

Friday
November 14, 1980
9:15 a.m.

APPOINTMENT WITH GAO REPRESENTATIVES

ON DEFENSE PROPERTY LEASING
(10 USC, §2667)

GAO Representatives: Messrs. Hackten, Kelly, and McCracken

Background: Prior meetings on October 16 and November 6
with GAO representatives and Mr. Silber, LTC Wilhelm,
and Dr. Crossman

GAO representatives have separately met with Mr. Rudd,
as well as State representatives and personnel from
ADCSLOG, DARCOM, OP-63, and AF/PAI

GAO representatives will be talking to Mr. V. Garber
(OUSDR&E) and Mr. Trosch (OGC)

TAB A: Letter from DSAA Director to State-PM Deputy Director,
November 10, 1979 (UNCLASSIFIED)

GAO representatives were advised to ask State what it proposes
to do about renewal of Argentine lease or assistance to recover
the defense property under a lease now expired, as requested
by DSAA. GAO representatives reported that State personnel
claimed they were "unaware" of any pending DSAA request on the
matter. GAO representatives requested a copy of the letter at
TAB A. Recommend release to GAO.

TAB B: Existing MASH guidance on Section 2667 leases. (GAO HOLDS A
COPY) Provides that lease will not be arranged if FMS "is
feasible."

TAB C: Insert for the record of SFRC Hearing, April 16, 1980, justifying
proposed lease of 10 helicopters to Honduras. Lease was executed
on April 25, 1980. GAO HOLDS A COPY of the insert for the record,
which includes list of some recent leases -- including the
Argentine lease.

TAB D: Memo from DSAA Director to Mildepts., March 22, 1980, requesting
verification of recent lease examples, and includes DSAA Legal
Counsel memo to State on the legal authority for leases to foreign
governments. (GAO HOLDS A COPY)

TAB E: Executive Branch position on the Zorinsky Amendment. (GAO ADVISED
TO SECURE A COPY FROM SFRC STAFF)



DEFENSE SECURITY ASSISTANCE AGENCY
WASHINGTON, D. C. 20301

10 NOV 1979

In reply refer to:
I-8884/79

Mr. Daniel A. O'Donohue
Deputy Director
Bureau of Politico-Military Affairs
Room 7317
Department of State
Washington, D.C. 20520

Dear Dan:

We are in receipt of the attached memorandum of September 28, 1979, from PM/SAS relative to our proposal to approve the extension for one year of a lease under the authority of 10 USC 2667 of two radars with associated equipment to the Argentine Government. The US Army leased this property in 1974 prior to the enactment of section 620B of the Foreign Assistance Act of 1961 in 1977. The period of the five-year lease has expired, but the US Army advises that the radars could continue to be used to support upper atmosphere research projects of joint US-Argentina interest.

Section 620B of the Foreign Assistance Act of 1961 prohibits: the furnishing of assistance under specified chapters of Part II of the Act to Argentina, the extension of FMS credits to Argentina, new cash foreign military sales to Argentina, and new export licenses under the ITARs for Argentina after September 30, 1978. The section was narrowly and precisely drafted with the assistance of Mr. Borek in order to avoid legal questions as to the scope of the prohibition. Inasmuch as the lease authority provided in 10 USC 2667 does not fall within the jurisdiction of the security assistance authorization committees, but rather within the jurisdiction of the Armed Services Committees, it should be expected that the Congress did not intend that the section 620B prohibitions extend to any and all military supply relations with the Argentine military authorities regardless of the authorities under which those relations were conducted. The Legal Counsel for this Agency has therefore concluded that the proposed lease extension may be concluded as a matter of law.

I propose to authorize the US Army to extend the lease for an additional year unless the Department of State wishes to interpose foreign policy objections. The Department of

State's memorandum under reference is merely grounded upon legal objections and, moreover, does not provide a lawful and responsible alternative course of action with respect to the United States Government property in question. If there is an objection grounded upon foreign policy considerations, I must request that the Department of State lend its active assistance to the prompt recovery of custody of the leased property. A course of action that amounts to de facto extension of the lease period without a specified termination date is not legally authorized by 10 USC 2667 in absence of a determination pursuant to subsection (b)(1) nor is it, in my opinion, a responsible means of protecting the United States Government's interest in its property.

