

THE MOSCOW EMBASSY: A STUDY IN CONGRESSIONAL RESPONSE TO CRISIS*

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In the spring of 1987, much to the amazement of the State Department and the American public in general, it was revealed that security at the United States Embassy in Moscow had been breached. Particularly distressing were allegations that members of the Marine Security Guard Detachment, whose members are charged with guarding the Embassy, had permitted Soviet nationals to penetrate the facility. Equally distressing were allegations that our new embassy complex was riddled with listening devices. Last summer, in the wake of this controversy, the *Journal of Legislation* asked Congresswoman Olympia J. Snowe, who led a delegation to Moscow to investigate these and other allegations, for her reflections on the events surrounding these disclosures. Her comments appear below.

OVERVIEW

The "scandal" at the United States's Embassy in Moscow and related matters of diplomatic security illustrate three fundamental characteristics of the Congressional legislative process. First, Congress is fundamentally a reactive body. While we make every effort to anticipate various problems, and to stay on top of issues, the legislative process usually does not mobilize until a specific problem arises. While the image of Congress meddling in every avenue of American life persists, actually, for the most part, the House of Representatives and the Senate do leave well enough alone.

Second, there is a limit on Congress' ability to solve a problem through legislation. For instance, in seeking to correct the security problems that existed, and those which still exist, at American embassies, Congress passed a comprehensive legislative package which the President signed. Under this law, new embassies are being constructed, some security procedures have been revamped, and new security-related positions have been created.¹

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1. "Omnibus Diplomatic Security and Antiterrorism Act of 1986," Pub. L. No. 99-399, 100 Stat. 853 (1986). The Act in relevant portions states:

TITLE I-DIPLOMATIC SECURITY

SEC. 101.SHORT TITLE.

Titles I through IV of this Act may be cited as the "Diplomatic Security Act".

SEC. 102. FINDINGS AND PURPOSES.

(a) FINDINGS.-The Congress finds and declares that-

(1) the United States has a crucial stake in the presence of United States Government personnel representing United States interests abroad;

(2) conditions confronting United States Government personnel and missions abroad

However, at Moscow and elsewhere, we found that attitudes towards, and perspectives on, security contributed significantly to the penetration of our

are fraught with security concerns which will continue for the foreseeable future; and

(3) the resources now available to counter acts of terrorism and protect and secure United States Government personnel and missions abroad, as well as foreign officials and missions in the United States, are inadequate to meet the mounting threat to such personnel and facilities.

(b) **PURPOSES.**—The purposes of titles I through IV are—

(1) to set forth the responsibility of the Secretary of State with respect to the security of diplomatic operations in the United States and abroad;

(2) to provide for an Assistant Secretary of State to head the Bureau of Diplomatic Security of the Department of State, and to set forth certain provisions relating to the Diplomatic Security Service of the Department of State;

(3) to maximize coordination by the Department of State with Federal, State, and local agencies and agencies of foreign governments in order to enhance security programs;

(4) to promote strengthened security measures and to provide for the accountability of United States Government personnel with security-related responsibilities; and

(5) to provide authorization of appropriations for the Department of State to carry out its responsibilities in the area of security and counterterrorism, and in particular to finance the acquisition and improvements of United States Government missions abroad, including real property, buildings, facilities, and communications, information, and security systems.

SEC. 103. RESPONSIBILITY OF THE SECRETARY OF STATE.

(a) **SECURITY FUNCTIONS.**—The Secretary of State shall develop and implement (in consultation with the heads of other Federal agencies having personnel [in] missions abroad where appropriate and within the scope of the resources made available) policies and programs, including funding levels and standards, to provide for the security of United States Government operations of a diplomatic nature and foreign government operations of a diplomatic nature in the United States.

SEC. 104. RESPONSIBILITIES OF THE ASSISTANT SECRETARY FOR DIPLOMATIC SECURITY.

Within the authority of the Secretary of State, the Assistant Secretary for Diplomatic Security should be responsible for the following:

(1) **FORMER OFFICE OF SECURITY FUNCTIONS.**—Functions and responsibilities exercised by the Office of Security, Department of State, before November 11, 1985.

(2) **SECURITY AND PROTECTIVE OPERATIONS ABROAD.**—

(A) Establishment and operation of post security and protective functions abroad.

(B) Development and implementation of communications, computer, and information security.

(C) Emergency planning.

(D) Establishment and operation of local guard services.

(E) Supervision of the United States Marine Corps security guard program.

(F) Liaison with American overseas private sector security interests.

