

Sent: 8 JUL 2003 20:42:19
From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
To: Lauren C. Lobrano (CN=Lauren C. Lobrano/OU=OMB/O=EOP@EOP [OMB])
Subject: : Re: State SAP
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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-JUL-2003 20:42:19.00
SUBJECT: Re: State SAP
TO: Lauren C. Lobrano (CN=Lauren C. Lobrano/OU=OMB/O=EOP@EOP [OMB])
READ: UNKNOWN
End Original ARMS Header

ok from Counsel's office perspective.

Lauren C. Lobrano
07/08/2003 07:57:21 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: State SAP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_B72PH003_WHO.TXT_1>

July 8, 2003
(Senate)

S. 925 - Foreign Relations Authorization Act, Fiscal Year 2004
(Senator Lugar (R) Indiana)

The Administration supports Senate passage of S. 925, which authorizes appropriations for the Department of State, the Broadcasting Board of Governors (BBG), and the Peace Corps, and contains other foreign relations provisions, many of which are consistent with the Administration's request. The Administration would further support Senate passage of an amendment which incorporates S. 1161, the Foreign Assistance Authorization Act, fiscal year 2004, and would strongly support authorization of the Millennium Challenge Account based on the President's proposal. The Administration presents its views and concerns on each component, and looks forward to working with the Congress to address these and other concerns.

Amendment on S. 1161 - Foreign Assistance Authorization Act

The Administration commends the Senate Foreign Relations Committee for including a broad range of flexible foreign assistance and important defense export control authorities. This bill would authorize appropriations for bilateral economic and security assistance programs for fiscal year 2004, and U.S. contributions for several multilateral development banks. S. 1161 also includes a number of changes that the Administration sought to improve security assistance programs, as well as authorization for a Complex Foreign Contingency Account and creation of a Famine fund.

The Administration welcomes the Sense of Congress support expressed for the bilateral exemption from defense export licensing requirements for the United Kingdom and would urge an amendment to codify the exemption. The Administration intends to work with the Congress on legislative language to provide for debt relief for Pakistan - a partner in the War on Terrorism.

Provisions that concern the Administration include section 519, which is highly objectionable because it almost doubles the number of countries included in the Emergency Plan for AIDS Relief, which focuses resources on the most afflicted countries in Africa and the Caribbean. This increase will dilute the Plan's effectiveness, and the effort (in the 14 targeted countries) to develop programs and activities that would be successful models to then replicate elsewhere. Other provisions of concern include: (1) program authorizations in Title III (Radiological Terrorism Threat Reduction) that are duplicative of existing activities; (2) parts of Title IV that could inappropriately restrict global pathogen surveillance activities; and (3) several authorizations of appropriations in excess of the President's request, and a reduction in the authorization for the Andean Counterdrug Initiative.

Provisions raising constitutional concerns include sections 308 and 413(c), requiring the Secretary of State to submit reports including budget recommendations. These provisions should be amended to provide for submissions only to the extent the President deems necessary and expedient, as provided by the Recommendations Clause of the Constitution. Sections 512 and 515(b) require reports that could disclose information relating to diplomatic activities and negotiations. These provisions would impermissibly infringe on the President's authority to conduct foreign affairs and international negotiations.

Amendment on "Mexico City" Policy

The Administration would strongly oppose any amendment that would overturn the Administration's family planning policy (commonly known as the "Mexico City" policy) and allow U.S. taxpayer funds to go to international organizations which perform abortions and engage in abortion advocacy. The President would veto the bill if it were presented to him with such a provision.

Amendment on Millennium Challenge Account (MCA)

The Administration understands that an amendment authorizing the creation of the MCA may be offered by Chairman Lugar and Senator Hagel. The Administration supports Senate passage of this amendment. The Administration supports legislation consistent with the principles outlined in the President's February 5, 2003, transmittal to Congress establishing a Millennium Challenge Corporation that would administer a new assistance program using innovative strategies with an emphasis on economic growth, country ownership and responsibility, and accountability for results. Only an autonomous corporation, guided by the U.S. foreign policy leadership, will have the flexibility and focus necessary to achieve these goals. We look forward to working with Congress to implement the President's vision on this important initiative.