Sincerely,

Ernie

Attachment
a/s

ERNEST GRAVES
LIEUTENANT GENERAL, USA
DIRECTOR
DEFENSE SECURITY ASSISTANCE AGENCY



DEPARTMENT OF STATE

Washington, D.C. 20520

September 28, 1979

UNCLASSIFIED

MEMORANDUM

TO: DOD/DSAA - Charles G. Jameson
FROM: PM/SAS - David W. Cox *DW*
SUBJECT: Lease of Nike-Hercules Radars to Argentina
REFERENCE: Your Memorandum of September 19, 1979
(I-8884/79)

In view of the doubtful legality of extending the lease in question, the Department of State does not clear the memorandum under reference.

Memoranda from the Office of our Legal Adviser are attached for your information.

Attachments:

Memoranda from Mr. Ted Borek dated
September 20 and 21, 1979

Drafted: PM/SAS:DW *DW*
9/28/79: ext. 27774

Clearances: L/PM - Mr. Borek (subs) *MB*
ARA/ECA - Mr. Adams (subs) *MA*
PM/SAS - Mr. Farber (draft) *CF*

UNCLASSIFIED



DEPARTMENT OF STATE

Washington, D.C. 20520

September 21, 1979

MEMORANDUM

TO: PM/SAS - Mr. James Farber
FROM: L/PM - Ted A. Borek ^{TAB}
SUBJECT: Leased Radar in Argentina

Having given some additional thought to the subject problem, it occurs to me that one possibility for resolving it would be simply to do nothing upon expiration of the "lease" on September 26, and treat the matter thereafter as a day-to-day possession at sufferance by the Argentine Government. This avenue is by no means unprecedented, in that in my experience at least the Department of Defense has on numerous occasions failed to conclude formal extensions of existing lease or bailment arrangements.

I see at least three advantages to this course. First, we could avoid a legally doubtful action (execution of a lease under 10 U.S.C. §2667). Second, we could avoid a potentially embarrassing episode with the Argentines. Lastly, and perhaps most important, we could avoid a positive act that could be misconstrued by the Argentines as demonstrating sub rosa United States Government support for the Argentine military and as suggesting a device whereby the clear statutory proscriptions on security assistance to that government could be circumvented.

L/PM:TABorek:tab
9/21/79:x20321

Page determined to be Unclassified
Reviewed Chief, Records & Declass Div, WHS
IAW EO 13526, Section 3.5
Date: Oct 23, 2018



DEPARTMENT OF STATE

Washington, D.C. 20520

September 20, 1979

MEMORANDUM:

TO: PM/SAS - Mr. David Cox D

FROM: L/PM - Ted A. Borek TB

SUBJECT: Proposed Lease of Defense Articles to
the Government of Argentina

We have reviewed the attached papers from the Department of Defense wherein it is proposed to extend, for a one-year period, the lease of certain NIKE HERCULES radar equipment to the Government of Argentina. The existing five-year lease covering this equipment expires on September 26 of this year. The legal authority cited for the lease and its extension is 10 U.S.C. §2667.

10 U.S.C. §2667 was enacted shortly after the close of World War II in order to permit the lease for manufacturing and other commercial purposes of Department of Defense property (principally defense plants) no longer required for war production purposes. Although the history of 10 U.S.C. §2667 is quite clear in this regard, that statute has been relied upon on a number of occasions in the intervening years to support the lease, bailment, or other temporary transfers of possession of Department of Defense personal property to foreign governments in unusual situations where other statutes (including the Foreign Assistance Act of 1961, as amended (the FAA), and the Arms Export Control Act) were not entirely apposite. Reliance on 10 U.S.C. §2667 in such circumstances has largely gone unchallenged by the Congress, although such reliance goes beyond what a rigorous legal analysis of that statute would likely support.

In the present case, reliance on 10 U.S.C. §2667 must be viewed in the context of section 620B of the FAA. As you know, that provision precludes any form of security assistance under that Act or under the Arms Export Control Act to or for the Government of Argentina. There can be no doubt that in enacting section 620B the Congress had in mind a comprehensive prohibition on support to the military authorities of the Argentine Government. Under these circumstances, reliance on 10 U.S.C. §2667 to avoid the proscriptions of section 620B of the FAA cannot, in our view, be defended. Moreover, the already doubtful availability of 10 U.S.C. §2667 for purposes of this sort suggests that its use in a controversial case such as this could provoke a closer examination by the Congress of past uses of that statute.

