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OGC Has Reviewed

OGC 72-1135

Executive Registry
72-4409

4 August 1972

MEMORANDUM FOR: Executive Director-Comptroller
SUBJECT: Possible GAO Audit of Laos Paramilitary Programs in FY 1973
REFERENCE: Memo fr C/FE to Multiple Addressees, Dtd 18 July 72, Same Subject

1. This memorandum contains a recommendation submitted for Executive Director-Comptroller approval. Such recommendation is contained in paragraph 10.

2. Referent transmitted a memorandum of 18 July 1972 to Chief, Far East Division, discussing Senator Symington's request of 15 June 1972 to State and DoD for a more detailed accounting by individual agencies for supplies, equipment and services provided under the Laos ceiling during FY 1972. It is understood that similar additional information will be requested for FY 1973 as a basis for a GAO audit to be requested by Senator Symington. That memorandum goes on to state that the Executive Director has requested that FE Division conduct a study of the implications of a GAO audit of DoD funds expended by CIA in FY 1973 in Laos. There is attached to the memorandum to Chief, Far East Division, a detailed discussion of current Agency procedures in Laos. Included are the actual budget figures, the details of KIP and Baht funding, discussion of the Lao irregular program by military regions including the relationship with Agency intelligence programs in Laos, discussion of air support and

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logistics. We believe that the decision made by the Agency to exclude from State's report (in response to a request from Senator Symington) details of FY 1972 Agency expenditures under the ceiling is equally applicable to FY 1973 expenditures and the mere fact that the source of the 1973 funds is DoD does not change the basic factors considered in reaching the decision as to FY 1972.

3. The authority granted by Congress to the Director of Central Intelligence under section 8(b) of P. L. 81-110 removes GAO from the audit of those funds certified by the Director. The purpose of the statute is to protect the security of Agency activities and operations. As a pure legal matter, it is perfectly clear that GAO has no legal authority to audit funds expended under the Director's certification regardless of the source of such funds. Thus, funds transferred to the Agency from DoD for the Laos paramilitary program are not, as a legal matter, subject to audit by GAO.

