.¹¹² The historic reason for putting Greece with European countries, first under the Economic Cooperation Act and later under Title I of the Mutual Security Act, is the importance of keeping all of the original Marshall Plan countries together, so that they would all be receiving aid under the same provisions of law. As a result, after the European Recovery Program started in 1948, economic aid for Greece and Turkey shifted to the new Marshall Plan legislation, while military aid for Greece and Turkey stayed under the old Greek-Turkish Aid Act.

In 1949, the Mutual Defense Assistance Act authorized further military aid to Greece and Turkey, under the old act, primarily to permit the continuance of procedures then operating smoothly, and to avoid the necessity of the negotiation of new agreements with those countries. This split-up has never been changed. The Mutual Security Act still directs that Europe gets military aid under the MDAA,¹¹³ Greece and Turkey get it under Public Law 75;¹¹⁴ countries in the general area of China get it under the kind of magic wand put into the President's hands by Section 303(a) of the MDAA.¹¹⁵

¹¹¹ As was done in the International Policies course at Cornell Law School in the Fall Term, 1952.

¹¹² North Atlantic Treaty, 63 STAT. 2241 (1949); T.I.A.S. 1964, 2390.

¹¹³ MSAam. § 101(a)(1).

¹¹⁴ MSAam. § 201.

¹¹⁵ MSAam. § 301.

The technical assistance furnished under "Point Four" was for the *underdeveloped* areas of the world.¹¹⁶ To provide technical assistance, therefore, in the highly developed countries of Europe under the Act for International Development, which wrote Point Four into law, would have been illogical. Technical assistance in those countries continues to be furnished under the Economic Cooperation Act, and, in the military field, under the MDAA.¹¹⁷ But how about the underdeveloped overseas territories belonging to the European countries? Should a congressman ask the Mutual Security Agency, which administers non-military aid to Europe, for information about a technical assistance mission in Morocco? Should he go to the State Department's Technical Cooperation Administration, which administers the Act for International Development?¹¹⁸ When he finally gets the answer, he may wonder what provision of law, adopted by Congress, designates the agency to handle these programs. He will look in vain. He may also want to know which agency administers aid to Israel¹¹⁹ and which one has the responsibility of carrying out the special provisions for aid to Spain.¹²⁰ If he can find any written document dividing the world between the administering agencies and the available statutes, he will be unusually skilled in locating governmental orders which do not have to be published, and he may be dizzied by an alphabetical blizzard.¹²¹ The Appropriations Committees, however, must appropriate funds for the agencies administering these different programs. They need to know why the various requested amounts are necessary.

An American manufacturer may be asked, as part of a "defense support" project, to cooperate in the construction of production facilities in a country receiving military aid. The firm's lawyer, paging through the various laws, will come upon section 104 of the Mutual Defense Assistance Act. It prohibits among other things the use of funds appro-

¹¹⁶ Act for International Development, *op. cit. supra* note 4, § 402(b).

¹¹⁷ FIRST SEMI-ANNUAL REPORT ON THE MUTUAL DEFENSE ASSISTANCE PROGRAM 40-41 (1950).

¹¹⁸ See note 87 *supra*.

¹¹⁹ *Hearings before the House Committee on Foreign Affairs on the Mutual Security Act Extension*, 82d Cong. 2d Sess. 956, 965 (1952).

¹²⁰ *Id.* at 552-3.

¹²¹ FIRST SEMI-ANNUAL REPORT TO CONGRESS ON THE MUTUAL DEFENSE ASSISTANCE PROGRAM (1950) uses the following symbols on pages 32 and 33—MDAP, MAAGS, JAMAG, ECA, OSR, and FMACC, without indicating where to find the originating documents. The subject is covered in the testimony of Thomas D. Cabot at the *Hearings before the House Committee on Foreign Affairs on the Mutual Security Program*, 82d Cong. 1st Sess. 241 *et seq.* (1951). See also the THIRD SEMI-ANNUAL REPORT TO CONGRESS ON THE MUTUAL DEFENSE ASSISTANCE PROGRAM 39-50 (1951).

priated for carrying out that act or the Greek-Turkish Aid Act for the construction of factories outside the United States. He may wonder how the Washington lawyers find authority for the project in question. He can be assured that he need not worry about Section 104, however, for it has been "superseded" by later, inconsistent enactments. Look at the word "defense support" in Section 2(b) of the Mutual Security Act, which naturally means that our assistance can be used to enable other countries to manufacture arms and munitions in the interest of the mutual security effort.¹²² Sections 503(a)(1) and (2) of the Mutual Security Act also contain authority to construct manufacturing capacity in other countries in the interest of the Mutual Security Program. Section 104 remains as a symbol of our dislike for armament races, but it does not hold us back from creating the resources we need to produce strength in Europe.

