How Congress Cleared the Bases: A Legislative History of BRAC

BY GEORGE SCHLOSSBERG

Introduction

As the nation struggles to absorb significant defense budget cuts over the next several years, it is instructive to review the historical setting that led to the creation of independent commissions to select military installations for closure. Accordingly, this paper describes the genesis of the Defense Base Closure and Realignment Commission and frames the policy considerations and legislative compromises that control the statutory base closure process; it will not attempt to describe the specific selection process to close or realign individual domestic military installations.[1]

The diversity of closure procedures available to the Department of Defense guides the nature of any analysis. There are three distinct statutory procedures for selecting military installations to close or realign. Only the third in this list is currently available for use by DoD:

- First, special, one-time procedures of the Defense Authorization Amendments and Base Closure and Realignment Act, as amended, Base Closure Act I (1988 round of closures and realignments; now expired);[2]
- Second, the four phases established by the Defense Base Closure and Realignment Act of 1990, as amended, Base Closure Act II (1991, 1993, 1995 and 2005 rounds of closures and realignments);[3] and
- Third, permanent law (10 U.S.C. §2687); which applied to those attempted before Base Closure Act I, and after the expiration of Base Closure Act II (which occurred on Sept. 15, 2011).

It is important to note that both Base Closure Acts were justified on the basis of expediting closures. While the selection process under the Base Closure Acts may be slower and more formal (e.g., both require independent executive branch commissions), implementing closures outside of the Base Closure Acts is considerably more complex and time consuming because full compliance with environmental protection regulations, among other requirements, is needed.

The Historical Context of Base Closures

During the last six decades, the base closure process has been beset by mistrust on the part of Congress, and cries of interference on the part of the executive branch. Prior to the massive restructuring conducted during the tenure of Defense Secretary Robert McNamara, the President, as Commander in Chief, and

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acting through the Secretary of Defense, retained unlimited authority to relocate military forces. This was deemed to be a unique constitutional prerogative of the Commander in Chief; Congress's role was limited to providing the necessary resources.

The massive dislocations caused by the McNamara closures, and rising congressional concerns that base closures were being used to reward friends and punish political enemies, especially during the Vietnam phase-down, led to increased congressional interest and legislative activity.

Historically, the simplest and most effective way for Congress to stop a closure has been attaching a restriction to an appropriations bill. Normally, these restrictions were site specific and, while limited to the life of the appropriation, were repeated annually. The executive branch traditionally has taken the view that while funding restrictions could prevent the expenditure of money for rent, facilities, or other improvements, no fund restriction language, no matter how broadly drawn, could prevent the Commander in Chief from relocating military forces. Nevertheless, DoD has not challenged Congress in this regard; the risk of appropriations act restrictions on clearly permissible targets — such as weapon systems or personnel ceilings — has been too great.

Because of past timidity on the part of DoD, broadly drawn oversight measures also have been used to stop closures. Congressional attempts to enact permanent restrictions have resulted in two presidential vetoes; most recently, President Ford vetoed the Military Construction Authorization Act for fiscal year 1977 because it attempted to limit the President's power over military bases. However, an uneasy compromise was reached in 1977 when Congress enacted the predecessor of the current base closure statute (now 10 U.S.C. §2687). The compromise revolved around an acceptable report-and-wait process. Nevertheless, enactment of section 2687 throttled base closures; the extensive statutory reports required by the law provide ample time and opportunity for court challenges on environmental grounds, or as to the sufficiency of particular studies. Moreover, long delays permit communities to rouse Congress. In fact, DoD was unsuccessful in closing any major bases during the decade preceding enactment of Base Closure Act I.