(3) **SECURITY AND PROTECTIVE OPERATIONS IN THE UNITED STATES.**—

(A) Protection of foreign missions and international organizations, foreign officials, and diplomatic personnel. . . .

(4) **COUNTERTERRORISM PLANNING AND COORDINATION.**—Development and coordination of counterterrorism planning, emergency action planning, threat analysis programs, and liaison with other federal agencies to carry out this paragraph.

(5) **SECURITY TECHNOLOGY.**— Development and implementation of technical and physical security programs, including security-related construction, radio and personnel security communications, armored vehicles, computer and communications security, and research programs necessary to develop such measures.

(6) **DIPLOMATIC COURIER SERVICE.**—Management of the diplomatic courier service.

(7) **PERSONNEL TRAINING.**—Development of facilities, methods, and materials to develop and upgrade necessary skills in order to carry out this section.

(8) **FOREIGN GOVERNMENT TRAINING.**— Management and development of anti-terrorism assistance programs to assist foreign government security training which are

Embassy in Moscow. This raises a question: Can Congress legislate the attitudes of government officials? Our experience with diplomatic security questions clearly suggests not—but it also suggests that there are other means available for swaying or countering such attitudes.

administered by the Department of State under chapter 8 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2349a *et. seq.*)

. . . .

TITLE II—DIPLOMATIC SECURITY SERVICE

SEC. 201. ESTABLISHMENT OF DIPLOMATIC SECURITY SERVICE.

There shall be, within the Bureau of Diplomatic Security, the Diplomatic Security Service. The Diplomatic Security Service shall perform such functions as may be assigned it by the Secretary of State. . . .

. . . .

TITLE IV—DIPLOMATIC SECURITY PROGRAM

SEC. 401. AUTHORIZATION.

A. DIPLOMATIC SECURITY PROGRAM.—

(1) IN GENERAL.— In addition to amounts otherwise available for such purposes, the following amounts are authorized to be appropriated for fiscal years 1986 and 1987, for the Department of State to carry out diplomatic security construction, acquisition, and operations pursuant to the Department of State's Supplemental Diplomatic Security Program. . . .

SEC. 402. DIPLOMATIC CONSTRUCTION PROGRAM.

(a) PREFERENCE FOR UNITED STATES CONTRACTORS.—Notwithstanding section 11 of the Foreign Service Buildings Act, 1926, and where adequate compensation exists, only United States persons and qualified United States joint venture persons may—

(1) bid on a diplomatic construction or design project, which has an estimated total project value exceeding \$5,000,000; and

(2) bid on a diplomatic construction or design project which involves physical or technical security.

(b) EXCEPTION.—Subsection (a) shall not apply with respect to any diplomatic construction or design project in a foreign country whose statutes prohibit the use of United States contractors on such projects. . . .

SEC. 403. SECURITY REQUIREMENTS FOR CONTRACTORS.

Not later than 90 days after the date of enactment of this Act, the Secretary of State shall issue regulations to—

(1) strengthen the security procedures applicable to contractors and subcontractors involved in any way with any diplomatic construction or design project. . . .

. . . .

SEC. 407. ADVISORY PANEL ON OVERSEAS SECURITY.

Not later than 90 days after the date of enactment of this Act, the Secretary of State shall submit a report to the Congress on the implementation of the 91 recommendations contained in the final report of the Advisory Panel on Overseas Security. If any such recommendation has been rejected, the Secretary shall provide reasons why that recommendation was rejected.

SEC. 408. TRAINING TO IMPROVE PERIMETER SECURITY AT UNITED STATES DIPLOMATIC MISSIONS ABROAD.

(a) TRAINING.—It is the sense of Congress that the President should use the authority under chapter 8 of title II of the Foreign Assistance Act of 1961 (relating to antiterrorism assistance) to improve perimeter security of United States diplomatic missions abroad.

(b) REPORTS.—Not later than October 1 of each year, the President shall submit a report to the Congress on the progress and problems of improving perimeter security of United States diplomatic missions abroad.

SEC. 409. PROTECTION OF PUBLIC ENTRANCES OF UNITED STATES DIPLOMATIC MISSIONS ABROAD.

The Secretary of State shall install and maintain a walk-through metal detector or other advanced screening system at public entrances of each United States diplomatic mission abroad.

. . . .

Third, and finally, the legislative process is inconclusive by nature. Contentious issues are rarely "resolved," in the sense that legislative action lays to rest debate or forecloses future action on a particular issue. In a way this can be desirable since it permits Congress to "undo" past mistakes. On the other hand, it lends itself to legislative mischief and seemingly endless and indecisive treatment of problems.

