

GAO
United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-225832.4

May 26, 1987

RELEASED

The Honorable Daniel K. Inouye
Chairman
Subcommittee on Foreign Operations
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

This is in response to your letter dated May 22, 1987, requesting the views of this Office on the applicability of certain House and Senate expedited procedures set forth in the International Security and Development Cooperation Act of 1985, (ISDCA), Pub. L. No. 99-83, § 722, 99 Stat. 190, 258 (1985), to the Administration's recent budget request for \$105,000,000 in assistance to the Nicaraguan Democratic Resistance.

As set forth below, the expedited procedures set forth in ISDCA appear to be available in the Senate for the consideration of the President's fiscal year 1988 budget request for assistance to the Nicaraguan Democratic Resistance. Further, the applicability of the Senate expedited procedures to the President's request does not appear to be dependent on the extension of the provisions of section 722 of ISDCA by section 215 of Title II of the Military Construction Appropriations Act, 1987. Because of the necessarily short period of time available to prepare this letter, our conclusions represent only the tentative opinion of this Office. Further, these provisions deal with the rules of the Senate and, accordingly, the final authority to interpret these provisions rests with the Senate itself.

BACKGROUND

Subsection 722(p) of the International Security and Development Cooperation Act of 1985, Pub. L. No. 99-83, 99 Stat. 190, 258 (1985) (ISDCA), provides for submission by the President of requests for "budget and other authority to provide additional assistance for the Nicaraguan democratic resistance."

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Subsection (s) of section 722 provides for expedited consideration of "a joint resolution with respect to the request submitted by the President pursuant to subsection (p)" in the House of Representatives. The expedited House procedures include time limits on committee consideration and expedited parliamentary procedures. The provisions specifically were to apply "during the 99th Congress." 99 Stat. 258.

Subsection (t) of section 722 provides for generally similar expedited procedures in the Senate, incorporating by reference certain procedures set forth in the Department of Defense Appropriations Act, 1985, Pub. L. No. 98-473, § 8065, 98 Stat. 1837/1935-36 (1984). The Senate procedures, however, were not limited to the 99th Congress.

Section 215 of Title II of the Military Construction Appropriations Act, 1987, Pub. L. No. 99-591, 100 Stat. 3341/3341-307 (1986) provides as follows:

"The provisions of subsections (s) and (t) of section 722 of the International Security and Development Cooperation Act of 1985 shall apply--

"(1) with respect to any request described in section 722(p) of such Act submitted by the President to the Congress on or after the date of enactment of this title, and

"(2) with respect to any request by the President for additional economic assistance for the Central American democracies ***

"except that, for purposes of consideration in a House of Congress of a joint resolution under subsection (s) or (t) of such section, amendments to such a joint resolution may be in order but only if such amendments are germane."

ANALYSIS

The specific questions posed in your May 22 letter and our conclusions in each case are set forth below. Your first question is as follows:

"It is my impression that under section 722 of the International Security and Development Cooperation Act of 1985 expedited procedures are available in the Senate for the consideration of the President's request for military assistance to the Nicaraguan Democratic Resistance (FY 1988 Budget Appendix I-D27). Is that a correct reading of the law?"

We conclude that the expedited procedures set forth in ISDCA appear to be available in the Senate for the consideration of the President's fiscal year 1988 budget request for \$105,000,000 in assistance to the Nicaraguan Democratic Resistance. Whatever the time period initially covered by the House and Senate expedited procedures set forth in section 722 of ISDCA, those procedures were made applicable to the President's fiscal year 1988 request by section 215 of Title II of the Military Construction Appropriation Act, 1987, quoted above. Section 215 incorporated by reference the procedures set forth in subsections (s) and (t), with some changes, and made them applicable to any request made by the President pursuant to ISDCA "on or after the date of enactment" of that Act. Accordingly, the expedited procedures appear to be available in the Senate for consideration of the President's fiscal year 1988 budget request for \$105,000,000 for the Nicaraguan Democratic Resistance.

Your second question is as follows:

"It is also my impression that the President's request for assistance to the Nicaraguan Democratic Resistance would be entitled to expedited procedures in the Senate during fiscal year 1987 (i.e., until September 30, 1987) even if section 215 of the Military Construction Title of P.L. 99-591 were repealed. Is that a correct reading of the law?"

The President's \$105,000,000 fiscal year 1988 budget request for aid to the Resistance would appear to be entitled to expedited procedures in the Senate even were section 215 of the Military Construction Appropriations Act, 1987, repealed. Initially, although the President's request is for fiscal year 1988, it was submitted within the fiscal year 1986-87 coverage of the authorizations in ISDCA. That Act authorized international development and security assistance programs "for fiscal years 1986 and 1987." 99 Stat. 190.

Additionally, the Senate expedited procedures in subsection 722(t) of ISDCA do not expire at the end of the fiscal year 1987, but rather are applicable to any request made by the President after enactment of that Act. ISDCA is an authorization act, not an appropriation act, and accordingly is not subject to the presumption that any provision in an annual appropriation act is effective only for the covered fiscal year. 65 Comp. Gen. 588, 593 (1986). Further, subsection 722(p) of ISDCA, which authorizes the President to submit

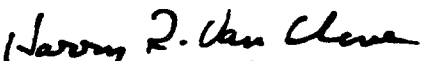
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requests for additional funding for the Resistance, is applicable to such requests made "at any time" after enactment. The phrase, "at any time," constitutes "words of futurity," indicating that that provision and its associated subsections (s) and (t) are permanent legislation. 24 Comp. Gen. 436 (1944).

The House expedited procedures are specifically limited to consideration of requests "during the 99th Congress." There is no such limitation, however, in the Senate procedures. Accordingly, the applicability of the Senate expedited procedures to the President's request does not appear to be dependent on the extension of the provisions of section 722 of ISDCA by section 215 of Title II of the Military Construction Appropriations Act, 1987.

This letter will be available for release to the public 30 days from today, unless released earlier by you or your staff.

Sincerely yours,


Harry R. Van Cleve
General Counsel