The commendable concern of Congress that the program of foreign aid shall not be harmful to private trade and American business, and shall, when possible, promote it, is reflected in a variety of provisions. If all were to be found in one place, their purpose would be more readily served without the burden of redundancy. The practice has been to write in a new requirement with each year's amendments. Admonitions to respect private channels of trade were originally inserted in Section 111(b) of the Economic Cooperation Act, in two places, and in Sections 402(c) and 403(b)(3) of the Act for International Development. Section 516 of the Mutual Security Act of 1951 was a veritable charter of encouragement for private enterprise in the field of international trade.¹²³ Its counterpart for American small business was inserted in 1952, but 22 sections further along in the Act.¹²⁴ Supplementing Section 516 is Section 115(k) of the Economic Cooperation Act, also added in 1952, authorizing \$100,000,000 of appropriated funds to further the purposes of Section 516 to encourage private enterprise through the use of the local currency accounts. The Economic Cooperation Act and the Mutual Defense Assistance Act both have firm but different directions that 50% of the goods shipped under them shall go in U. S. flag vessels.¹²⁵ In the periodic reports to Congress on the whole program, special mention is to be made of the progress under the various provisions for promoting free private enterprise.¹²⁶

¹²² 1ST REPORT TO CONGRESS ON THE MUTUAL SECURITY PROGRAM 15 (1952).

¹²³ Referred to in 3d REPORT TO CONGRESS ON THE MUTUAL SECURITY PROGRAM 17 (1952).

¹²⁴ MSAam. § 538.

¹²⁵ ECA § 111(a)(2); MDAA § 409.

¹²⁶ MSAam. §§ 516, 538.

Throughout the existing laws are many provisions having their origins in post-war conditions of material shortages, now past, and in a feeling on the part of congressmen that they cannot rely on the executive to guard all of the best interests of the United States.¹²⁷ The long and complex provisions of Section 112 of the Economic Cooperation Act, labeled "Protection of Domestic Economy", were intended partly to prevent the shipment abroad of commodities needed in the United States and partly to prevent the purchase abroad of commodities which might be in over-abundant supply in the United States. They seemed more important in the immediate post-war period, when the economy was still out of balance as the result of wartime conditions. While their individual purpose is generally commendable, their effect almost inevitably lessens the effectiveness of aid. They increase the cost to the American taxpayer and curtail off-shore purchases which would have the dual effect of providing dollars in the country of origin and goods in the country of destination.

The various acts have been drawn with careful limits on the countries made eligible for aid. They reflect a congressional attitude that no country should be brought into the club without specific congressional authorization. The door has been allowed to be opened a crack now and then, in great emergencies, when the President might determine that aid to other countries would be "of direct importance to the defense" of some area and that the "increased ability to defend itself" by such a country is important to the preservation of peace and security of the area and to the security of the United States.¹²⁸ Any such determination is to be reported promptly to the four interested congressional committees. Such restrictions reflect the fear in Congress that, without restraints, the executive branch is likely to scatter aid all over the world without regard to need.¹²⁹

Even after the decision to permit inclusion of a particular country has been made, the president is required to exact a variety of definite promises before he can start the goods flowing. The fixed uniformity of these conditions does not allow for differences in political and economic circumstances in the various countries. It is humiliating for some nations to have to promise the United States to maintain a sound currency and achieve a balanced budget. They may feel better informed on these subjects than we. Sometimes countries have re-

¹²⁷ See Crawford, *supra* note 30 at 886-9.

¹²⁸ MSAam. §§ 101(a)(1) and 202.

¹²⁹ Cf. *Hearings before the Senate Committee on Foreign Relations on the Mutual Security Act of 1952*, 82d Cong. 2d Sess. 161 (1952).

ceived "aid" only because of the needs of neighboring countries; it is unfortunate to require the same promises in such cases. More leeway to the president to waive or select the conditions would help to have the program accepted with good will rather than grudging acquiescence.