While ensuring the safety of American embassies and personnel abroad would not seem to be a particularly contentious issue, having labored on the subject for several years I can safely conclude that this area is fraught with controversy and indecision. In fact, the response of Congress to our Moscow "problem" is indicative of those fundamentals of the congressional legislative process enumerated above.

SECURITY PROBLEMS AT THE MOSCOW EMBASSY

In March 1987, Congressman Daniel A. Mica² and I, Chairman and ranking Republican, respectively, of the House Foreign Affairs Subcommittee on International Operations, were briefed by the State Department on security problems at the United States Embassy in Moscow. Included in these briefings were details of the compromise of Marine Security Guards at the Moscow Embassy.³ The information we received raised sufficient concerns to prompt us to lead a delegation to the Moscow Embassy in early April 1987 to investigate further.

While our inspection of the Moscow Embassy was prompted by the compromise of Marine Security Guards, the inspection itself was part of the Subcommittee's ongoing oversight of embassy security issues, and in particular, part of the Subcommittee's longstanding concerns with the Moscow Embassy. Specifically, the delegation's investigation in Moscow was also part of the Subcommittee's oversight of the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986.⁴ This legislation, based in part on recommendations made by the Secretary of State's Advisory Panel on Overseas Security, chaired by Admiral Bobby Inman, authorized the construction or revamping of embassy facilities at high threat posts throughout the world, and also provided funds to address many of the same problems later encountered in Moscow. The Inman Panel also made specific recommendations for improving security at posts in Eastern Europe and in the Soviet Union.

While in Moscow, our delegation uncovered extensive and serious shortcomings in the Embassy's security program. There were two major components to the security problems that we sought to investigate: those associated with the existing Embassy building and those associated with the construction of the new Embassy building.⁵ Setting aside whether or not Marine Security Guards allowed

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2. Member, United States House of Representatives (D-Fla.). [Since this writing, Congressman Mica has left Congress to seek other office. *Eds.*]
 3. [For details of this particular aspect of the security problems at the Moscow Embassy, see generally *Time*, Apr. 20, 1987, at 14 and *Time*, Feb. 20, 1989, at 50 (*quoting* KESSLER, *infra*). See also KESSLER, *MOSCOW STATION: HOW THE KGB PENETRATED THE AMERICAN EMBASSY* (1988). *Eds.*]
 4. Pub. L. No. 99-399, 100 Stat. 853 (1986). For details of this Act, see *supra* note 3.
 5. On May 16, 1969, the U.S. and the U.S.S.R. signed an agreement on the reciprocal allocation of land to build new embassy complexes. This agreement states:

Soviets to penetrate the facility, our investigation uncovered that in any case the

AGREEMENT BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE
UNION OF SOVIET SOCIALIST REPUBLICS ON THE
RECIPROCAL ALLOCATION FOR USE FREE OF CHARGE OF
PLOTS OF LAND IN MOSCOW AND WASHINGTON

The Government of the United States of America and the Government of the Union of Socialist Republics have agreed to make available for use to each other free of charge, on a long-term basis, the plots of land described below in the cities of Moscow and Washington, designated for the construction of complexes of Embassy buildings, including living quarters and other structures.

The allocated plots of land and the buildings constructed on them shall be considered by both Parties as servicing diplomatic missions. Neither Party will create nor permit conditions that will interfere with full access to them and their proper use and enjoyment.

ARTICLE I

1. The Government of the Union of Soviet Socialist Republics shall make available to the Government of the United States of America, for the construction of a complex of American Embassy buildings in Moscow, a plot of land with an area of 10.1558 acres (4.1100 hectares) located on Konyushkovskaya Ulitsa in the Krasnopresnenskiy District of the City of Moscow. A description of the plot and its boundaries is contained in Attachment I.

2. The Government of the Union of Soviet Socialist Republics shall also make available to the Government of the United States of America for use a plot of land with an area of 1.7915 acres (0.7250 hectares), located on Spasopeskovskaya Ploschad in the Kiyevskiy District of the City of Moscow. A description of the plot and its boundaries is contained in Attachment II. Questions concerning the use and rent of the buildings located on this site shall be settled separately in accordance with an understanding embodied in notes exchanged simultaneously with the conclusion of the present Agreement.

ARTICLE II

The Government of the United States of America shall make available to the Government of the Union of Soviet Socialist Republics for the construction of a complex of Soviet Embassy buildings in Washington a plot of land with an area of 12.5258 acres (5.0692 hectares), known as "Mount Alto," in the City of Washington, District of Columbia. A description of the plot and its boundaries is contained in Attachment III.