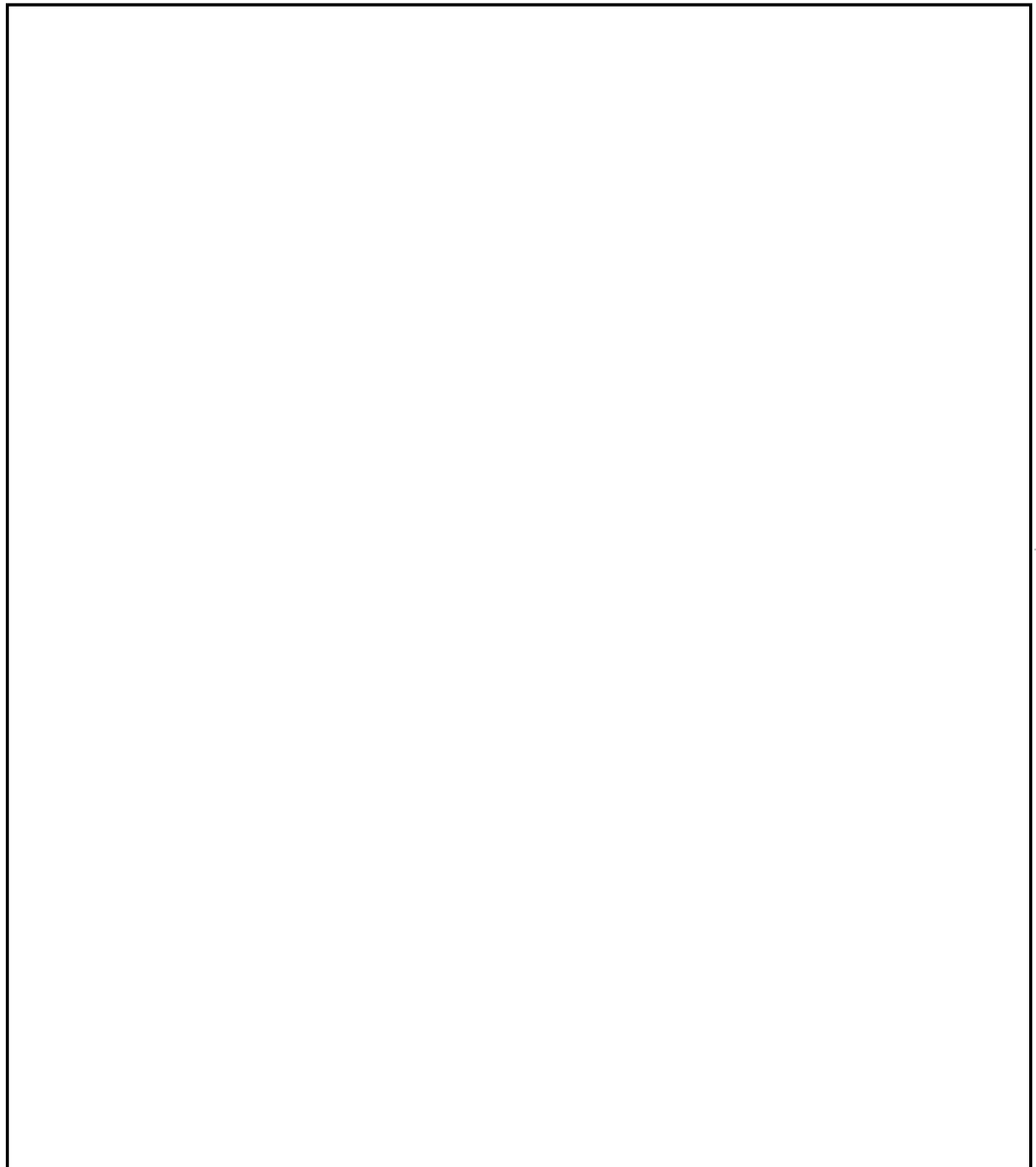
4. The hearings before Senate Armed Services Committee on 7 March 1972 are pertinent. The principal witnesses were: The Honorable G. Warren Nutter, Assistant Secretary of Defense, ISA; Honorable William H. Sullivan, Deputy Assistant Secretary for East Asian and Pacific Affairs, Department of State; and Mr. Don R. Brazier, Principal Deputy Assistant Secretary of Defense (Comptroller). The subject of the hearings was the Military Authorization Bill for FY 1973 and there was considerable discussion concerning the proposed transfer from the Military Assistance Service Fund (MASF) to the Agency, principally for the payment of Laotian irregulars and Thai irregulars. Chairman Stennis questioned Brazier, Nutter and Sullivan extensively as to why it was proposed that [redacted] be transferred to CIA. The thrust of their answers was that while there was ample legal authority for DoD to carry out this program, nevertheless the transfer and disbursement by CIA was planned strictly as an administrative convenience since the Agency had the disbursing machinery in place. The DoD witnesses repeatedly stated that there was no legal barrier in DoD carrying out the disbursement and that the transfer to CIA avoided the problems of DoD establishing new disbursing machinery in Laos.

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5. It is our view that a GAO audit of the transfer to the Agency utilizing normal governmental accounting requirements would undoubtedly result in numerous exceptions. Further, the GAO findings would certainly support further charges by those in the Congress who have already stated that the Thai irregular program is in violation of the Fulbright amendment as well as other charges against the mercenary programs. Specific examples would include:

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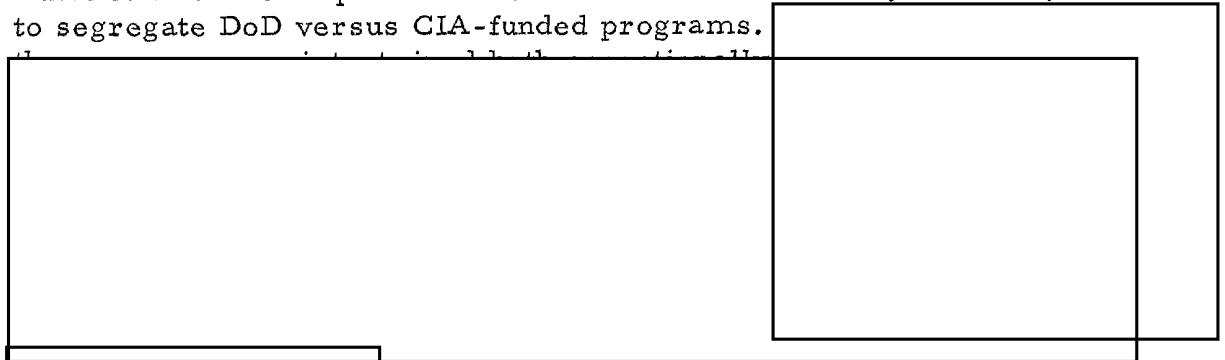
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6. It would appear appropriate here to point out that the potential for exceptions in GAO audit does not relate to mere accounting standards and procedures. It is a substantive question in that CIA does have the statutory authority to pay a subsidy to the irregulars as in the case of the Lao irregulars. We have devised accounting procedures to insure, insofar as possible, that monies granted for subsidies are expended for the purposes intended. On the other hand, DoD simply has no statutory authority for paying subsidies of this nature. Therefore, if GAO were to attempt an audit they would have to start with examination of the basic chain of authority delegated down from the Director as well as Agency policies, regulations and procedures for expenditure of unvouchered funds. Thus, a proper audit by GAO would start at Headquarters and then move to the field.