The Creation and Role of Independent Commissions to Select Military Installations for Closure and Realignment

The First Commission

In early 1987, Rep. Dick Armey of Texas introduced a bill to facilitate military base closures by creating a commission to review the entire domestic base structure of DoD. The idea of a short-lived, bipartisan, independent commission gained support in Congress. While originally reluctant to surrender certain constitutional powers of the President to an independent commission, then-Secretary of Defense Frank Carlucci believed that he had a historic opportunity to effect base closures if action was taken before the end of the Reagan administration. He believed it was necessary for a commission to be established, the recommendations to be approved by the commission and delivered to the Secretary, and for DoD to review and accept the recommendations, with implementation to commence — all within a narrow window of opportunity — subsequent to the November 1988 election and prior to the January 1989 inauguration.

In an effort to jumpstart the process, Secretary Carlucci moved ahead of Congress and established the Defense Secretary's Commission on Base Realignment and Closure (first Base Closure Commission) on May 3, 1988, pursuant to existing law, the Federal Advisory Committee Act.[4] This action spurred Congress to enact Base Closure Act I on the eve of the 1988 election, in time to meet the Secretary's timetable.

Base Closure Act I contained an important compromise to insulate the Base Closure Commission from political interference and favoritism that was acceptable to both Congress and the executive branch. Base Closure Act I adopted the so-called "all-or-nothing" language that required both the President and Congress to adopt or reject the final recommendations of the Commission as a package; neither the President nor Congress could add or subtract individual installations. The only mechanism for either branch to remove bases recommended for closure or realignment by the Commission was to reject the entire package and suffer the political cost of scuttling what was perceived to be a historic opportunity to restructure the defense establishment.

The first Base Closure Commission issued its final report at a Pentagon press conference on Dec. 29, 1988. The 1988 Report recommended closing 86 military installations and realigning 59. The 1988 Report was distributed to the Secretaries of the military departments and the Chairman of the Joint Chiefs of Staff for their views and, within a week, all came back recommending that the Secretary adopt all of the Commission's recommendations. On Jan. 5, 1989, the Secretary, in conformance with Base Closure Act I, accepted the recommendations and so notified Congress. As a matter of law, DoD was obligated to carry out all of the recommendations of the first Base Closure Commission by Sept. 30, 1995, the time period established by Base Closure Act I.

The Cheney List

At the time the first Base Closure Commission was established, and even when Secretary Carlucci adopted the Commission's recommendations, it was widely believed that base closure had been put to bed for a generation. However, the confluence of a reduced defense budget and the outbreak of peace in Eastern Europe convinced the President and then-Secretary of Defense Dick Cheney that another round of closures was necessary.