ARTICLE III

1. The plots of land mentioned in Articles I and II of this Agreement shall be made available reciprocally for use free of charge for a period of 85 years.

2. The period of use of the plots of land mentioned in Article I, Paragraph 1, and in Article II of this Agreement shall begin from the date both sides concurrently accept the plots as being ready for construction. The date of the beginning of the period of use will be established by an exchange of notes.

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ARTICLE VIII

1. Each party agrees to facilitate the construction of the complex of buildings of the other Party. Questions related to the construction of the buildings on the respective plots will be determined by a separate Agreement on Conditions of Construction, which shall be concluded not later than 120 days after the signing of this Agreement.

2. Actual construction on the plots will not begin until agreement has been reached on the conditions for construction mentioned in Paragraph 1 of this Article, and until a mutually acceptable date for the commencement of the period of use of the plots has been agreed upon as provided in Article III of this Agreement. This must not prevent work relating to the planning of buildings on these plots.

ARTICLE IX

The American Embassy will vacate the premises rented by it at 19-21-23 Ulitsa Chaykovskogo as promptly as possible after the new buildings of the Embassy of the United States of America at Konyushkovskaya Ulitsa are ready for occupancy. It is envisaged that the move to the Konyushkovskaya premises will occur within four months following completion of construction of the buildings.

Moscow Embassy was highly vulnerable to such penetration. It was, in fact, the

Article VIII of the Agreement refers to a separate construction agreement setting the terms and conditions for the actual building of the new embassies. This agreement was signed on December 4, 1972 and is the source of much of the present controversy over our new embassy in Moscow. It provides in relevant part:

AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE
UNION OF SOVIET SOCIALIST REPUBLICS
ON THE CONDITIONS OF CONSTRUCTION
OF COMPLEXES OF BUILDINGS OF
THE EMBASSY OF THE UNITED STATES OF AMERICA
IN MOSCOW AND OF
THE EMBASSY OF THE UNION OF SOVIET SOCIALIST REPUBLICS
IN WASHINGTON

In accordance with the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics for the reciprocal allocation of plots of land for the construction of Embassy buildings in Moscow and Washington dated May 16, 1969, the parties have agreed on the following conditions of construction of the buildings:

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I. GENERAL CONDITIONS

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6. To the extent reasonably possible the parties will agree on target dates for completion of the buildings of their Embassies in order to guarantee completion of the work at approximately the same time, after approval of the final plans and preliminary discussions with general contractors. Each side has the right to carry out its entire project at one time or in a sequence which it finds most convenient. All construction of the building complexes will be divided into a number of sequences which will be agreed upon by the sides after the approval of the final design and the conclusion of building contracts. The chanceries will be occupied simultaneously at an agreed upon date after final completion and acceptance. All other buildings may be occupied at any time after completion and acceptance and put to their designated use.

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IV. EXECUTION OF CONSTRUCTION

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2. Taking into account the principle of mutuality, specific features of design, technology and methods of constructing buildings accepted by each Party as well as economical factors, the execution of work in Stage 1 will be carried out by local design and construction organizations or firms using local building materials. However, the Parties may select and supply materials for the exterior facing of the buildings to be decided at the time of agreement upon the final design plan. For the execution of work in Stage 1 the respective Parties will select a general contractor from a number of local firms or organizations and conclude contracts with them according to their own choice with the assistance of the Department of State of the United States of America and the Ministry of Foreign Affairs of the Union of Soviet Socialist Republics respectively.

3. The execution of work in Stage 2 will be carried out at the choice of either Party either through local organizations or by its own sources. The installation of equipment imported from third countries may be carried out by specialists from these countries or by organizations or firms of the Parties.

4. The respective Parties may begin construction of the buildings and structures on the plots made available after the other Party approves the final plan. The date of initiation of construction will be determined by an exchange of notes.

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8. On the basis of contracts concluded with a general contractor and sub-contractors, the Embassy of the U.S.S.R. in the U.S.A. and the U.S. embassy in the U.S.S.R. will have the right, on the sites allotted to them, to exercise technical control and supervision at any time from the time construction is begun until all of the buildings are accepted by the side for which they are being constructed. The necessary municipal inspectors and representatives of the general contractor will have the right to conduct, during the second Stage, periodic

gaping holes in the Embassy's security that lent credence to the charge of Soviet penetration.