7. The funds to support the operational programs run by CIA are accounted for in accordance with established Agency regulations and procedures and, of course, are subject to audit by the Audit Staff of the Inspector General. No effort is made, however, to segregate DoD versus CIA-funded programs.

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While theoretically possible to segregate all aspects of Agency activities involved with the expenditure of DoD-supplied funds, it would involve a massive reorganization effectively requiring an insulated little CIA separate from the existing organization.

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8. It is assumed that the ostensible purpose of an audit would be to determine if the Lao ceiling had in fact been exceeded. It should be noted, however, that of the congressional budget for the paramilitary program, is to be transferred to the Agency. The remainder, of course, is subject to audit in any event. Also, it would be illogical to assume that the Agency would spend from

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its own budgeted funds more than [] transferred to it for this purpose. Consequently, the case for an audit of the [] is weak on the merits unless the real purpose is a fishing expedition. On the other hand, if GAO is to assure that the Agency only spent [] for this program, it could logically ask for review of other documentation and other expenditures to assure that the Agency had not put some of its own funds into the program. It seems obvious that the Agency would not permit such review. It should also be mentioned in passing that \$102.8 of the [] will be expended by DoD for materiel which will be transferred to CIA. GAO, of course, could apply its normal audit function to the purchase and issue of such materiel but would be unable to trace the materiel to its end use, their trail ending with the transfer from DoD to CIA. It would appear, therefore, that even if the Agency were to acquiesce in a GAO audit of DoD-supplied funds to CIA, there are so many obstacles to a full and complete audit that it is doubtful that GAO would ever be in a position of certifying to the Congress that the Laos ceiling was not exceeded.

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9. In summary, there is a clear legal basis for denying GAO access for audit of funds expended under the Director's certification. It is believed that to acquiesce in such an audit would establish an undesirable precedent, having in mind the much larger sums which are yearly transferred from DoD and expended by the Agency under the Director's authority. Additionally, to permit GAO audit would almost certainly result in charges that the testimony of Nutter and Brazier before Senate Armed Services was inaccurate in the sense that there would be uncovered legal impediments against DoD expending the funds in the manner in which they are currently being expended. Also, a GAO audit poses severe security considerations by exposing to GAO internal CIA procedures both at Headquarters and in the field because of the intertwining of financing, logistics support, and operational direction of paramilitary activities and intelligence operations. Finally, it is doubtful that GAO could issue an unconditional certification that the Laos ceiling had not been exceeded.

10. In view of the above, it is recommended that we not acquiesce in any attempt to have GAO audit funds expended under the Director's authority even though the source of the funds is by transfer from DoD.

Messrs. Woodruff and Preston of the Senate and House Appropriations Committee staffs support this view. If this is to be the Agency position, careful consideration, of course, should be given to discussing this situation more fully with our subcommittees to apprise them of our views and to seek their support.

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Attachment - Referent Memo

CONCURRENCE:

[Redacted signature]

Deputy Director for Plans

[Redacted signature]

Director of Finance

9 Aug. 72

Date

4 August 1972

Date

[Redacted signature]

Chief, Far East Division

8 Aug 72

Date

[Redacted signature]

Director, Office of Planning, Programming and Budgeting

8 August 1972

Date

[Redacted signature]

Legislative Counsel

8/21/72

Date

[Redacted signature]

Dept

7 August 1972

Date

The recommendation in paragraph 10 is approved.

[Redacted signature]

Executive Director - Comptroller

15 AUG 1972

Date

This is a decision in principle, but no action need be taken unless it is initiated by an [unclear] - [unclear]

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SUBJECT: Possible GAO Audit of Laos Paramilitary Programs
in FY 1973

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Trans file

18 July 1972

19 JUL 1972

MEMORANDUM FOR: Office of General Counsel
Office of Legislative Counsel ✓
Director, OPPB
Director of Finance
Director of Logistics
Chief DDP/MPS
Chief, [redacted]

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SUBJECT : Possible GAO Audit of Laos Paramilitary Programs in FY 1973

The attached memorandum dated 18 July 1972 and accompanying outline highlights a problem facing CIA during FY 73. It will be appreciated that you or a member of your staff attend a meeting in the FE Conference Room 5D03 on 21 July 1972 at 10:30 a.m.