Amendment on Iran Democracy

The Administration understands that an amendment on Iran democracy may be considered. The Administration supports full democracy for Iran, but we believe the focus of the bill on a referendum as the only tool for change in Iran is too narrow and advocate a broader range of activities to support democracy and human rights in Iran. We are concerned that funding private broadcasters operating in the United States would violate prohibitions regarding government subsidized dissemination within the United States of programming designed to shape public opinion, as well as divert critical funding for U.S. funded broadcasting, such as VOA and RFE/RL. It would be difficult to monitor private stations to ensure their programming reflects U.S. policy. We support the substitute to this amendment proposed by Chairman Lugar which addresses the Administration's concerns.

Amendment on Armenia

The Administration understands that an amendment on Armenia may be considered. We would oppose a specific reference to Armenia in amendment SA 541, which concerns the UN

Genocide Convention. While we view the mass killings and forced exile of countless Armenians at the end of the Ottoman Empire as a horrible tragedy, the Administration instead favors reconciliation between Turkey and Armenia, coupled with frank discussion regarding these horrific events among Turks and Armenians around the world.

S. 925 - Foreign Relations Authorization Act

S. 925 for the most part contains authorities and appropriations authorizations that support and enhance the Administration's ability to carry out the Nation's foreign policy. Nonetheless, the bill contains a number of provisions that restrict the President's flexibility to conduct foreign policy; exceed the President's FY 2004 Budget request; or raise managerial or constitutional concerns.

Significant provisions that restrict the President's ability to conduct and manage foreign policy include: (1) section 401, which permanently raises the peacekeeping cap to 27.4 percent, and (2) section 803, which prohibits the elimination of U.S. international broadcasting in specified languages in Central and Eastern Europe that were proposed for elimination or reduction for as many as the last 8 years. The Administration seeks to shift our broadcasting reach from former Cold War countries with a growing free press, many of which are now joining NATO and the European Union, to new audiences in areas like the Middle East. The Administration objects to Section 813, a Sense of the Congress provision that seeks to narrow the United States' participation in international negotiations on global climate change to securing a "future binding climate change Treaty," which is based upon unbalanced and selective scientific findings and fails to consider the Administration's comprehensive domestic and international strategy to address potential long term global climate change.

Seven appropriation authorizations are in excess of the President's request. As well, certain provisions establish new unfunded benefits and would place pressure on the FY 2004 Budget, including sections 305 (additional post differentials and allowances) and 312 (certain additional housing benefits).

The Administration objects to section 203, which authorizes police powers to State Department contract guards, because its objective can be accomplished through administratively delegated protective authorities. The Administration has reservations concerning and will work with Congress on section 301, relating to assignments with foreign countries or entities, and has additional concerns, including section 303, which expands a proposed pilot program providing for a waiver of annuity limitations for re-employed Foreign Service annuitants into a permanent program. With respect to section 206, which concerns the capital cost sharing initiative for the construction of secure embassies overseas, which is currently under development within the Administration, we look forward to working with the Congress on the Administration's proposal.

Provisions raising constitutional concerns include: section 807, relating to Jerusalem, which would infringe upon the President's constitutional authority to conduct the Nation's foreign affairs and supervise the unitary executive branch, and which is not conducive to a constructive diplomatic outcome in a particularly sensitive and difficult negotiating environment; section 403,

which purports to direct Executive branch officials to use the U.S. voice and vote to oppose membership on UN Councils and Commissions for certain member nations; and provisions, such as section 808, which could be construed to be inconsistent with the President's constitutional authority with respect to foreign relations, national security, or deliberative processes of the Executive. Finally, sections 806 (requiring the Secretary of State to make proposals regarding compensation for victims of international violent crimes), and 905 and 906 (requiring certain Peace Corps reports) should be amended to provide for submissions only to the extent the President deems necessary and expedient, as provided by the Recommendations Clause of the Constitution.