For the foregoing reasons, I cannot concur in the proposed extension of the lease of the NIKE HERCULES radar equipment to the Government of Argentina.

Clearance:

L - Mr. Michel (subs.)

cc: L/ARA - Mr. Kozak
L/PM - Mr. Matheson

LEASES UNDER 10 U.S.C. 2632--Continued

Country and Item/Purpose	Signed	Term	Cost (rental fee)
Israel: Atomic reactor equipment. Various types of atomic bomb components sold to Israel under FAS were later found to be defective. To reduce costs of repair possible industrial equipment was leased to Israel to enable repairs to Israel.	February 1977	3 yr.	(?)
Switzerland: 4 TOW launchers and missiles. Leased for demonstration to Swiss Parliament which was required before procurement of weapons systems by the Swiss Ministry of Defense.	March 1979	2 mo.	12,000
United Kingdom: 11 trucks, 13 cargo trailers. Leased vehicles were used by United Kingdom for training at Fort Campbell, Ky.	March 1979	6 week	10,211
Australia: Ground support equipment. AMALS-40(V) chaff dispensing systems are being installed on RAN aircraft by U.S. military. Support equipment was required for system tests.	Feb. 6, 1980	60 day	600
Canada: Rocket launchers equipment. Being used by Canadian forces during temporary deployment to Iraq, Kuwait, Gulf, for air combat training.	Mar. 9, 1980	2 mo.	252
Japan: R-25 rotating bladders. Evaluation of the system.	Jan. 23, 1979	10 day	735
Do. Evaluation of the system.	Aug. 27, 1979	15 day	1,000
Hong Kong: D-47 engines. Engines required to ferry an aircraft (own engine) purchased under FAS.	Jan. 15, 1980	4 mo.	117
Pakistan: 18 T-37B aircraft. Aircraft are used to train PAF student pilots in jet aircraft.	Nov. 12, 1975	2 yr.	\$1,005
17 T-37B aircraft. Aircraft are used to train PAF student pilots in jet aircraft.	Feb. 6, 1979	do	\$907
16 T-37B aircraft. Aircraft are used to train PAF student pilots in jet aircraft.	do	do	\$10,000
8 T-37B aircraft. Aircraft are used to train PAF student pilots in jet aircraft.	Aug. 22, 1979	4 yr.	\$7,042
Singapore: AIM 9F guidance control unit. Evaluation of system.	Oct. 10, 1972	92 day	226
Samoa: Support equipment (AOM-48). Support for evaluation of Mammoth.	July 27, 1979	22 mo.	4,118
Switzerland: Guidance rails and support equipment (AOM-48). Support for evaluation of Mammoth.	Dec. 15, 1978	do	10,014
Saudi Arabia: M79 trainer, AM720-32, test set, etc. Provided to train students pending availability of purchased assets.	April 1979	10 mo.	20,551
India: 150-mm howitzer. Leased for testing in Indian Mountain area for cold weather operation. To determine feasibility to purchase.	February 1980	3 mo.	12,000
5-ton truck. Leased to provide a prime mover for 155-mm howitzer.	do	do	1,150
Argentina: Low FAR AQG order. Support a joint United States-Argentine upper atmosphere research project by increasing capacity of CELPA Atlantic Oceanic test range developed by Argentina.	September 1974	5 yr.	(?)
Taiwan: 77 Hercules workhead containers. Taiwan did not have adequate storage facilities to maintain workheads. Lease provided guaranteed return of containers required for future U.S. needs.	August 1979	4 yr.	57,761
Turkey: Yanki MGAAs. Leased as needed for setting up a production line for upgrading Turkish M44 tanks to the M48A5. Turkey would later buy required conversion kits through FAS.	November 1977	5 yr.	204,030
Netherlands: 100-mm howitzer. Leased for evaluation tests by Government of Netherlands to determine whether to buy United States or German howitzer.	March 1979	6 mo.	20,500
Switzerland: FALCON early warning system AN/TPS-2. Used for testing to determine feasibility of future decisions to buy.	December 1979	1 yr.	1,000
West Germany: GUNBA helicopter with METAR system. To conduct tests on the METAR.	During 1979	120 day	4,400
Israel: FADAC equipment for Loran. Leased for test and evaluation by the Government of Israel. None were available for sale.	January 1979	30 mo.	80,121

See footnotes at end of table.

