



UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100


COMPTROLLER

ACTION MEMO

March 4, 2003, 12:15 AM

FOR: SECRETARY OF DEFENSE

DepSec Action \_\_\_\_\_

FROM: Dov S. Zakheim 

SUBJECT: Acquisition and Cross-Servicing Agreement (ACSA) with Pakistan

DISCUSSION:

- I request that you authorize DoD to use its existing Acquisition and Cross-Servicing Agreements (ACSAs) as a mechanism to pay Pakistan and other countries for logistic support, supplies, and services that they provide to U.S. military operations in connection with the Global War On Terrorism (GWOT).
- As you know, Pakistan has sought reimbursement for military and logistical support it has provided to U.S. military operations since GWOT began.
- To date the United States has paid \$617 million to Pakistan for costs that Pakistan has incurred in supporting U.S. military operations between October 2001 and June 2002. These payments to Pakistan were authorized by section 304 of Public Law 107-117 and Public Law 107-206, which appropriated funds to DoD for the purpose of reimbursing Pakistan, Jordan, and other key cooperating nations for logistical and military support they provide to U.S. military operations in connection with the GWOT.
- The Government of Pakistan has submitted some \$530 million in additional costs that it has incurred in support of U.S. military operations in support of GWOT.
- On February 9, 2002, the DoD entered into an ACSA with Pakistan. Under this ACSA, DoD may acquire from Pakistan logistic support, supplies, and services for elements of the U.S. Armed Forces deployed (or to be deployed) outside the United States.
- In acquisitions of logistic support, supplies, and services under ACSAs, the supplying country typically provides supplies or services directly to the requesting country. However, ACSAs also permit DoD to pay a supplying country for logistic support, supplies and services that the country provides to *its own* forces in carrying out a military operation for DoD, *if* U.S. forces benefit by not having to provide the support, supplies or services to conduct the operation themselves. The Department of Justice agrees with this interpretation.
- Other legislative authorities support such payments to foreign countries. Specifically, DoD appropriations are available for services and supplies that are necessary for the

Pakistan

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national defense, and combatant commanders are responsible for carrying out missions that you assign to them in order to meet that objective. (10 U.S.C. §§ 164(b); 2241(b)). Further, the Authorization for Use of Military Force, Public Law 107-40, provides that the President is authorized to use all necessary and appropriate force -- and, implicitly, lesser means, including logistical support arrangements with foreign countries -- to prevent future acts of international terrorism against the United States.

- With your agreement, I will:
  - Upon validating all costs under a rigorous process that will ensure proper accounting of payments, direct the Services to cashflow up to \$530 million from within their available Operation and Maintenance resources, and
  - Include this entire amount plus what we project the Government of Pakistan will provide for the remainder of this fiscal year in the Supplemental that we are submitting. *Pakistan continues to bill DoD on a monthly basis for reimbursement of about \$70 million per month.*

#### RECOMMENDATION:

- SecDef authorize DoD to reimburse countries, pursuant to the cited authorities and applicable ACSAs, for the validated costs of logistic support, supplies, and services if (1) DoD has requested such support, supplies and services; (2) the countries would not have incurred the costs, but for DoD's request; (3) U.S. forces deployed (or yet to be deployed) benefited by not having to provide such support, supplies, and services; and (4) acquisition of such support, supplies and services significantly facilitated U.S. military operations in connection with the GWOT and was necessary and appropriate to prevent future acts of international terrorism against the United States.

Approve ✓ 4 2003 Disapprove \_\_\_\_\_ Other \_\_\_\_\_

- Based on the foregoing, SecDef direct the Components to cashflow up to \$530 million to reimburse the Government of Pakistan for validated costs at this time and to include the entire reimbursement for the Government of Pakistan in the Supplemental request.

Approve ✓ 4 2003 Disapprove \_\_\_\_\_ Other \_\_\_\_\_

COORDINATION: Attached. The General Counsel recommends a rigorous process to review all proposed payments, which we are doing; and suggests advising the Defense oversight committees of our interpretation, which we will do.

