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TO THE SECRETARY OF DEFENSE:

A LETTER OF MAY 2, 1958, FROM THE ASSISTANT SECRETARY (COMPTROLLER) REQUESTS OUR DETERMINATION AS TO WHEN AN OBLIGATION OF APPROPRIATED FUNDS ARISES IN ACCORDANCE WITH SECTION 1311 OF THE SUPPLEMENTAL APPROPRIATION ACT OF 1955, 68 STAT. 8031 UNDER A GRANT MADE PURSUANT TO SECTION 102 OF THE MUTUAL SECURITY ACT OF 1954, 68 STAT. 833.

SECTION 102 OF THE MUTUAL SECURITY ACT OF 1954 PROVIDES:

"SEC. 102. GENERAL AUTHORITY.--- MILITARY ASSISTANCE MAYBE FURNISHED UNDER THIS CHAPTER ON A GRANT OR LOAN BASIS AND UPON SUCH OTHER APPROPRIATE TERMS AS MAY BE AGREED UPON, BY THE PROCUREMENT FROM ANY SOURCE AND THE TRANSFER TO ELIGIBLE NATIONS AND INTERNATIONAL ORGANIZATIONS OF EQUIPMENT, MATERIALS, AND SERVICES OR BY THE PROVISION OF ANY SERVICE, INCLUDING THE ASSIGNMENT OR DETAIL OF MEMBERS OF THE ARMED FORCES AND OTHER PERSONNEL OF THE DEPARTMENT OF DEFENSE SOLELY TO ASSIST IN AN ADVISORY CAPACITY OR TO PERFORM OTHER DUTIES OF A NONCOMBATANT NATURE, INCLUDING MILITARY TRAINING OR ADVICE.'

THAT SECTION IS EXPLAINED IN HOUSE REPORT NO. 1925, PART I, 83D CONGRESS (P. 11), AS FOLLOWS:

"2. GENERAL AUTHORITY (SEC. 102)

"THIS SECTION CONSISTS OF A GENERAL STATEMENT OF THE AUTHORITY TO PROVIDE MILITARY ASSISTANCE. THE MAIN ELEMENTS OF THE AUTHORITY ARE (A) MILITARY ASSISTANCE MAY BE FURNISHED BY GRANT, BY LOAN, OR BY OTHER APPROPRIATE TERMS WHICH MAY BE AGREED UPON WITH RECIPIENTS; (B) RECIPIENTS MAY BE NATIONS OR INTERNATIONAL ORGANIZATIONS; (C) ASSISTANCE MAY INCLUDE THE TRANSFER OF EQUIPMENT, MATERIALS, AND SERVICES, AND PROCUREMENT MAY BE FROM ANY SOURCE, WITHIN OR OUTSIDE OF THE UNITED STATES. SUBJECT TO APPLICABLE REGIONAL CONDITIONS SPECIFIED IN SECTION 106, MILITARY ASSISTANCE MAY BE FURNISHED TO ANY NATION WHICH HAS COMPLIED WITH THE REQUIREMENTS OF SECTIONS 141 AND 142.'

SECTIONS 141 AND 142 OF THE ACT, AS AMENDED, 22 U.S.C. 1851-1852, GENERALLY ESTABLISH CONDITIONS WHICH ORGANIZATIONS OR NATIONS MUST MEET IN ORDER TO BE ELIGIBLE FOR ASSISTANCE UNDER THE MUTUAL SECURITY PROGRAM.

SECTION 1311 (A) PROVIDES, IN PERTINENT PART:

"AFTER THE DATE OF ENACTMENT HEREOF NO AMOUNT SHALL BE REPORTED AS AN OBLIGATION

OF THE GOVERNMENT OF THE UNITED STATES UNLESS IT IS SUPPORTED BY DOCUMENTARY EVIDENCE OF---

"/5) A GRANT OR SUBSIDY PAYABLE * * * (II) PURSUANT TO AGREEMENT AUTHORIZED BY, OR PLANS APPROVED IN ACCORD WITH AND AUTHORIZED BY, LAW * *

IT HAS GENERALLY BEEN HELD THAT, WHERE AUTHORITY EXISTS FOR THE MAKING OF GRANTS OR SUBSIDIES, AN OBLIGATION OF FUNDS COMES INTO BEING PURSUANT TO SUCH GRANT OR SUBSIDY UPON THE EXECUTION OF AN AGREEMENT DEFINITELY COMMITTING PUBLIC FUNDS FOR PAYMENT OF A GIVEN LIABILITY EVEN THOUGH THE AMOUNT IS NOT CERTAIN UNTIL A LATER TIME. 18 COMP. GEN. 363. THUS, UNDER A STATUTE AUTHORIZING A GRANT TO STATES AFTER APPROVAL BY A DESIGNATED FEDERAL OFFICER OF A PROGRAM OR PROJECT, AN OBLIGATION IS INCURRED WHEN THE FEDERAL OFFICIAL AGREES TO MAKE A CONTRIBUTION, WITHIN THE STATUTORY AUTHORITY, FOR A SPECIFIC PURPOSE UNDER STATED CONDITIONS AND THE STATE AGREES TO ACCEPT THOSE CONDITIONS. 31 COMP. GEN. 608. SEE, ALSO, 20 COMP. GEN. 370, AND 20 COMP. GEN. 185.