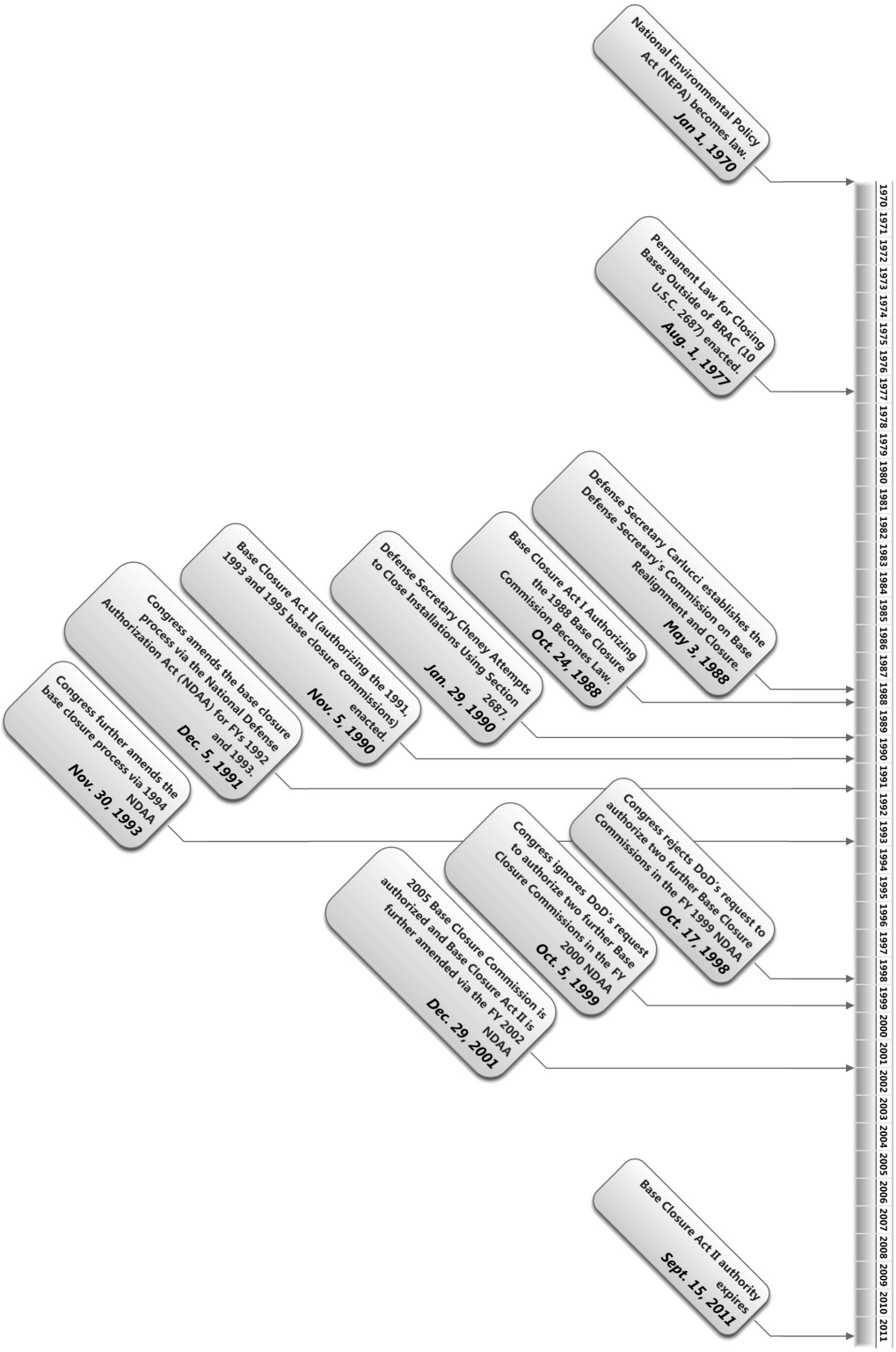
Secretary Cheney, however, opted not to wait for new legislation to ease the closure bottleneck as was accomplished on a one-time basis by Base Closure Act I. Instead, he attempted to close installations using the cumbersome procedures then in place — 10 U.S.C. §2687, the National Environmental Policy Act of 1969 (NEPA) as amended and the Federal Property Act. The result was the Jan. 29, 1990, "Cheney List."

The first obstacle DoD faced in implementing the Cheney List, as with any major non-Base Closure Act closure or realignment, was the inability of the department to make final decisions without complying fully with the procedural requirements of NEPA. NEPA applies solely to the decision-making process; it requires all agencies to consider the environmental effects of their actions prior to making a decision. This lengthy decision-making process, which must be conducted under the glare of full public scrutiny, takes an estimated 10 to 18 months, if no litigation arises.

Under NEPA, if DoD determines that the proposed action (closure or realignment) is a "major Federal action(s) significantly affecting the quality of the human environment," then the decision to proceed with the action may not be made until an environmental impact statement has been prepared, a time-consuming endeavor; on the other hand, if the threshold is not met, then DoD can proceed with the action following an environmental assessment, which documents the conclusion that there is no significant impact on the environment. Without doubt, the closure of a large military installation is a "major federal action."

The NEPA process is subject to continual congressional oversight and judicial review; moreover, because of the enormous economic cost to communities, NEPA litigation almost always accompanies a base closure announcement. And, while NEPA suits may not prevent a closure or realignment permanently,

Milestones in the Evolution of BRAC



if properly couched, a lawsuit can buy years of time by slowing down the already glacial pace of environmental studies.