*Diff for after  
discussion on point  
one with SecDef  
on 3/1 and DepSec  
on 3/4  
and on point  
two with  
DepSec*



**UNDER SECRETARY OF DEFENSE (COMPTROLLER)**

**COORDINATION SHEET**

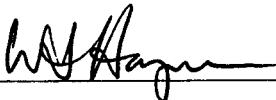
SUBJECT: Acquisition and Cross-Servicing Agreement (ACSA) with Pakistan

**COORDINATION MUST BE BY PRINCIPAL OR DEPUTY SINCE SECDEF/DEPSECDEF PACKAGE**

General Counsel \_\_\_\_\_

**Statement of Concurrence**

This office interposes no legal objection to the memorandum, subject to the noted revisions. We emphasize that using an Acquisition and Cross-Servicing Agreement (ACSA) to reimburse the supplying country for logistics support, supplies, and services that it provides to its own forces, even under the narrow conditions specified in the memorandum, constitutes an unprecedented application of 10 U.S.C. § 2341. Therefore, DoD should properly invoke the additional statutory authorities cited in the memorandum by obtaining the President's approval of the SecDef's determination. We also note that this broad interpretation of 10 U.S.C. § 2341 demands an especially rigorous methodology for reviewing all proposed payments under ACSAs to supplying countries, to ensure that such payments comply with statutory requirements and appropriately reflect the benefits received by DoD. Finally, in the interests of maintaining comity with Congress, we recommend that DoD advise its oversight committees of this application of the statutory authorities involved, including measures designed to limit this application to extraordinary circumstances in which DoD's established practices are insufficient to achieve national security objectives.



Date 2/25/03



March 4, 2003

TO: Larry DiRita

FROM: Dov S. Zakheim



SUBJECT: Acquisition and Cross-Servicing Agreement with Pakistan

- This responds to your question, "How can he 'determine' this?! We either can or cannot. It seems a legal matter, not something he can just decided to do. I thought this was on track." (Tab A)
- This is on track. The DoD General Counsel has approved the proposed application of the cited authorities, and the Office of Legal Counsel, Department of Justice agrees. We used the word "determine" because some of the legislative provisions that we cite contemplate a SecDef determination. (Similarly, we used "determine" in the February 10 Action Memo that SecDef signed re: Transporting and Sustaining Coalition Forces.)
- However, the Office of DoD General Counsel advises that "authorize" may be used as an alternative to "determine"; it implies the requisite determinations and is typically used in Action Memos. The attached package reflects the General Counsel's changes. (Tab B).

[REDACTED]



# TAB

# A





THE SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

February 27, 2003

TO: President Bush

FROM: Donald Rumsfeld

SUBJECT: Acquisition of Logistic Support, Supplies and Services from Foreign Countries

- I have determined that the Department of Defense may utilize its existing Acquisition and Cross-Servicing Agreements (ACSAs) as a payment mechanism to reimburse Pakistan and other countries for logistic support, supplies, and services that a country has provided for the benefit of U.S. forces in connection with the continuing war on terrorism. The background and basis of this determination, and the conditions under which I propose to apply it, are set forth in the memorandum at Enclosure 1.
- Because my determination is based, in part, on statutory provisions that pertain to Presidential authorities, I am forwarding a proposed memorandum for your signature, that is designed to document your approval of my determination (Enclosure 2).
- The Department of Defense is establishing procedures designed to ensure that all payments to foreign countries made pursuant to the above-referenced determination comply with applicable statutory requirements and appropriately reflect the benefits received by the U.S. Armed Forces.
- In addition, I intend to limit application of this authority to extraordinary circumstances in which the Department's established practices are insufficient to achieve national security requirements.
- Once I get your approval, we will provide Pakistan \$530 million to cover costs that it has incurred through December 2002.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_ Other \_\_\_\_\_



# TAB

# 1



203 FEB 25 PM 10:10

ACTION MEMO

February 25, 2003, 11:30 AM

DEFENSE

DepSec Action \_\_\_\_\_

and Cross-Servicing Agreement (ACSA) with Pakistan

determine that the Department of Defense (DoD) can utilize its  
and Cross-Servicing Agreements (ACSAs) as a payment  
to reimburse Pakistan and other countries for logistic support, supplies,  
country has provided to U.S. military operations in connection with  
Terrorism (GWOT).

Pakistan has sought reimbursement for military and logistical support  
for U.S. military operations since GWOT began.

- To date the United States has paid \$617 million to the Government of Pakistan for costs that Pakistan has incurred in supporting U.S. military operations between October 2001 and June 2002. *The DoD's previous payments to Pakistan are authorized by section 304 of Public Law 107-117 and Public Law 107-206, which appropriated funds to DoD for the purpose of reimbursing Pakistan, Jordan, and other key cooperating nations for logistical and military support they provide to U.S. military operations in connection with the GWOT.*
- The Government of Pakistan has submitted some \$530 million in additional costs that it has incurred in support of U.S. military operations in support of GWOT.
- On February 9, 2002, the DoD entered into an ACSA with Pakistan. Under this ACSA, methods of payment are established by which DoD may pay Pakistan for logistic support, supplies, and services for elements of the U.S. Armed Forces deployed (or to be deployed) outside the United States.
- Combatant commanders are responsible for the performance of missions assigned by you with the approval of the President, and DoD appropriations are available for services and supplies that are necessary for the national defense (10 U.S.C. §§ 164(b); 10 U.S.C. § 2241(b)). Further, the Authorization for Use of Military Force, Public Law 107-40, provides that the President is authorized to use all necessary and appropriate force -- and, implicitly, lesser means -- to prevent future acts of international terrorism against the United States.