* * * * *

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy (SAP) was developed by the Legislative Reference Division (Rooney), in consultation with IAD (Kulikowski/Pipan/Craythorn), State (Terry), NSC (Pica/Nemroff), BBG (Andros), CIA [redacted] Commerce (Dalmut), HHS(Friedman), Treasury (Levy), USAID (Cook), and Peace Corps (Wheat). ~~DOJ~~ did not respond. Justice did clear on the earlier S. 925 SAP, but did not respond on the full SAP, though DOJ did provide constitutional concerns (which are incorporated).

b(3)50 USC 3507

The Senate Foreign Relations Committee ordered S. 925 to be reported on April 9, 2003, by a vote of 18-0; and ordered S. 1161 to be reported on May 21, 2003, by a vote of 19-1.

OMB/LA Clearance: OVP (Leventhal), COS (), COMM (DeFrancis), NEC (Allgood), Counsel (), OLA (), CEA (Swagel), DepCOS (Kaplan), CA (Montgomery), NSC (Venlet), Advisor (Rove), DPC (Spellings), OMB (Cleveland).

Administration Position To Date

This is the first official position taken on S. 925 and S. 1161.

Provisions of S. 925

S. 925 is an omnibus bill that authorizes appropriations for the Department of State and International Broadcasting for FY 2004, and for the Peace Corps for FYs 2004-2007. The bill includes a number of requested provisions that improve State Department operations and administrative authorities. S. 925 also makes other policy, programmatic, and technical changes to laws affecting U.S. foreign relations.

Appropriations Authorization

The following table compares the FY 2004 appropriation authorizations requested with those contained in S. 925. For FY 2005, the Administration's authorization bill requested "such sums as may be necessary". S. 925 does not authorize FY 2005 appropriations. The principal difference between S. 925 and the FY 2004 Budget is that the bill authorizes an additional \$312 million for new embassy construction.

(\$ in millions)

	<u>FY 2004</u>		
	<u>Request</u>	<u>S. 925</u>	<u>Diff.</u>
<u>Adm. of Foreign Affairs</u>			
State Programs	4320.5	4328.5	8.0
Security & Maintenance	1514.4	1826.4	312.0
Educ. & Cult. Exchanges	345.3	402.3	57.0
Other	<u>72.7</u>	<u>72.7</u>	<u>0.0</u>

Subtotal	6253.0	6629.9	376.9
<u>Intrntl Orgns & Comm</u>			
Contributions to IOs	1010.5	1010.5	0.0
Contributions for Peacekeeping	550.2	550.2	0.0
Commissions	<u>69.6</u>	<u>69.6</u>	<u>0.0</u>
Subtotal	1630.3	1630.3	0.0
<u>Internatl Broadcasting</u>			
Broadcasting Operations*	552.1	561.0	8.9
Radio Construction	<u>11.4</u>	<u>11.4</u>	<u>0.0</u>
Subtotal	563.5	572.4	8.9
Migration and Refugee Asst	760.0	760.0	0.0
Other**	59.5	74.0	14.5
Peace Corps	359.0	359.9	0.0
Total	9625.5	10025.8	400.3

* Authorization for Broadcasting to Cuba is included in Broadcasting Operations.

** Other includes: The Asia Foundation, National Endowment for Democracy, the North-South Center, and the East-West Center.

Title II - State Authorities and Activities

Law Enforcement Provisions. This title includes three expansions of law enforcement authority: provides a new Federal criminal penalty for those who willfully and knowingly obstruct State's Diplomatic Security (DS) agents; provides administrative subpoena authority for the Secretary if there is an imminent threat against a person, foreign mission, or international organization protected by the DS; and authorizes the Secretary to designate contract guards as law enforcement officers for protecting State Department facilities. (Sections 201, 202, and 203).

Immediate Response Facilities. Authorizes reprogramming, without advance Congressional notification, of up to \$10 million per incident of Embassy Security funds to provide immediate response facilities. (The Administration requested authority for a total of up to \$15 million per year.) This authority is for existing posts or facilities. (Sec. 205)

Cost-Sharing for New Diplomatic Facilities. Authorizes the Secretary, beginning in FY 2005, to charge a fee to every Federal agency that has a presence at any US diplomatic facility to fund the construction of new diplomatic facilities. The amount of the fee charged would be determined by a formula that takes into account the number of employees assigned to each diplomatic mission. (Sec. 206)