Specifically, the flaws we observed included:

—A lack of redundancy in the technical components of the security program as well as a lack of redundancy between the technical and human parts of the system. The lack of redundancy allowed one person to control the entire security system; the system, thus, was subject to the vulnerability of one individual. The potential for human failure was seemingly simply ignored.

—Gaps existed in the technical coverage of the Embassy's perimeter, leaving blind spots that allowed easy access to the compound itself. Additionally, technical equipment in Moscow was frequently unreliable and antiquated.

—Security procedures, such as spot checks and schedules, were predictable.

—Security was treated cavalierly at the post, an attitude that emanated from the Ambassador himself. The former Ambassador⁶ repeatedly professed his belief that security was a low priority. He believed that ninety percent of what happened at the Embassy should be available to the Soviets. Further, he opposed any action to reduce the number of foreign nationals at the post and successfully opposed proposals to shield the new building from electronic penetration. Here, incredibly, he argued that the shielding would cut down on the amount of natural lighting received by each office and that the shielding might keep the Soviets from learning that information we "wanted" them to learn.

—The Marine Security Guard Detachment was hamstrung by split command and control, poor oversight, and minimal recruitment and training criteria; and by prolonged posting at high security facilities.

—The existing building itself is a firetrap, lacking minimal electrical, sewage and plumbing systems needed to maintain normal business operations.

—Performance at the post was also hindered by a lack of diplomatic reciprocity and the harassment of American personnel by the Soviets. Drinking water at the Embassy has been contaminated by Moscow sewage. Break-ins occur at diplomatic residences, with cigarettes and unflushed toilets left as "messages." Embassy personnel are awakened in the middle of the night by phone calls and the legitimate movement of diplomatic personnel is restricted.⁷

Furthermore, there exists, to the Soviets' advantage, an unequal number of buildings and facilities accorded to each nation, unequal conditions of facilities, inequitable "official" exchange rates, and unequal access to leisure and entertainment facilities. These inequities and harassments, we noted, not surprisingly, serve to hurt the morale of American workers, expose their vulnerabilities, and hinder our mission in Moscow.⁸

Our inspection of the New Office Building revealed an electronic penetration stunning in its comprehensiveness and complexity. To describe this penetration

inspections accompanied by representatives of the side for which the buildings are being constructed.

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23 U.S.T. 3544 (1972).

I.e., Arthur Hartman.

6. For additional details of our investigation, see HOUSE FOREIGN AFF. COMM., 100TH CONG., 1ST SESS., SECURITY AT THE U.S. EMBASSY IN MOSCOW, (Comm. Print 1987) [hereinafter COMMITTEE REPORT]. See also S. REP. NO. 154, 100th Cong., 1st Sess. (1987).

8. See generally COMMITTEE REPORT, *supra* note 7.

as simply "bugging" is inadequate and inaccurate. Rather, the penetration consists of a network of interconnected listening and transmitting devices that form an integral part of the new building's structure.⁹ Clearly, the Soviets violated their contractual agreement to provide a facility appropriate for a diplomatic mission. Inadequate oversight by American personnel of the construction process, including the prefabrication of building components offsite, vastly increased the ability of the Soviets to compromise this new building.¹⁰

Consequently, it may very well be impossible to develop countermeasures to create a secure environment in the new building. The new Embassy, built at a cost of millions of dollars, may have to be totally abandoned. All the while there has been growing concern in Congress over the Soviets' imminent occupation of their new embassy compound in Washington. Located on Mount Alto, the compound is perched on one of the highest points in the District of Columbia, substantially increasing the Soviets' capability for electronic surveillance.

CONGRESSIONAL RESPONSE

Since the early 1980's, Congress had consistently agreed to State Department requests for additional resources for the construction of the new Moscow Embassy. Between 1981 and 1987, Congress provided over \$100,000,000 specifically to address unanticipated problems in constructing the new facility and to properly secure the new complex.¹¹

Despite this support, it became increasingly apparent, as the above indicates, that security at the new Moscow facility was being compromised to an unprecedented degree. As a result, in December 1986, a moratorium on further construction at the site, proposed by Representative Mica and myself, was included in the Continuing Resolution passed by Congress.