LEADS NUMBER IN U.S.C. 2007--Continued

Country and Description	Signal	Trans	Control
Italy: U.S. Embassy (1948-49) U.S. 1207 sent to Consulate, Feb. 1, 1949. Slight objection to subject the GCI in connection to the GCI, but not mentioning the GCI in 1949. U.S. 1207 sent to Consulate, June 21, 1949. U.S. 1207 sent to Consulate, June 21, 1949. None mentioned in subject the GCI in mentioning the GCI, but not mentioning the GCI in 1949. None.	None, 26, 1949.	9 17	(7)
Italy: U.S. Embassy (1948-49) U.S. 1207 sent to Consulate, Feb. 1, 1949. Slight objection to subject the GCI in connection to the GCI, but not mentioning the GCI in 1949. U.S. 1207 sent to Consulate, June 21, 1949. U.S. 1207 sent to Consulate, June 21, 1949. None mentioned in subject the GCI in mentioning the GCI, but not mentioning the GCI in 1949. None.	None, 26, 1949.	9 17	(7)

[The information referred to follows:]

RESEARCH

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Until 1972 Cuba was generally considered to be one of the most democratic countries in Latin America, with an excellent record of respect for civil and political liberties. With a strong congress, little military involvement in public, and a functioning multiparty system, the country had been governed by freely elected presidents for decades, including Christian Democrat Eduardo Frei (1964-1970) and Marxist Salvador Allende (1970-1973).

Under Allende, U.S. copper companies were nationalized, the pace of agrarian reform was accelerated, and much sectors of the economy were socialized, giving rise to severe domestic opposition, compounded by a falling economy, which produced calls for military intervention from some sectors.

Breaking sharply with Cuba's democratic tradition, the military removed Allende on September 11, 1973, and installed General Augusto Pinochet as head of government, justifying the action as necessary to restore economic order and prevent communism. A state of siege was declared. Congress was dissolved, and all Marxist parties were declared unlawful. Command of all armed forces was transferred to the universities and Air units came under government control, and university

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IAW EO 13526, Section 3.5
Date: Oct 23, 2018

Leases Under 10 USC 2667 (1975-1980 period)				
MIL DEPT	COUNTRY	ITEM	TERM	COST (RENTAL FEE)
Navy	Spain	4 P-3A Aircraft	40 months	\$888,700/year
	Turkey	USS SAFEGUARD (ARB-25)	5 years	none
	Turkey	USS TANG (SS 563)	5 years	none
Army	Saudi Arabia	6 M109, 6 M548, 2 M577, etc.	32 months	\$93,000
	Saudi Arabia	M70 Trainer, ANTM-82, test set, etc.	18 months	\$29,551
	India	155mm Howitzer	3 months	\$13,009
	India	5 ton Truck	3 months	\$1,150
	Argentina	Low PAR ACQ Radar	5 years	none
	Taiwan	77 Hercules Warhead Containers	4 years	\$57,701
	Israel	Ammo Renovation Equip	3 years	none
	Turkey	Tank M48A5	5 years	\$224,030
	Netherlands	155mm Howitzer	8 months	\$30,563
	Switzerland	4 TOW Launchers & Missiles	2 months	\$13,908
	United Kingdom	31 Trucks, 13 Cargo Trailers, etc.	6 weeks	\$10,211
	Switzerland	Platoon Early Warning System AM/TRS-2	1 year	\$1,000
	West Germany	OH58A Helicopter w/ISTAR System	90 days	\$4,483
	Israel	FADAC Equip for Lance	30 months	\$59,131
Air Force	Australia	Ground Support Equipment	60 days	\$ 448
	Canada	Rocket Launchers	2 months	\$ 252
	Canada	Cargo Loaders	1 year	\$4,077

Office of the Secretary of Defense
Chief, RDD, ESD, WHS
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Declassify in Part: _____
Reason: _____
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