[redacted]

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Chief, Far East Division

Attachment: As Stated

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18 July 1972

MEMORANDUM FOR: Chief, Far East Division

SUBJECT : Possible GAO Audit of Laos Paramilitary Programs

1. On 15 June 1972 Senator Symington in his capacity as Chairman, Subcommittee on United States Security Agreements and Commitments Abroad requested from State Department certain information on FY 72 expenditures in Laos. Among other items, he requested a detailed accounting by Agency of supplies, equipment and services provided during FY 72 and those ordered but undelivered as of 30 June 1972. When queried by State on the intended use of these accountings, a Subcommittee staff member responded that the accountings would serve as the basis for a GAO audit to be requested by Senator Symington to determine if the Executive Branch is complying with the law.

2. An Agency decision has been made to deny Senator Symington's request for more information for FY 72 on the basis that detailed information on the expenditure of CIA funds should only be supplied to the CIA Oversight Committee. This decision was informally conveyed by OLC to Mr. Ed Braswell, staff member of the Senate Armed Services Committee who concurred. However, Mr. Braswell advised OLC that while he could support this decision with regards to expenditure of CIA funds, he would be hard pressed to support such a decision regarding FY 73 expenditures since all funding of the irregular program in Laos was contained in the DOD budget.

3. Mr. Colby has requested that FE Division conduct a study on the implications of a GAO request for audit of DOD funds expended by CIA in FY 73 in Laos.

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4. An attached draft outlines some of the current record-keeping procedures used in Laos. While all problems have not been included there are a sufficient number to conclude that immediate changes must be implemented if the Agency is to concur in GAO audit of DOD funds expended by CIA during FY 73. On the other hand a decision is needed if in fact we will and can permit GAO audit of the DOD funds disbursed on the basis that such funds are being disbursed under special authority of the DCI. We must also bear in mind that the Armed Services Committee has been assured by DOD that the transfer of funds to CIA in FY 73 for the irregular program is not being done to avoid DOD legal restrictions but is being done for administrative convenience since DOD does not have sufficient personnel in-country or any existing system to handle their disbursement under regular procedures.

5. A meeting of all interested components is necessary to review the whole problem and to recommend a course of action to the Executive Director.



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Attachment: As Stated

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MEMORANDUM FOR: Chief, Far East Division

SUBJECT: Possible GAO Audit of Laos Paramilitary Programs

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(18 July 1972)

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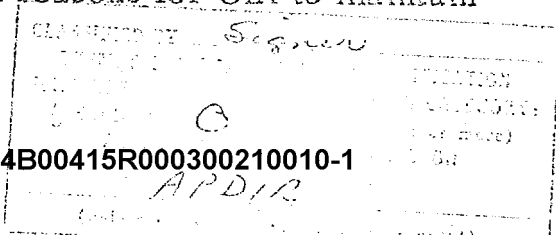
MEMORANDUM FOR: Deputy General Counsel

SUBJECT: Comments on "Possible GAO Audit of
Laos Paramilitary Programs in FY 1973"

REFERENCE: Your draft memo to ExDir dtd 28 Jul 72;
same subject

1. Para. 1 -- No comment.
2. Para 2 -- Believe the last line should be dropped if it is a conclusion of your paper, or changed if it is a conclusion of the referent paper to state that fact.
3. Para. 3 -- This paragraph deals with a number of matters which I think need clarification. Are the Defense funds "transferred" to the Agency? Should these funds be expended under the Director's certification? Can the Agency receive any funds in any manner except by transfer from another Agency or by appropriation. Do our transfers currently meet all legal requirements? Could GAO audit transfers to CIA in order to determine the validity of the transfer? I think we need to settle these questions in order to fully develop the Agency position on this matter.
4. Para. 4 -- Does not the sense of DoD testimony weaken continued use of the Director's certification which seems to be the principal legal defense to GAO audit?
5. Para. 5 -- I agree with the conclusions reached in this paragraph, but I believe they pose whether internal corrective action is not at least as desirable a goal as continuing to shut out GAO.
6. Para. 6 -- This paragraph deals with Agency accounting procedures and implies that while such procedures are adequate for the Agency, they do not meet GAO standards for the Federal Government. I believe this to be the actual state of affairs. And while there may be good and sufficient reasons for CIA to maintain