Congress' primary vehicle for addressing the security problems in Moscow was the Foreign Relations Authorization Act for Fiscal Years 1988 and 1989.¹² During House consideration of the authorization (H.R. 1777),¹³ members evinced a deep concern over failures that led to the compromise of the Embassy, and over the prospect of the Soviet's occupation of the Mount Alto facility when our own new Moscow facility had been rendered useless. Along with Foreign Affairs Committee Chairman Dante Fascell (D-Fla.) and ranking Republican William Broomfield (R-Mich.), Representative Mica and I offered a comprehensive package, in the form of an amendment to H.R. 1777, that addressed issues specific to Moscow and issues of overall embassy security.¹⁴

9. *Id.*

10. *Id.*

11. [As of the date of publication of this issue of the *Journal of Legislation* the chancery building in Moscow remained incomplete and largely unoccupied. *Eds.*]

12. Pub. L. No. 100-204, 101 Stat. 1331 (1987). This legislation is also referred to as the State Department Authorization. One of the few regular two year authorization bills in Congress, it authorizes funds for the State Department, the U.S. Information Agency, Voice of America, the Board for International Broadcasting, international organizations and other programs. The source for this particular appropriation is the original act delegating certain powers to the State Department. See Act of August 1, 1956, Pub. L. No. 84-885, ch. 841, § 15, 70 Stat. 892 (1956). This Act was codified, 22 U.S.C. § 2680 (1982), to further express the necessity of congressional authorization for such appropriations.

13. H.R. 1777, 100th Cong., 1st. Sess. (1987) (later Pub. L. 100-204, 101 Stat. 1331 (1987)).

14. [This amendment was originally introduced as a separate piece of legislation, e.g., H.R. 2410 (entitled the "Diplomatic Reciprocity and Security Act"). *Eds.*]

Under the amendment, the Soviet Union would be barred from occupying the Mount Alto facility, unless the President certified to Congress that our new facility in Moscow was secure from physical and electronic penetration, and that steps were being taken to eliminate the dangers of Soviet eavesdropping from their Mount Alto complex. The amendment also stated that the United States should seek compensation from the Soviets for the costs incurred in securing the new building, and that U.S. and Soviet diplomatic facilities should be equivalent in size and quality.

On a broader scale the amendment prohibited the hiring of Foreign Service nationals in communist countries and other high intelligence threat posts, required lie detector tests of those involved in embassy security, and stiffened security criteria and training for those serving in high threat posts. In addition, the amendment proposed that the "security bureaucracy" at the State Department be reformed. Specifically, we proposed the establishment of a new Undersecretary of State for Security, Communications and Construction and Missions (SCCM) to oversee security arrangements at United States embassies throughout the world. Finally, under the amendment, Marine Security Guards would be prohibited from serving more than twelve successive months at any one high security post.¹⁵

The State Department, sensitive to the inherent criticisms of its performance embodied in the amendment, opposed the amendment.¹⁶ Yet several Members of Congress pointed out that the State Department's strong objections to the amendment helped ensure its prompt and overwhelming passage. The Department's failure to maintain close scrutiny over the issues, and its crumbling relations with Congress, left its objections with little credibility. Thus, on June 16, 1987 the amendment was adopted by an unanimous vote (414-0) and the entire authorization passed the House of Representatives on June 23, 1987 by a margin of 303 to 11.

During its consideration of companion legislation,¹⁷ the Senate also required the United States to void the embassy agreement with the Soviet Union, but did not allow for a Presidential waiver of this requirement. Under the Senate provision, the Soviet Union would have to occupy an embassy no more than ninety feet above mean sea level.

Following Senate passage of the State Department Authorization, an alternative approach to the Moscow situation was adopted in conference, and subsequently approved by both Houses of Congress.¹⁸ The President was directed, six months after enactment of the Authorization, to make specific determinations regarding the two embassies, including an assessment on U.S. national security of the Soviet Embassy on Mount Alto, and to determine what steps, if any, are

15. For details of these proposals, see H.R. 1777, 100th Cong., 1st Sess. (1987), Part F, § 185 *et seq.*

16. The State Department's sensitivity to criticism has surfaced repeatedly in connection with questions of embassy security. For example, a panel appointed by then-Secretary of State George Shultz and headed by Melvin Laird, former Secretary of Defense, issued a report highly critical of the Department's actions. However, even an unclassified version of the report was kept under wraps by the Department, effectively quashing publicity about the criticisms.

17. S. 1394, 100th Cong., 1st Sess. (1987).

18. See H. REP. NO. 475, 100th Cong., 1st Sess. (1987) (conference report on H.R. 1777, the Foreign Relations Authorization Act for Fiscal Years 1988 and 1989).

being taken, or contemplated, to secure our new chancery in Moscow. If the President is unable to make such determinations, then the Secretary of State is to notify the Soviet Union of our withdrawal from the Embassy Agreement.