The second obstacle to implementing the Cheney List was the required congressional notifications under section 2687. While Secretary Cheney's public announcement, with its charts and handouts was impressive, it failed to comply with the statute for the simple reason that it was not submitted to Congress as part of the department's annual budget request. Section 2687 requires the Secretary of Defense, prior to a closure or realignment announcement, to submit a notice "as part of an annual request for authorization of appropriations." Since the authorization request is required by law to be submitted within 10 days after the President submits the annual budget,[5] section 2687 limits DoD to one round of closures a year during a very narrow, 10-day window.

Substantively, section 2687 requires "an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such closure or realignment." The required notice must address, as a separate and distinct item, each of the criterion required by the statute. And, while there is no statutory or court test by which to measure the adequacy of the individual evaluations, DoD must provide at least enough information to reasonably comply with the statute.

The draft Cheney List was received with congressional charges of unfairness and hidden political motives. Press reports detailed that the majority of the recommended closures would occur in Democratic congressional districts. DoD replied accurately that most defense installations were located in Democratic congressional districts and that it would be impossible to close bases where they are not located. Congress ultimately did not accommodate the closures and realignments announced in January 1990. But because lawmakers agreed the military still retained excess infrastructure, later that year they passed Base Closure Act II. Base Closure Act II specifically, and very directly, vitiated the Cheney List; section 2909(a) of the Act states:

> "this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States. "

Accordingly, the Jan. 29, 1990, list announced by Secretary Cheney provided nothing more than a loose starting point for the DoD staff as they proceeded with the Base Closure Act II process.

The Second Base Closure Act

Concomitant with unveiling the January 1990 list of candidates for closure, Secretary Cheney proposed additional legislation to simplify and speed up the closure process. The Secretary's proposal was identical to Base Closure Act I procedurally; however, it would have permitted DoD to make closure decisions and eliminated the need for an independent commission, placing decision-making outside of public scrutiny. In common with Base Closure Act I, it would have eliminated the sensitive, but restrictive, section 2687 reports to Congress, and would have provided increased incentives to DoD disposal agents to sell unneeded properties to the highest bidders by permitting DoD to retain the proceeds of the sales.

While the Secretary's proposal was passed by the Senate, it was soundly defeated in the House and ultimately was ignored by the congressional conferees for the defense authorization act. Nevertheless, as part of the 1991 defense authorization process, Congress passed base closure legislation (Base Closure Act II), although not in the form suggested originally by DoD. Base Closure Act II, as enacted originally in November 1990, established three additional rounds of closures and realignments (1991, 1993 and 1995), and authorized the creation of in-

dependent executive branch Defense Base Closure and Realignment Commissions (subsequent Base Closure Commissions) consisting of eight members appointed by the President with the advice and consent of the Senate. In the 1991 and 1993 rounds, however, the Commissions only had seven members due to resignations.

Base Closure Act II requires DoD to accomplish three things prior to the Commissions commencing their deliberations. First, as part of the President's budget request, DoD is required to submit to Congress:

> "a force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security."[6]

Second, DoD must publish in the Federal Register and transmit to the Congress:

> "the criteria proposed to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States under this part."[7]

Third, and most importantly, the Secretary is required to transmit to Congress and the subsequent Base Closure Commissions by a specified date:

> "a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria …"[8]

The date set forth in the original statute for the 1991 round was April 15, 1991; subsequently, the date was changed to March 15, 1993, for the 1993 round and March 1, 1995, for the 1995 round to allow the Commissions additional time to complete their deliberations. For the 2005 round, the Secretary had to transmit DoD's recommendations by May 16, 2005.