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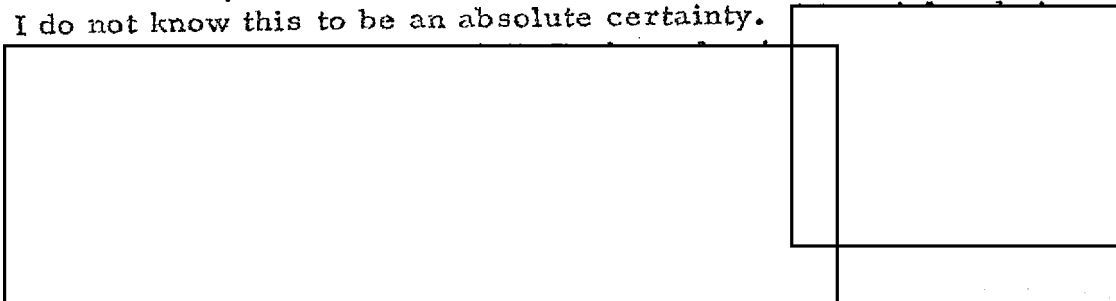
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lesser accounting standards in certain circumstances, there is a question as to whether all Agency projects require such favored treatment, or whether, where conditions permit, we should hold to GAO standards, even if we do not give GAO the right to audit. In other words, can we justify our own accounting practices in these projects?

7. Para. 7 -- This paragraph assumes that the current issue concerns only those funds which are directly passed to the CIA. I do not know this to be an absolute certainty.

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8. Para. 8 -- I agree with everything said in this paragraph, but I believe there are other points requiring discussion as indicated above.

9. Para. 9 -- I suggest we explore the possibility of improving our internal accounting system so as to bring it more in line with GAO standards; that we explore the manner in which we treat funds received by the Agency in order to assure correct legal handling of these funds; and that we at least explore the general possibility of permitting GAO audits on certain projects even if this particular one is beyond the tolerance.

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Deputy Director of Planning,
Programming, and Budgeting

GENERAL AND SPACE SCIENCES
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WASHINGTON, D.C. 20510

STANLEY H. FIKK
ADMINISTRATIVE ASSISTANT

June 15, 1972

Honorable Melvin R. Laird
Secretary of Defense
The Pentagon
Washington, D. C.

Dear Mr. Secretary:

It is our understanding that Section 505 of the Defense Authorization Act of 1971 (P. L. 92-156) and Section 655 of the Foreign Assistance Act of 1971, which established expenditure ceilings for United States activities in Laos and Cambodia, respectively, have been the subjects of extensive study in the Department of Defense.

We are particularly interested in the administration of these laws and in their effect upon United States programs in Laos and Cambodia. In the above connection, we would like to have available, prior to the mark up of the Southeast Asia portion of the FY 1973 Defense Procurement Bill by the Armed Services Committee, detailed information regarding the procedures instituted by the Defense Department to ensure compliance with these two ceilings; and would appreciate as soon as possible the following items:

1. Copies of all interpretations and determinations, both formal and informal, made by the Office of the General Counsel, relating to the expenditure ceilings for Laos and Cambodia.
2. Copies of current guidelines and instructions relating to the application of these laws and the preparation of the reports required by them. These should include all guidelines and instructions directed to or originated by the General Counsel's Office, the Office of the Controller, the Office of the Assistant Secretary for International Security Affairs, the Directorate of Defense Security Assistance, CINCPAC, MACV, Deputy Chief, MACV, the Requirements Office, Vientiane, and the Military Equipment Delivery Team, Cambodia, and any service commands, procurement or logistics authorities.
3. A detailed accounting of all goods, supplies, materials, equipment, services, personnel or advisors provided to, for, or on behalf of Laos and Cambodia during FY 1972 by gift, donation, loan, lease, transfer or otherwise.

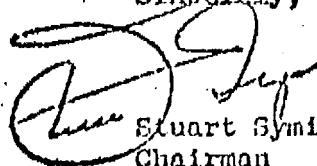
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4. An accounting of all goods, supplies, materials, equipment, services, personnel, or advisors now in the process of procurement, contracting and which are intended for the ultimate use of the Royal Laos Government, its regular or irregular forces or any of its "local forces" and for the Government of Cambodia.

In your responses to the foregoing questions kindly include both classified and unclassified information.

If necessary, and in order to avoid undue delay, we would appreciate your supplying individual answers to the above questions rather than delaying your reply until all information is available.

Sincerely,



Stuart Symington
Chairman

Subcommittee on United States Security
Agreements and Commitments Abroad

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