The conference agreement also echoed House legislative proposals on reciprocity issues, security programs in high threat posts, the recovery of costs related to the new building, and polygraph testing of security personnel. Provisions in both bills contemplating reform of security functions at the State Department were dropped, pending a wide-ranging review of the Department's organization this year.¹⁹ House provisions covering the Marine Security Guard program were dropped as well, having been obviated by corrective steps undertaken administratively by the Marine Corps. Final approval to this legislation was given in the House of Representatives on December 14, and in the Senate on December 15, and was signed by the President on December 22, 1987.²⁰

19. [I.e., during 1988. Eds.]

20. Pub. L. 100-204, 101 Stat. 1331 (1987). In its final form the Act provides for the following measures be taken to better security at the United States Embassy in Moscow and at American embassies generally.

PART C—DIPLOMATIC RECIPROCITY AND SECURITY

SEC. 151. UNITED STATES-SOVIET EMBASSY AGREEMENT: PROHIBITION ON USE OF MOUNT ALTO SITE.

(b) WITHDRAWAL FROM EMBASSY AGREEMENT.—The United States shall withdraw from the Agreement between the Government of the United States and the Government of the Union of the Soviet Socialist Republics on the Reciprocal Allocation for Use Free of Charge of Plots of Land in Moscow and Washington (signed at Moscow, May 16, 1969) and related agreements, notes, and understandings unless the President makes determinations and waiver under subsection (c).

(c) WAIVER.—

(1) PRESIDENTIAL DETERMINATION REQUIRED.—The President may waive subsection (b) if he determines that—

(A) it is vital to the national security of the United States that the United States not withdraw from the agreement . . . referred to in subsection (b);

(B) steps have been or will be taken that will ensure that the new chancery building to be occupied by the United States Embassy in Moscow can be safely and securely used for its intended purposes; and

(C) steps have been or will be taken to eliminate, no later than 2 years after the date of enactment of this Act, the damages to the national security of the United States due to the electronic surveillance from Soviet Facilities on Mount Alto.

(2) WHEN DETERMINATION MAY BE MADE.—The President may not make the determination and waiver permitted by paragraph (1) before the end of the 6-month period beginning on the date of enactment of this Act.

(3) REPORT TO CONGRESS.—The waiver permitted by paragraph (1) shall not be effective until 30 days after the determinations and waiver are reported to Congress. . . .

(4) NONDELEGATABILITY.—The President may not delegate the responsibility for making the determination and waiver permitted by paragraph (1).

(d) NOTIFICATION OF UNAVAILABILITY OF MOUNT ALTO.—If the President does not waive subsection (b), the Secretary of State shall notify the Government of the Union of Soviet Socialist Republics that the Mount Alto site will cease to be available to that Government for any purposes as of the date which is 1 year and 10 days after the earliest date on which the President could make the waiver under subsection (c).

(e) PROHIBITION ON FUTURE USE OF MOUNT ALTO SITE BY FOREIGN MISSIONS.—If subsection (b) takes effect, the Mount Alto site may not be made available for use thereafter by a foreign mission for any purpose.

SEC. 155. PERSONNEL SECURITY PROGRAM FOR EMBASSIES IN HIGH INTELLI-

Any notion that the issue was essentially resolved, however, was punctured barely a week after the House of Representatives' approval of the conference report. It happened in the 1200-page Continuing Appropriations Resolution.²¹ A provision²² was slipped into the Continuing Resolution that waived the provision

GENCE THREAT COUNTRIES.

(a) **SPECIAL SECURITY PROGRAM.**—The Secretary of State shall develop and implement, within three months after the date of enactment of this Act, a special personnel security program for personnel of the Department of State assigned to United States diplomatic and consular post in high intelligence threat countries who are responsible for security at those posts and for any individual performing guard functions at those posts. Such programs shall include—

- (1) selection criteria and screening to ensure suitability for assignment to high intelligence threat countries;
 - (2) counterintelligence awareness and related training;
 - (3) security reporting and command arrangements designed to counter intelligence threats;
- and
- (4) length of duty criteria and policies regarding rest and recuperative absences.

SEC. 157. PROHIBITION ON CERTAIN EMPLOYMENT AT UNITED STATES DIPLOMATIC AND CONSULAR MISSIONS IN COMMUNIST COUNTRIES.

(a) **PROHIBITION.**—After September 30, 1990, no national of a Communist country may be employed as a foreign national employee in any area of a United States diplomatic or consular facility in any Communist country where classified materials are maintained. . . .

SEC. 160. CONSTRUCTION SECURITY CERTIFICATION.