The criteria used to determine which bases should be closed or realigned by the first Base Closure Commission under Base Closure Act I, and the final criteria used by both DoD and the subsequent Base Closure Commissions under Base Closure Act II for the 1991, 1993 and 1995 rounds, were similar. The single most important decision element remained military value — mission requirements and the impact on operational readiness — although the yardstick was changed. The first Base Closure Commission was charged with reviewing the impact of a closure recommendation on "the military departments concerned,"[9] while the subsequent Base Closure Commissions reviewed the DoD recommendations based upon their impact on "the Department of Defense's total force."[10]

In some cases this standard — military department vs. total force — led to conflicting results. For example, Fort McClellan, Ala., was once the home of the Army Chemical School, and was on the list of potential closures submitted by DoD for consideration by the Base Closure Commissions in 1991, 1993 and 1995. The Fort McClellan closure recommendation was developed first by the Army. The Fort McClellan Army Chemical School, however, included the only indoor live chemical agent training facility in the world and was used to train military contingents from the Army, Marine Corps, the Navy and representatives of 24 foreign allies. It is not clear that the Army consulted with the other branches of the Armed Forces, let alone U.S. allies, in preparing its closure recommendation. After reviewing this requirement, among other things, subsequent Base Closure Commissions reversed DoD in the 1991 and 1993 rounds, recommending Fort McClellan remain open. For the 1995 round, the Army came up with a revised recommendation to close Fort McClellan that satisfied the 1995 Commission and resulted in the post's closure and the relocation of the Army Chemical School to Fort Leonard Wood, Mo.
For the 1991, 1993 and 1995 rounds of deliberations, DoD met all three of the statutory conditions

to close or realign military installations. For the 1991 round, DoD transmitted its recommendations for realignment and closure to the Commission on April 12, 1991, and the Commission considered the Secretary's recommendations and reported to the President a final list of recommended closures on July 1, 1991, as required by section 2903(d) of Base Closure Act II; for the 1993 round, DoD transmitted its recommendations on March 12, 1993, and the Commission submitted its final report to the President on July 1, 1993; for the 1995 round, DoD transmitted its recommendations on Feb. 28, 1995, and the Commission submitted its final report to the President on July 1, 1995.

Legislative Refinements to the Base Closure Process

As DoD and Congress became familiar with Base Closure Act II's selection process, various legislative attempts were made to resolve lingering problems. For example, following the 1991 round of commission deliberations, Congress enacted comprehensive amendments to Base Closure Act II as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (1992/1993 Amendments).[11]

One of these changes addressed the congressional concern that if the President did not nominate the Commissioners in a timely fashion, the Commissioners would be unable to properly fulfill their duties once they were finally nominated and confirmed. Accordingly, section 2821(a) of the 1992/1993 Amendments established an additional condition for the Base Closure Commission to undertake its deliberations. Section 2821(a) stated that the process for selecting military installations for closure or realignment would be terminated unless the President transmitted to Congress the nominations for appointment to the Commission on or before the date specified in Base Closure Act II.

This section caused some trepidation among base closure proponents following the 1992 presidential election as it was not clear whether President George Bush would send nominations for the 1993 Commission to Congress in the waning days of his administration, and, if not, whether President Clinton would be able to submit the names of nominees in time to meet the statutory deadline. Ultimately, Bush did transmit names to Congress; these individuals were subsequently confirmed and presided over the deliberations that considered the closure recommendations submitted by Clinton.

Section 2821(b) of the 1992/1993 Amendments addressed a DoD concern that the Commission was building up a body of staff expertise on DoD's base structure that rivaled that of the military departments. This was deemed to be inappropriate because the Commission was created to be an appellate body and was not intended to substitute its judgment, or that of the individual Commissioners, for that of the Secretary of Defense. The concern held that the Commission was exceeding its responsibility to review the recommendations of DoD and determine whether they were consistent with the department's force structure report approved by the President and the base selection criteria published in the Federal Register.

Accordingly, section 2821(b) of the 1992/1993 Amendments limited the number and composition of professional staff members and analysts that could be employed by the Commission. One restriction limited the number of staff to 15 at any one time during calendar years 1992 and 1994; presumably, this would prevent the training and retention of the analysts necessary to challenge DoD's views during the periods immediately preceding the Commission's deliberations in 1993 and 1995. On the other hand, legislative efforts were made to free the Commission from any undue DoD influence by limiting the number of DoD personnel that could be detailed to the Commission, as well as limiting the number of Commission staff members who had worked previously for DoD.

