

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20540

B-219870

January 13, 1986

The Honorable Spark M. Matsunaga
United States Senate

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FOR 13 DAYS**

Dear Senator Matsunaga:

This is in response to your letter dated July 30, 1985, which requests that we obtain answers to a series of questions relating to the President's obligation to appoint members to the Board of Directors of the Institute of Peace. Because Representative Glickman has written to us raising the same issues you have raised, we are providing him with an identical response.

The United States Institute of Peace was established by the United States Institute of Peace Act (Act), Title XVII of Public Law 98-525, October 19, 1984, 98 Stat. 2492, 2649, to be codified at 22 U.S.C. §§ 4601-4611. Your questions with our responses are set forth below.

1. Is the President's delay in submitting the names of his nominees for the Board of Directors of the U.S. Institute of Peace a violation of federal law?

The Act provides that the powers of the Institute of Peace (Institute) shall be vested in a Board of Directors. The Board shall consist of 15 voting members as follows: the Secretary of State (or his designee); the Secretary of Defense (or his designee); the Director of the Arms Control and Disarmament Agency (or his designee); the president of the National Defense University (or the vice president of the University); and 11 individuals appointed by the President, by and with the advice and consent of the Senate. Sections 1706(a) and (b) of the Act, 22 U.S.C. §§ 4605(a) and (b). With regard to the appointment of the 11 individuals, section 1706(e)(3) of the Act provides as follows:

"The President may not nominate an individual for appointment to the Board under subsection (b)(5) [the eleven individuals]

prior to January 20, 1985, but shall submit the names of eleven nominees for initial Board membership under subsection (b)(5) not later than ninety days after that date. If the Senate rejects such a nomination or if such a nomination is withdrawn, the President shall submit the name of a new nominee within fifteen days." 22 U.S.C. § 4605(e)(3).

As you are probably aware, pursuant to the above provision, the President has submitted the names of nine of the eleven nominees who require Senate confirmation. The names of the nine nominees along with the dates that their nominations were received by the Senate are as follows:

1. Sidney Lovett - September 9, 1985
2. John Norton Moore - September 9, 1985
3. Richard John Neuhaus - September 9, 1985
4. W. Bruce Weinrod - September 9, 1985
5. Dennis Bark - September 18, 1985
6. Evron Kirkpatrick - September 18, 1985
7. Scott Thompson - October 4, 1985
8. Allen Weinstein - October 17, 1985
9. William Kintner - November 1, 1985

The plain language of section 1706(e)(3) of the Act quoted above required the President to have nominated all 11 individuals for Board membership within 90 days of January 20, 1985, or by April 20, 1985. As can be seen from the above list the President did not submit any of the required 11 nominations within the statutorily mandated time period. Therefore, the President did not implement the statutory requirement in a timely manner.

2. What is the current status of the nominees for the Board of the U.S. Institute of Peace?

The Board when fully constituted will have 15 voting members. It presently has three designated members: The Honorable Max M. Kampelman (State Department); The Honorable Richard N. Perle (Defense Department); and The Honorable Kenneth L. Adelman, Director of the Arms Control and Disarmament Agency. Although the president or the vice president of the National Defense University is made a voting member of the Board by section 1706(b)(4) of the Act, we understand that neither has been so designated by the President. We have been informally advised that this is because of a reluctance on the part of the president and vice president of the University to disclose their political party affiliation which would be necessary in order for the administration and the Congress to insure that not more than eight voting members of the Board are members of the same political party as required by section 1706(c) of the Act. As indicated above in our answer to your first question, the names of nine of the eleven individuals to be nominated by the President have been sent to the Senate.

We have been informally advised by the Director of Presidential Personnel that a potential tenth nominee's name has been submitted to the Federal Bureau of Investigation (FBI) for security investigation and will be announced when the FBI completes its investigation provided that the results of the investigation are compatible with such action. The Director advised our Office that he received notification in early November 1985 that the FBI's investigation of a potential eleventh nominee was not consistent with going forward with the nomination. Therefore, it will be necessary to begin a new security clearance process for an eleventh nominee.