The detailed directions as to how and when aid must be stopped, including in several acts immediate termination or passage by the two Houses of Congress of a concurrent resolution not calling for presidential approval,¹³⁰ are another reflection of congressional distrust of the administration's self-restraint and intention to spend only as much as our security requires. Laws such as the Battle Act,¹³¹ which replaced the impractical Kem amendment,¹³² and the adequate section 117 (d) of the Economic Cooperation Act, have a potent appeal. Who dares to defend the shipment of goods to countries that may soon be shooting at our troops? Such laws assume that the president, if left to his own discretion, would not give enough consideration to such matters, and would be prepared, without excuse, to go right on aiding a country which in turn was arming a potential enemy. The effect of statutory rigidity here, however, is to make the exception into the rule.¹³³ Since the Act authorizes the continuance of aid, despite certain of the designated shipments, when the president finds that cessation could "clearly be detrimental to the security of the United States" and so reports to Congress, our government is repeatedly put in the position of acknowledging that our rigid policy is not workable in practice.

Every aspect of these activities, however, is subject to detailed scrutiny and deserved criticism when the executive branch seeks continuation of its authority and additional funds each year. This is the time when Congress can and does find out whether the laws have been administered in the spirit in which they were passed. When there is a feeling of trust between the two ends of Pennsylvania Avenue, it is possible to give the president a wider discretion in the administration of these laws. He can then really use foreign aid as an instrument of a dynamic foreign policy, always, of course, within the bounds set by Congress through the fixing of top limits and general policies. Pressure could still be applied when needed, but our efforts at mutual support would not be impeded by the constant irritants that rigid conditions foster.

¹³⁰ MSAam. § 529; MDAA § 405; Greek-Turkish Aid Act §§ 5, 6; Act for International Development § 411(b).

¹³¹ 65 STAT. 644 (1951), 22 U.S.C. 1611 (Supp. 1952).

¹³² 64 STAT. 1066 (1951), 22 U.S.C. 1523 (Supp. 1951).

¹³³ Cf. *Letters of President Truman to Chairman of Appropriate Committees of Congress*, Dec. 30, 1952, 28 DEP'T STATE BULL. 79 (1952).

A PATTERN FOR REVISION

The Lend-Lease Act¹³⁴ was a simple grant of power to the president to provide wartime assistance to countries whose defense he deemed vital to the defense of the United States. No more specific designation of eligible countries was put in the Act throughout the war. The few definitions of the authorized types of assistance were so broad that, as a matter of fact, anything that could be used "for defense" could be transferred under the act. The president could carry out his powers through any agency or officer that he might designate. The mass of legislative words in the present system authorizes no functions necessary to a foreign aid program that were not allowed under the simple terms of the Lend-Lease Act. That law reflected the congressional assumption that the whole Government was equally devoted to the effort to help our Allies defeat the Axis aggressors. Might it not be possible now for Congress to give the president a law based on the assumption that he will use it appropriately as a means of deterring the aggressor of today?

With an attitude of this kind in Congress, the entire present hodge-podge of foreign aid legislation, the product of political expediency and compromise, could be supplanted by a short and simple act. The countries to be aided could be left to the discretion of the president, guided by certain principles established by Congress. Emergency situations could be met by the immediate start of aid in a needy area, and U.S. producers would not have to wait months to learn if special orders must be fitted into crowded schedules. The types of aid could be left entirely to the president's judgment concerning what would best serve the purpose of the general act. The semantic exercise that colors the presentation of the annual programs to Congress stemming from the need to distinguish between economic aid and defense support or technical assistance could be avoided. The quantities of aid would naturally be limited by the amount of funds provided, but within the over-all appropriation the president could be allowed to determine how much would go to each country or area. Instead of the detailed provisions now required by the various acts to be included in bilateral agreements, the president should merely be authorized to make such agreements as he might deem necessary to carry out the purposes of the act. The administration of the program could be left in the hands of the president, with authority to delegate where he might find it best suited to the type of administration he desires. Military matters would certainly

¹³⁴ 55 STAT. 31 (1941), 22 U.S.C. 411 (1946).

continue to be handled primarily in the Department of Defense, and foreign policy aspects would still be controlled by the Department of State. Delegations of power, however, and policy directives, when effected by executive orders instead of statutes, can be changed as soon as need arises. Amendments to rigid laws take months. Executive discretion can be the means of avoiding a patchwork administrative structure that puts pieces on the old instead of rebuilding when a new situation arises. The Economic Cooperation Act specified every detail of administration. The position of Director for Mutual Security was later created by Congress after long debate to unify administration of all the programs, but his office looks much like just another agency added to the existing conglomeration. Contrast this with the creation by the stroke of a pen of the Foreign Economic Administration in 1943 to combine wartime foreign aid and economic warfare in one agency.¹³⁵ This was done under laws that set the line of policy but left the prerogative of administration where it belongs, in the president.