Section 2821(f) of the 1992/1993 Amendments provided a key substantive change to the Commission selection process by clarifying the Commission's authority to radically alter DoD's closure and realignment recommendations. During the 1991 round of deliberations, a serious debate arose among the Commissioners and Commission staff as to whether, as part of its deliberative process, the Commission could add military installations to DoD's closure and realignment recommendations. The majority of the 1991 Commissioners adopted the conservative view that while the Commission could remove an installation from DoD's list of recommendations, the Commission did not have the authority to recommend the closure or realignment of installations not proposed by the Secretary of Defense.

In section 2821(f) Congress agreed with those who believed the Commission should be able to recommend the closure of installations not proposed by the Secretary of Defense, thereby permitting the Commission to collectively substitute its judgment for that of the Secretary. Section 2821(f) codified procedural changes to Base Closure Act II to allow the Commission to make changes to the list of recommendations made by the Secretary of Defense only if the Commission:

> "determines that the change is consistent with the force structure plan and final criteria referred to in subsection (c)(1); ... publishes a notice of the proposed change in the Federal Register not less than 30 days before transmitting its recommendations to the President ... and (iv) conducts public hearings on the proposed change."

As a result of this change, the Commission held a second set of hearings during the 1993 round to ensure that no community would be caught by surprise and suffer the loss of a military installation without the opportunity to address the Commission. This made for a rather hectic June 1993, the 30-day period set forth in the amendment.

Among other things, the chaos caused by the Commission adding new candidates for closure during the last month of its 1991 deliberations led to further amendments to Base Closure Act II to lengthen the duration of the Commission's deliberations.

The last change to Base Closure Act II enacted as part of the 1992/1993 authorization process concerned the submission of information and data to the Commission. During the 1991 round, several Commissioners expressed concern about the accuracy and timeliness of information submitted by DoD in response to questions from individual Commissioners and to questions raised by communities defending the military installations within their boundaries. As a result, Congress amended Base Closure Act II to require government personnel to certify that information submitted to the Commission is accurate and complete to the best of that person's knowledge and belief.

Very few substantive amendments were made to Base Closure Act II concerning the base closure selection process as part of the National Defense Authorization Act for FY 1993[12] or for FY 1994.[13] Changes that were made concerned the reuse of the property rather than the base closure selection process. Nevertheless, in section 2925 of the 1994 authorization act, Congress made its first attempt to statutorily influence the drafting of the selection criteria used by DoD and the Base Closure Commission. The criteria used by the 1988, 1991 and 1993 Commissions were drafted solely by DoD. During the 1991 and 1993 rounds, the criteria were submitted to Congress for approval and in neither case did Congress take any action to amend or reject the department's criteria.

Section 2925 states "it is the sense of Congress that the Secretary of Defense consider, in developing ... amended criteria, whether such criteria should include the direct cost of such closures and realignments to other federal departments and agencies."

Nevertheless, the final criteria for the 1995 round remained identical to those used during the 1991 and 1993 base closure rounds. Congress again attempted to influence the selection criteria when authorizing the 2005 round.

Following the 1995 round of closures, the Base Closure Act II authorizations expired and no changes were made to the base closure selection process. Nevertheless, Congress significantly amended the Base Closure Acts as part of the National Defense Authorization Acts for Fiscal Years 1995 through 1997 to clarify and simplify the reuse and disposal process.[14]

The Genesis of the 2005 Base Closure Round

Following the 1995 round, continuing DoD efforts to streamline its operations and shed unneeded infrastructure led to DoD calls for additional closures. In response, Congress required the Secretary of Defense to prepare a report justifying future closures. Section 2824 of the National Defense Authorization Act for FY 1998,[15] among other things, required DoD to prepare a report detailing:

> "the costs and savings attributable to the rounds of base closures and realignments conducted under base closure laws and on the need, if any, for additional rounds of base closures and realignments."