Reimbursements from the United States Olympic Committee. Authorizes State to seek and retain reimbursement for security provided by special agents to the U.S. Olympic Team during the 2004 Summer Olympic Games in Athens, Greece. The Department plans to deploy about 150 special agents at an estimated cost of \$3 million. (Sec. 208)

U.S. Diplomacy Center. Provides authorities for the operation of a U.S. Diplomacy Center at the Department of State, to create a better understanding of US diplomacy. This section would authorize the Secretary to provide museum visitor and educational outreach services and to sell, trade, or transfer documents and articles that are displayed at the center. Any proceeds generated from these services or sales would be retained and spent by the center. These authorities were requested along with a funding cap of \$950,000 for FY 2004. (Sec. 212)

Latin American Educational Program. Authorizes an educational program for Latin American professionals to promote civilian control of government ministries with national security functions. (Sec. 213)

Title III - Organization and Personnel of the Department of State

Fellowship of Hope Program. Section 301 clarifies the authority of an existing exchange program with the foreign ministries of EU countries and the EU Commission in Brussels and expands it to NATO countries and NATO headquarters. Under the expanded program, mid-level diplomats will spend a year working in the foreign ministries of participating countries or in the European Commission or NATO headquarters. The provision is similar to an Administration request but does not include requested language to ensure that no Foreign Service officer occupies a position in a foreign government or foreign entity that may create a conflict with the officer's duty to the United States or with the interests of the United States.

Educational Expenses of Dependent Children. Section 302 would authorize payments for certain educational expenses of dependent children of Foreign Service employees posted overseas.

Foreign Service Pay and Retirement. Several sections in this title would amend pay and retirement benefits for State Department personnel. Section 303 would authorize the Secretary to temporarily rehire Foreign Service retirees without terminating their pension benefits in emergency circumstances or to fill exceptionally difficult positions. Section 305 would increase the cap on hardship and danger pay allowances from 25 percent to 35 percent of basic pay for State Department employees serving overseas. Section 309 would establish a 60-day deadline for OPM to issue regulations to implement a previously enacted change in pension benefits for certain spouses of Foreign Service workers. Section 310 would change personnel review and termination procedures for each Foreign Service class.

Housing Allowance. Increases from 30 to 40 the number of employees of the U.S. Mission to the United Nations in New York City who may receive a housing allowance. (Sec. 312)

TITLE IV - International Organizations

Peacekeeping Contributions. Permanently increases the cap on UN peacekeeping assessments to 27.4 percent. The Administration requested a cap of 27.1 percent for FY 2004 and 2005. (Sec. 401)

Brahimi Report. Requires the Secretary to report to Congress assessing UN implementation of the recommendations of the 2000 Report of the Panel on United Nations Peace Operations (known as the "Brahimi Report") and U.S. support of UN progress in this area. (Sec. 402)

Membership on UN Councils and Commissions. Requires the President use the US voice and vote at the U.N. to make every effort to prevent state sponsors of terrorism and countries subject to UN sanctions from gaining membership positions on the U.N. Security Council or the Human Rights Commission. (Sec. 403)

TITLE V - Designating Foreign Terrorist Organizations

This title amends the Immigration and Nationality Act, as requested, to revise requirements for designation of foreign terrorist organizations.

TITLE VI – Strengthening Outreach to the Islamic World

Public Diplomacy. Requires the President to develop and report to Congress on an international information strategy consisting of public information plans for major regions of the world, focusing on regions with significant Muslim populations. Further requires the Secretary to ensure that public diplomacy is a component of Foreign Service training. (Sec. 601)

Exchange Programs. Establishes new educational and cultural exchange programs (i.e., for journalism, library, English language teaching, sister-city partnership, youth ambassador) and expands the Fulbright Education Exchange and the Hubert H. Humphrey Fellowship programs to countries with predominantly Muslim populations. S. 925 earmarks \$30 million for these exchanges. (Secs. 612 and 613)

Edward R. Murrow Fellowship Program. Establishes a new fellowship program at the BBG to allow 20 foreign national journalists each year to spend 6 months working at the Voice of America, Radio Free Europe/Radio Liberty, or Radio Free Asia. BBG would pay their salaries, living expenses, and travel costs. (Secs. 621-624)

TITLE VII –International Parental Child Abduction Prevention Act of 2003

This title amends the Immigration and Nationality Act to revise requirements with respect to the inadmissibility of aliens supporting international child abductors and relatives of such abductors.