A bill containing these essentials, laid on the president's desk early in the spring, would be tangible evidence that there is a refound trust in his determination to conduct our foreign relations in the best interests of the country. If there is a working bipartisanship in the formulation of foreign policy,¹³⁶ the placing of trust in the executive is not tantamount to accepting the decisions of a partisan administration. It would be the restoration of the balance of powers. The president's traditional responsibility for the proper administration of our foreign policy would be returned to the White House. This should also appeal to those in Congress who recognize that it is their prerogative to place the blame, not share it, in case the execution of policy is less than perfect. A draft of such a bill appears as the appendix to this article.

APPENDIX

A BILL

To maintain the security and promote the foreign policy and provide for the general welfare of the United States by furnishing assistance to friendly nations in the interest of international peace and security.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mutual Aid Act of 1953."

Sec. 2. The President may, from time to time, when and for so long as he deems it in the interest of the United States, furnish assistance to any

¹³⁵ Exec. Order No. 9380, 8 FED. REG. 13081 (1943).

¹³⁶ Perhaps as described in DULLES, WAR OR PEACE 182-4 (1950).

country whose national security, economic stability and social progress he finds to be a matter of national interest to the United States. In making such finding the President shall take into consideration the contribution of such country toward the strengthening of the security of the free world, the purposes of the United Nations, the elimination of barriers to international trade and the participation of free private enterprise therein, and other measures in the interest of world peace based on the freedom and individual liberty of all people. With respect to each country for which he makes such a finding, the President shall forthwith report such finding to the Congress.

NATURE OF ASSISTANCE

Sec. 3. Assistance may be rendered under this Act by any of the following means or any combination thereof which the President deems will serve the interests of the United States:

(a) transfers of articles in the possession of, or procured from any source by, the United States Government;

(b) making funds available to other governments, agencies or groups of such governments, or to international organizations, whether or not the United States participates therein;

(c) furnishing information or technical assistance through instruction, technicians or otherwise;

(d) providing services, licenses, and facilities, including the construction thereof whenever it may be to the interest of the United States;

(e) purchasing or procuring articles, information, services, licenses and facilities outside the United States (i) out of any United States Government funds, for the use of the United States or (ii) out of funds authorized under this Act, for transfer as assistance under this Act;

(f) making payment for any of the foregoing, using where practicable, procedures that will encourage the use of normal channels of trade.

TERMS OF ASSISTANCE

Sec. 4. (a) Assistance may be rendered under this Act on such terms as the President may deem to be in the interest of the United States, including credit for such periods as he may determine, grants without payment, immediate cash payment or payment in strategic material or such other form as may be mutually agreed between the United States and the other country concerned.

(b) The President may conclude agreements with other countries concerning assistance furnished or to be furnished under this Act. Such agreements shall specify (i) the terms and conditions on which assistance will be furnished and will terminate; (ii) the use to be made of assistance furnished under this Act; (iii) the military, economic, budgetary, social or other measures to be adopted in connection with assistance furnished under this Act; and (iv) such other undertakings as shall be mutually agreed.

METHODS AND PROCEDURES

Sec. 5. (a) In furnishing assistance under this Act the President may adopt such procedures as have heretofore been used in similar operations, or may adopt such new procedures as he may deem necessary. In so doing he shall make use, to the maximum practicable extent, of private channels of trade and banking.

(b) The President may, when he determines it to be necessary for the proper carrying out of this Act, perform functions under this Act without

regard to such laws regulating the making, performance, amendment or modification of contracts and the expenditure of Government funds as he may specify.

Sec. 6. (a) The President may exercise any power or authority granted under this Act, except the finding to be made under section 2, through any department or agency, any Government Corporation, whether or not organized specially for the purpose, or any officer named by him for the purpose, and he is authorized to delegate his powers and authority under this Act accordingly.

(b) Persons may be employed or retained as consultants to carry out the functions authorized under this Act in the United States and abroad, of whom (i) not to exceed two may be compensated at rates not exceeding \$22,500 per annum, (ii) such number as the President finds necessary in the interest of proper administration of this Act may be compensated at rates in excess of grade 15 of the general schedule established by the Classification Act of 1949, as amended, but not in excess of \$17,500 per annum, and (iii) those serving outside the United States may at the discretion of the President be employed and compensated under the Foreign Service Act of 1946, as amended, or receive compensation at the rates provided for chiefs of mission and the Foreign Service Reserve and Staff by that Act, together with allowances and benefits established thereunder. All persons performing functions under this Act shall be subject to the same loyalty and security check as the employees of other sensitive agencies.

(c) The head of any department or agency, or any other officer, performing functions under this Act, shall, in accordance with arrangements prescribed by the President, consult (i) with the Secretary of State on all matters of foreign policy arising in connection with such functions, (ii) with the Secretary of Defense on all military questions, and (iii) with the National Advisory Council on International Monetary and Financial Problems on all monetary and financial questions.