In April 1998, as required, DoD presented Congress with its report on base realignment and closure. In the report, then-Secretary of Defense William Cohen defined the department's Defense Reform Initiative to re-engineer business processes, consolidate organizations, compete commercial activities and eliminate excess infrastructure. Secretary Cohen declared, "Central to this effort are two additional rounds of base realignment and closure beginning in 2001."

The April 1998 report made the case for base realignment and closure proposed by President Clinton in the FY 1999 budget request. The Clinton administration's proposal would have authorized additional rounds of base closures in 2001 and 2005 with a process similar to prior rounds: the creation of an eight-member Base Closure Commission, with members nominated by the President in consultation with congressional leaders, the completion of a force structure plan, and selection criteria for making closure or realignment recommendations.

However, the Clinton administration's legislative proposal was rejected by Congress and the National Defense Authorization Act for FY 1999 did not authorize future rounds.[16] Among the many reasons given for rejecting the call for additional rounds was dissatisfaction with the Clinton administration's implementation of the 1995 round of base closures, specifically President Clinton's directive that allowed for the privatization in place of existing work at Kelly Air Logistics Center in San Antonio and McClellan Air Logistics Center in Sacramento, Calif. Both installations were recommended for closure by the 1995 Base Closure Commission with no mention of privatization as an alternative. President Clinton was accused of circumventing the bipartisan process in an effort to curry electoral favor by keeping the depot work and jobs in place as private entities, thereby avoiding the full effect of the Commission's closure recommendations.

Again, in March 1999, Secretary Cohen went to Capitol Hill and asked lawmakers to consider the Clinton administration's FY 2000 budget proposal for two additional rounds of base closure. And again, due to lack of trust in the White House's ability to implement an impartial base realignment and closure process, Congress ignored the request for future commissions in the National Defense Authorization Act for FY 2000[17] and the National Defense Authorization Act for FY 2001.[18]

With the election of President George W. Bush and

change of administration in 2001, came a renewed DoD push for closures. In July 2001, DoD outlined its proposal for another round of base closures, the Efficient Facilities Initiative (EFI). In announcing the EFI, Pete Aldridge, Undersecretary of Defense for Acquisition, Technology and Logistics, stated that the main precepts of prior rounds, the establishment of an independent, bipartisan base closure commission and the all-or-nothing aspect, would remain. However, unlike deliberations in prior base closure rounds, Aldridge said, "Recommendations for closure or retention will be based upon future force structure needs to meet our strategy, and will emphasize retained military value." The EFI also proposed one round of base closures, rather than two, in order to "get the pain of base closure over quickly." Secretary of Defense Donald Rumsfeld sent the EFI to Congress for consideration in August 2001.

Throughout the fall of 2001, Congress debated whether to authorize another round of closures in its fiscal year 2002 defense authorization. Staunch opposition came from members of the House of Representatives, and, in fact, the House did not include language authorizing closures in its version of the authorization bill. The Senate, however, did authorize a single round of base closures to begin in 2005. After considerable debate, the House-Senate conference committee in December 2001 passed the National Defense Authorization Act for FY 2002, which included language amending Base Closure Act II and authorizing an additional base closure and realignment round for 2005.[19] The legislation differed only slightly from the Bush administration's EFI proposal.

The 2001 amendments to Base Closure Act II required DoD to complete three key steps prior to the 2005 Base Closure Commission commencing its deliberations. First, as part of President Bush's budget request for FY 2005, the Secretary of Defense had to submit to Congress:

> "A force-structure plan … based on an assessment by the Secretary of the probable threats to the national security during the 20-year period beginning with fiscal year 2005, the probable end-strength levels and major military force units … needed to meet these threats, and the anticipated levels of funding that will be available for national defense purposes during such period," and
>
> "A comprehensive inventory of military installations worldwide for each military department, with specifications of the number and type of facilities in the active and reserve forces of each military department."[20]

Second, DoD was required to publish in the Federal Register and provide to Congress no later than Feb. 16, 2004,

> "the final criteria proposed to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States."[21]

On Dec. 23, 2003, DoD issued its draft criteria that mirrored the guidance provided by the defense authorization act. Once again, military value had to be the primary consideration of the secretary of defense in making recommendations for closure or realignment.