3. What is the average time that official government agencies take to clear requests for high-level (GS-18) security clearances?

It should be noted that all 11 Board members requiring Senate confirmation are Presidential appointees and as such the investigations for their security clearances are done by the FBI. In seeking security clearances, the Office of Presidential Personnel sent FBI clearance forms to the selected candidates and encouraged a quick response to begin the clearance process. The average time for a

full-field FBI investigation is 90 to 120 days, according to the Director. There were some changes in the original selections because one candidate took a full-time job instead of the Board position, one candidate declined it, and, as indicated above, one candidate did not pass the security clearance.

With regard to other high-level positions, civilian Executive Branch agencies, with few exceptions, use the investigative resources of the Office of Personnel Management (OPM) to conduct background investigations which are used for the granting of top secret security clearances. The OPM has three categories which an agency may use to request such investigations and the categories are dependent on how quickly the requester desires the results. Cases are categorized as 35-day, 75-day or 120-day cases. In contacting several major users of OPM the following information was obtained: OPM is completing 35-day cases in 2-4 months, 75-day cases in 4-6 months and 120-day cases in 8-12 months.

The various elements of the Department of Defense use the Defense Investigative Service (DIS). The DIS is presently completing background investigations within 120-150 days. However, DIS does have the capability of conducting special request investigations on an expedited basis and these are generally completed within 30-60 days.

It is the requesting agency's responsibility to review and adjudicate the completed investigation and subsequently grant a security clearance as needed or required.

Neither the Office of Personnel Management nor the Defense Investigative Service has any direct responsibility for the investigations or clearances of the Board members since, as noted above, they are Presidential appointees.

4. What procedure did officials of the U.S. Government follow in compiling a list of candidates for the Institute's Board of Directors, and seeking security clearances for them and was such procedure consistent with the provisions of the U. S. Institute of Peace Act?

We have been informally advised by the Director of Presidential Personnel that his office followed "the same procedures as always" in generating a list of candidates for the Institute of Peace Board of Directors. The Office

of Presidential Personnel received approximately 100 recommendations, most of which were unsolicited. Additionally, some consultations with other offices in the executive branch might have taken place. The Office of Presidential Personnel forwarded a list of recommended candidates to the White House where a personnel committee and, in some instances, the President's Chief of Staff, were involved in the selection process. The Director of Presidential Personnel indicated that details about this process might be covered by executive privilege. The Director did state that there are no standard regulations or rules requiring certain procedures to be followed.

The criteria the office used in selecting names to be forwarded to the President were that (1) the Board be bipartisan and (2) it have people familiar with the subject. The Office of Presidential Personnel tried to have "some religious people" and some familiar with peace work and how to work for peace. The office's standards were to look at whether candidates had written, spoken, or worked in the area. Additionally, the candidates' backgrounds were reviewed.

When asked whether his office had used criteria that were subjective, the Director said that the criteria always were in these cases. When asked if there had been any objective criteria used for the final selection of candidates' names (other than the statutory limit on the number of members having the same political affiliation), the Director said he could not recall any. The Director did note the application of the "two Cs": competent and committed to the President's policy agenda.

The process began in early February, with selections made in March or April when recommendations were sent to the President. After he signed off on the nominees the FBI investigations began.

We are not aware of any provisions in the Act which would have required the President to have followed a different selection process.

5. When can the Senate expect to receive these nominations?

The President is required to nominate two additional voting members to the Board of Directors. As indicated above one additional nominee is presently being investigated by the Federal Bureau of Investigation. The Director

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indicated that the final nomination will not be made in all likelihood until 1986 as a new selection must be made and a security clearance initiated.

We trust the above information serves the purpose of your inquiry.

Finally, in accordance with our agreement with your staff, this letter will be generally available 15 days after receipt in your office.

Sincerely yours,

Thelton J. Doran
for Comptroller General
of the United States