TITLE VIII - Miscellaneous Provisions

Foreign Language Broadcasting. Prohibits BBG from eliminating foreign language broadcasts in 13 languages related to Central and Eastern Europe, which were proposed for elimination or

reduction in the FY 2004 Budget. This prohibition is for one year from the date of enactment. It also requires a report within 6 months of enactment by the Secretary of State on the state of democratic governance and press freedom in the countries in Central and Eastern Europe for which the language broadcasts are proposed for elimination. (Sec. 803)

Fellowships for Multidisciplinary Training on Nonproliferation Issues. Authorizes graduate fellowships at U.S. institutions of higher education focusing on nonproliferation studies. (Sec. 804).

Requirement for Report on United States Policy Toward Haiti. This section requires a report on US policy toward Haiti, including the steps the United States is taking to resolve the political crisis in Haiti and its anticipated activities to promote free and fair elections in the country. (Sec. 805)

Victims of Violent Crime Abroad. Requires the Secretary to develop a proposal to increase services provided to American victims of violent crime overseas, and to explore ways in which victims could be compensated that is not taxpayer funded, similar to domestic victim compensation plans. It also requires the Secretary to establish a database to track the incidents of violent crime against Americans that are reported to an embassy or consulate. (Sec. 806)

Jerusalem Restrictions. Prohibits funds authorized in this Act from being used: (1) for operations of a consulate or diplomatic facility in Jerusalem unless such a facility is under the supervision of the U.S. ambassador to Israel, or (2) to publish documents that do not list Jerusalem as the capitol of Israel. (Sec. 807)

Requirement for Additional Report Concerning Promotion of Israel's Diplomatic Relations With Other Countries. This section extends for another year a reporting requirement outlining U.S. efforts undertaken to promote Israel's diplomatic relations with nations around the world, countries that do not have diplomatic relations with Israel, and all efforts by U.S. officials to promote Israeli participation in the world diplomatic community. (Sec. 808)

Middle East Broadcasting Network. Authorizes the BBG to make annual grants to a Middle East Broadcasting Network (MEBN) to provide radio and television broadcasts to the Middle East region. Radio Sawa currently provides radio programming to the Middle East. The BBG plans to add a satellite television network that would provide news, entertainment, and information programs to complement this radio programming. This section authorizes appropriations of \$47 million for FY 2004 for the MEBN. (Sec. 810)

Title IX - Peace Corps Charter for the 21st Century Act

This title would authorize appropriations of \$359 million, \$401 million, \$443 million, and \$485 million, for the Peace Corps for FYs 2004-FY 2007, respectively. This title also requires the Peace Corps Director to develop a training program for all Peace Corps volunteers in the education, prevention, and treatment of infectious diseases, and increases the Peace Corps volunteer readjustment allowance from \$125 to \$275 a month. (Currently Peace Corps volunteers receive \$225/month.)

Section 905 requires the Director to annually report to Congress on any new initiatives being proposed with the associated cost of the initiatives. This section also requires a one time report to Congress, within 30 days of enactment, describing current student loan forgiveness programs available to volunteers, with a comparison to other government-sponsored loan forgiveness programs, and a recommendation for any additional student loan forgiveness programs that could attract additional volunteers.

Section 906 requires the Director to develop a plan for doubling the number of Peace Corps volunteers and to report to Congress on the plan not later than thirty days after enactment, with annual reports thereafter until the doubling of volunteers has been achieved.

Corporation for National and Community Service (CNCS). Title IX also authorizes appropriation of \$10 million in FY 2004 to CNCS to provide grants to nonprofit organizations that support returned Peace Corps volunteers. Programs and projects may include: (1) educational programs; (2) partnerships with libraries; and (3) audio-visual projects. This section would require corporations receiving grants to have a board of directors composed of returned Peace Corps volunteers with a background in community service, education, or health.

Pay-As-You-Go Scoring

According to IAD (Pipan), S. 925 would affect receipts and direct spending. OMB scoring of the bill is under development.

LEGISLATIVE REFERENCE DIVISION

07/8/03 - 10:20 a.m.