Third, the Secretary of Defense was required to transmit to Congress and the Base Closure Commission, no later than May 16, 2005,

> "a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and infrastructure inventory prepared by the Secretary … and the final selection criteria."[22]

Significantly for the 2005 round, and unlike previous rounds, the Secretary of Defense had a new option when considering whether to close or realign a military installation. Previously, if a base was unneeded or expensive to maintain, the Secretary needed to choose between keeping the base open or closing it and disposing of the surplus property. For 2005, the Secretary was able to recommend that an installation be closed and placed on inactive status if it had future national security uses or retention was otherwise in the best interest of the United States.

This option allowed the department to shut down the installation but retain the property for an indefinite period of time. This possibility raised the stakes considerably for affected communities. For not only was a community faced with the loss of valuable military jobs, but it could be denied the opportunity to reuse the property and replace its job losses and tax base. In a worst case scenario, an installation could be closed, the property put in an inactive status and crucial real estate and facilities kept off the tax roles, preventing any meaningful form of economic recovery.

Other important statutory differences between the 2005 base closure round and prior rounds include:

- The Commission was composed of nine members, whereas prior Commissions had eight. This potentially eliminated tie votes.
- The Secretary of Defense had to assess probable threats to national security and determine potential surge requirements necessary to meet those threats.
- The Commission could not add an installation to the closure/realignment list unless at least two Commissioners had visited the base.
- The BRAC Commission could not add any military facility to the list of facilities to be closed under the Secretary of Defense's infrastructure plan unless a super-majority (seven of the nine Commissioners) agreed to do so. In contrast, the Commission could remove a base from the closure list by a simple-majority vote.
- DoD had to create, by Dec. 31, 2003, a working group on the provision of military health care to persons who relied on health care facilities located at military bases that were selected for closure or realignment in the 2005 round.

The BRAC 2005 recommendations were finalized on Sept. 15, 2005.

No Legislative Refinements Made after the 2005 Base Closure Round

Congress made no revisions to the base closure process after the 2005 round, as it was the final of four rounds under Base Closure Act II. Of course, come February, it is possible that the President or Congress may request one or more new base closure rounds as part of the FY 2013 budget process.

Conclusion

The legacy of the BRAC process arose from the need to streamline Department of Defense operations and to do so in a manner acceptable across the political spectrum. The procedures that were followed — in 1988, 1991, 1993, 1995 and 2005 — to evaluate and ultimately close or realign bases has been refined significantly since the first base closure round. But the essential process has not changed and is rooted in the existence of an independent bipartisan commission evaluating DoD recommendations to produce an all-or-nothing list of closures and realignments.

Endnotes

1. This paper also will not address the very complex and time-consuming manner by which the federal government reuses or disposes of surplus federal property.
2. Pub.L.No. 100-526
3. Pub.L.No. 101-510
4. 5 U.S.C. appendix 1
5. 10 U.S.C. §2859
6. Base Closure Act II, section 2903(a)
7. Base Closure Act II, section 2903(b)
8. Base Closure Act II, section 2903(c)
9. Revised Charter, #A.1., Nov. 8, 1988
10. Final Criteria, #1 in 1991, 1993, 1995 and draft criteria in 2005
11. Pub.L.No. 102-190
12. Pub.L.No. 102-484
13. Pub.L. No. 103-160
14. Pub.L.No. 103-337, Pub.L.No. 104-106 and Pub.L.No. 104-201, respectively
15. Pub.L.No. 105-85
16. Pub.L.No. 105-261
17. Pub.L.No. 106-65
18. Pub.L.No. 106-398
19. Pub.L.No. 107-107
20. Section 3001 (Pub.L.No. 107-107)
21. Section 3002 (Pub.L.No. 107-107)
22. Section 3003 (Pub.L.No. 107-107)