SPL ASSISTANT DI RITA	
SR MA CRADDOCK	
MA BUCCI	

U02442 / 03



- Under the ACSA with Pakistan and the cited legislative provisions, DoD may acquire logistic support, supplies, and services that Pakistan provides to its own forces, if deployed forces of the United States are thereby benefited by not having to provide such support, supplies, and services themselves.
- With your agreement, I will:
  - Upon validation of costs, direct the Services to cashflow up to \$530 million from within their available Operation and Maintenance resources, and
  - Include this entire amount plus what we project the Government of Pakistan will provide for the remainder of this fiscal year in the Supplemental that we are submitting. *Pakistan continues to bill DoD on a monthly basis for reimbursement of about \$70 million per month.*

RECOMMENDATION:

- SecDef determine, with the President's approval, that DoD may reimburse countries, pursuant to the cited authorities and applicable ACSAs, for the validated costs of logistic support, supplies, and services if (1) DoD has requested such support, supplies and services; (2) the countries would not have incurred the costs, but for DoD's request; (3) U.S. forces deployed (or yet to be deployed) benefited by not having to provide such support, supplies, and services; and (4) acquisition of such support, supplies and services significantly facilitated U.S. military operations in connection with the GWOT and was necessary and appropriate to prevent future acts of international terrorism against the United States.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_ Other \_\_\_\_\_

- Based on the foregoing, and with the President's approval, SecDef direct the Components to cashflow up to \$530 million to reimburse the Government of Pakistan for validated costs at this time and to include the entire reimbursement for the Government of Pakistan in the Supplemental request.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_ Other \_\_\_\_\_

COORDINATION: Attached. The General Counsel advises that SecDef obtain the President's approval, which may be verbal; recommends a rigorous methodology to review all proposed payments, which we are doing; and suggests advising the Defense oversight committees of our interpretation, which we will do.

[REDACTED]



**UNDER SECRETARY OF DEFENSE (COMPTROLLER)**

**COORDINATION SHEET**

SUBJECT: Acquisition and Cross-Servicing Agreement (ACSA) with Pakistan

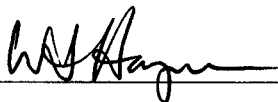
**COORDINATION MUST BE BY PRINCIPAL OR DEPUTY SINCE SECDEF/DEPSECDEF PACKAGE**

General Counsel

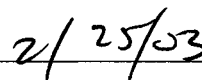
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**Statement of Concurrence**

This office interposes no legal objection to the memorandum, subject to the noted revisions. We emphasize that using an Acquisition and Cross-Servicing Agreement (ACSA) to reimburse the supplying country for logistics support, supplies, and services that it provides to its own forces, even under the narrow conditions specified in the memorandum, constitutes an unprecedented application of 10 U.S.C. § 2341. Therefore, DoD should properly invoke the additional statutory authorities cited in the memorandum by obtaining the President's approval of the SecDef's determination. We also note that this broad interpretation of 10 U.S.C. § 2341 demands an especially rigorous methodology for reviewing all proposed payments under ACSAs to supplying countries, to ensure that such payments comply with statutory requirements and appropriately reflect the benefits received by DoD. Finally, in the interests of maintaining comity with Congress, we recommend that DoD advise its oversight committees of this application of the statutory authorities involved, including measures designed to limit this application to extraordinary circumstances in which DoD's established practices are insufficient to achieve national security objectives.



Date





# TAB

# 2



MEMORANDUM FOR THE HONORABLE DONALD H. RUMSFELD  
THE SECRETARY OF DEFENSE

SUBJECT: Acquisition of Logistic Support, Supplies and Services from Foreign Countries

Pursuant to my authority under the Constitution as Commander in Chief, and consistent with the Authorization for Use of Military Force, Public Law No. 107-40, and Title 10, United States Code, sections 164(b), 2241(b) and 2341 et seq., I have determined that the Department of Defense may reimburse foreign countries for costs of logistic support, supplies, and services that such countries provide to their own forces, if Armed Forces of the United States deployed (or to be deployed) outside the United States are thereby benefited by not having to provide such support, supplies, and services themselves, and if acquiring such support, supplies and services is necessary and appropriate to prevent future acts of international terrorism against the United States. You are authorized to issue such orders as you deem necessary to reimburse foreign countries for such support pursuant to this determination.



# TAB

# B