APPROPRIATIONS AUTHORIZED

Sec. 7. (a) To carry out the provisions and accomplish the purposes of this Act, there is hereby authorized to be appropriated from time to time not to exceed such amounts as may be authorized by law: *Provided*, That for the fiscal year ending June 30, 1954, there are so authorized to be appropriated \$x,xxx,xxx,xxx.

(b) Whenever the President shall determine that, because of an unforeseen emergency, it is important to the interests of the United States, there may, if there are insufficient funds remaining out of appropriations made under this Act, be made advances by the Treasury not to exceed in the aggregate in any one year \$100,000,000 to carry out the provisions of this Act, and no interest shall be charged on advances made for this purpose. The Treasury shall be repaid for such advances out of funds appropriated for the purposes of this Act.

(c) The President is authorized to accept money, local currency and other property or benefits from other countries in connection with assistance furnished under this Act: *Provided*, That (i) all money so received in dollars shall go into miscellaneous receipts of the Treasury; (ii) local currencies of other countries so received may be used in carrying on the functions authorized under this Act; (iii) other property or benefits so received shall be disposed of as the President shall direct in the interests of the United States, or as may be hereafter directed by law.

REPORTS TO CONGRESS

Sec. 8. The President, from time to time while assistance continues to be furnished under this Act, shall transmit to the Congress reports covering each six months of operation under this Act, except information the disclosure of which he deems incompatible with the security of the United States. All reports required by this Act shall be transmitted to the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, if the Senate or the House of Representatives, as the case may be, is not in session.

PATENTS AND TECHNICAL INFORMATION

Sec. 9. (a) As used in this section—

(1) the term "invention" means an invention or discovery covered by a patent issued by the United States, and

(2) the term "information" means information originated by or peculiarly within the knowledge of the owner thereof and those in privity with him, which is not available to the public and is subject to protection as property under recognized legal principles.

(b) Whenever, in connection with the furnishing of any assistance in furtherance of the purpose of this Act—

(1) use within the United States, without authorization by the owner, shall be made of an invention, or

(2) damage to the owner shall result from the disclosure of information by reason of acts of the United States or its officers or employees, the exclusive remedy of the owner of such invention or information shall be by suit against the United States in the Court of Claims or in the District Court of the United States for the district in which such owner is a resident for reasonable and entire compensation for unauthorized use or disclosure. In any such suit the United States may avail itself of any and all defenses, general or special, that might be pleaded by any defendant in a like action.

(c) Before such suit against the United States has been instituted, the head of the appropriate department or agency of the Government, which has furnished any assistance in furtherance of the purpose of this Act, is authorized and empowered to enter into an agreement with the claimant, in full settlement and compromise of any claim against the United States hereunder.

(d) The provisions of the last sentence of section 1498 of Title 28 of the United States Code shall apply to inventions and information covered by this section.

(e) Except as otherwise provided by law, no recovery shall be had for any infringement of a patent committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action, except that the period between the date of receipt by the Government of a written claim under subsection (c) above for compensation for infringement of a patent and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as part of the six years, unless suit is brought before the last-mentioned date.

Sec. 10. (a) There are hereby repealed—

(1) An Act to Provide for Assistance to Greece and Turkey, approved May 22, 1947, as amended.

(2) The Foreign Assistance Act of 1948, as amended, including the Economic Cooperation Act of 1948, as amended; the International Chil-

dren's Emergency Fund Assistance Act of 1948, as amended; the Greek-Turkish Assistance Act of 1948; and the China Aid Act of 1948, as amended.

(3) The Far Eastern Economic Assistance Act of 1950, as amended.

(4) The China Area Aid Act of 1950, as amended.

(5) The Mutual Defense Assistance Act of 1949, as amended.

(6) The United Nations Palestine Refugee Aid Act of 1950.

(7) The Mutual Security Act of 1951, as amended, except section 535 thereof: *Provided*, That the authorizations under section 533 of the Mutual Security Act of 1951 as amended shall be applicable to offices and appointments under this Act.

(8) The Mutual Security Act of 1952, except section 11 thereof.

(9) The Act for International Development, as amended.

(b) The provisions of this section shall not affect the validity of any action, contract, authorization, agreement or other activity undertaken or entered into under authority of a provision of law repealed by this section, and any such action, contract, authorization, agreement or other activity may be carried to completion as though such provision of law had not been repealed.

Sec. 11. If any provision of this Act or the application of any provision to any circumstances or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.