WHILE THE RULES CITED ABOVE WERE FORMULATED PRIOR TO THE ENACTMENT OF SECTION 1311, IT DOES NOT APPEAR THAT THE ENACTMENT OF THE PROVISION EFFECTED ANY RELAXATION OF THE RULES PREVIOUSLY APPLICABLE TO THE DETERMINATION AS TO WHEN AN OBLIGATION OF APPROPRIATED FUNDS AROSE. SEE 34 COMP. GEN. 459.

IN CARRYING OUT THE FACILITIES ASSISTANCE PROGRAM PURSUANT TO THE MUTUAL SECURITY ACT OF 1954, AS AMENDED, AN OVERALL MUTUAL DEFENSE AGREEMENT IS FIRST ENTERED INTO BETWEEN THE UNITED STATES AND THE FOREIGN GOVERNMENT. PURSUANT THERETO, A FACILITIES ASSISTANCE AGREEMENT IS THEN EXECUTED. THIS AGREEMENT SETS OUT, IN GENERAL TERMS, THE OBLIGATIONS EACH OF THE PARTIES AGREES TO INCUR WITH RESPECT TO SPECIFIC PROJECTS TO BE LATER AGREED UPON. PURSUANT TO THE FACILITIES ASSISTANCE AGREEMENT, A TECHNICAL ARRANGEMENT IS ENTERED INTO PROVIDING FOR A SPECIFIC PROJECT. UNDER ARTICLE 1 OF THE ARRANGEMENT THE RECIPIENT GOVERNMENT AGREES TO FURNISH ALL PERSONNEL, LABOR, EQUIPMENT, ETC. (EXCEPT EQUIPMENT AND TECHNICAL ASSISTANCE TO BE FURNISHED BY THE UNITED STATES IN ACCORDANCE WITH THE ARRANGEMENT) NECESSARY TO ESTABLISH IN A SATISFACTORY OPERATING CONDITION THE PARTICULAR FACILITY WHICH IS DESCRIBED IN DETAIL AND AT LENGTH IN APPENDIX I TO THE ARRANGEMENT. UNDER ARTICLE 2, THE UNITED STATES AGREES "UPON APPROVAL OF THE PLANS AND SPECIFICATIONS RELATING TO THE PROJECT SET FORTH IN APPENDIX I * * *, SUBJECT TO THE LIMITS OF COST SPECIFIED IN APPENDIX II, * * * (TO) PROVIDE * * * THE PRODUCTION EQUIPMENT AND TECHNICAL ASSISTANCE DESCRIBED IN APPENDIX II.' APPENDIX II STIPULATES A MAXIMUM ALLOWABLE COST TO THE UNITED STATES UNDER THE ARRANGEMENT AND APPENDIX I SETS OUT SPECIFICALLY THOSE ITEMS OF EQUIPMENT, INCLUDING COST, TO BE CONTRIBUTED BY THE UNITED STATES. SUBSEQUENT TO THE EXECUTION OF THE TECHNICAL ARRANGEMENT, A CONTRACT IS SIGNED GENERALLY PROVIDING THAT THE RECIPIENT GOVERNMENT SHALL OBTAIN AND THE UNITED STATES SHALL PAY FOR THOSE ITEMS OF EQUIPMENT WHICH THE UNITED STATES HAS AGREED TO CONTRIBUTE UNDER THE TECHNICAL ARRANGEMENT. IN ACCORDANCE WITH THE FOREGOING, WE CONCLUDE THAT APPROPRIATED FUNDS HAVE BEEN DEFINITELY COMMITTED IN A GIVEN AMOUNT AND, THEREFORE, AN OBLIGATION OF SUCH FUNDS HAS BEEN INCURRED AS DEFINED BY SECTION 1311 (A) (5) "UPON APPROVAL OF THE SPECIFICATIONS" PURSUANT TO ARTICLE 2 OF THE TECHNICAL ARRANGEMENT.

THE LETTER OF MAY 2, 1958, INDICATES THAT THE APPENDIX TO THE TECHNICAL ARRANGEMENT SPECIFICALLY LISTING THE ITEMS OF EQUIPMENT TO BE FURNISHED BY THE UNITED STATES IS NORMALLY INCLUDED. THE FOREGOING IS BASED UPON THE ASSUMPTION THAT THE NORMAL PROCEDURE HAS BEEN FOLLOWED. WHILE IT APPEARS THAT AN OBLIGATION WOULD BE INCURRED UNDER A TECHNICAL ARRANGEMENT IF PUBLIC FUNDS WERE COMMITTED

IN A GIVEN AMOUNT SUBJECT TO LATER REVISION, EVEN THOUGH THE SPECIFIC ITEMS CONSITUTING THE UNITED STATES' CONTRIBUTION ARE NOT LISTED PROVIDING THAT THE CONTRIBUTION OF THE UNITED STATES CAN BE DETERMINED FROM THE LANGUAGE OF THE AGREEMENT, WE MAKE NO DETERMINATION AS TO THE EXISTENCE OF AN OBLIGATION UNDER SECTION 1311 WHERE THE TECHNICAL ARRANGEMENT DOES NOT FOLLOW THE NORMAL PATTERN.