(a) **CERTIFICATION.**—Before undertaking any new construction or major renovation project in any foreign facility intended for the storage of classified materials or the conduct of classified activities, the Secretary of State, after consultation with the Director of Central Intelligence, shall certify to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate that—

- (a) appropriate and adequate steps have been taken to ensure the security of the construction project (including an evaluation of how all security-related factors with respect to such project are being addressed); and
- (b) the facility resulting from such project incorporates—
 - (A) adequate measures for protecting classified information and national security related activities; and
 - (B) adequate protection for the personnel working in the diplomatic facility. . . .

SEC. 163. COUNTERINTELLIGENCE POLYGRAPH SCREENING OF DIPLOMATIC SECURITY SERVICE PERSONNEL.

(a) **IMPLEMENTATION OF THE PROGRAM.**—Under the regulations issued pursuant to subsection (b), the Secretary of State shall implement a program of counterintelligence polygraph examinations for members of the Diplomatic Security Service (established pursuant to title II of the Diplomatic Security Act) during fiscal years 1988 and 1989.

(b) **REGULATIONS.**—The Secretary of State shall issue regulations to govern the program required by subsection (a). Such regulations shall provide that the scope of the examinations under such program, the conduct of such examinations, and the rights of individuals subject to such examinations shall be the same as those under the counterintelligence polygraph program conducted pursuant to section 1221 of the Department of Defense Authorization Act, 1986 (Public Law 99-145).

21. H.R.J. Res. 395, 100th Cong., 1st Sess. (1987).

22. The relevant portions of the Continuing Appropriations Resolution are as follows:

SEC. 304. The Secretary of State shall not permit the Soviet Union to occupy the new chancery building at its new embassy complex in Washington, D.C. or any other new facility in the Washington, D.C. metropolitan area, until a new chancery building is ready for occupation for the United States embassy in Moscow: *Provided*, That none of the funds appropriated in this Act or any prior Act may be obligated for the new office building in Moscow except for engineering and technical studies prior to October 1, 1988.

pertaining to the State Department authorization for the Moscow Embassy and the Mount Alto facility, thereby negating the actions previously agreed to by Congress—but also raising a somewhat novel legal question.

The waiver contained in the Conference Report²³ waived, but significantly, did not repeal the sections pertaining to the Moscow Embassy and the Mount Alto facility for fiscal years 1988 and 1989. Those provisions, however, delineated a specific timetable under which the State Department was to have met requirements regarding the embassies. Under the timetable, the requirements were to have been met largely before the end of fiscal year 1989. Once the waiver expires at the end of fiscal year 1989, the question arises as to whether the State Department is in violation of law should it fail to meet the requirements set forth in the Authorization bill. In short, must the State Department be in compliance with the Authorization once the waiver expires?

While this question remains unresolved, other stipulations clearly still apply. For instance, the moratorium on further construction in Moscow remains, as does the prohibition on Soviet occupation of its Mount Alto facility until our facility in Moscow is completed.

In the meantime, the State Department is conducting engineering and feasibility studies of the new building in Moscow, so as to make a final determination on the building's fate. Early indications are that the current structure is largely unsalvagable.²⁴

CONCLUSIONS

Thus, at this writing, a new cycle of debate on the embassy situation awaits commencement. Some of this debate will focus on the embassy security framework developed by former Secretary of State Shultz and Central Intelligence Agency (CIA) Director William Webster, and the question of whether the State Department or the CIA should control security at our embassies. An ongoing General Accounting Office investigation, which Chairman Mica and I requested, will likely raise still further questions.

Undoubtedly, in this new round of debate, the tendency to highlight short-term skirmishes will continue. That is a seemingly inevitable characteristic of the executive and legislative branches today. What should not be overlooked, however, is that the United States *is* making progress in protecting our personnel, facilities and confidential information abroad.

SEC. 305. The following sections of H.R. 1777 (the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989) are *waived* during Fiscal Years 1988 and 1989 in the event that H.R. 1777 is enacted into law: Sec. 122, Sec. 151, and Sec. 204.

Pub. L. 100-202, 101-Stat. 1329 (1987) (emphasis added).

23. See H.R. REP. NO. 498, 100th Cong., 1st Sess. (1987) (on H.R.J. Res. 395). See *supra* note 21.
24. [Proposals regarding the Moscow Embassy have been numerous and varied. For instance, one proposal suggests that the United States build three "secure" floors on top of the current bug-riddled structure. Another, and certainly the most prevalent, proposal is to completely destroy the new embassy complex and start anew. Yet another proposal is to sell the entire complex to an unspecified American or Soviet business entity. *Eds.*]