

SECURITY ASSISTANCE PERSPECTIVES

The Congress and U.S. Military Assistance Part II

By

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[The following represents a slightly revised version of the second half of a paper presented on April 9, 1987, at the Midwest Political Science Association Annual Meeting in Chicago, Illinois. This section of the paper examines legislative control and oversight mechanisms associated with the conduct of U.S. military assistance. The first section of the paper, published in the preceding Summer 1987 issue, provided a description of the evolution of the U.S. military assistance programs, a discussion of the Congressional authorization and appropriations process, and an analysis of Congressional funding from FY 1969 to FY 1987--the basic timeframe of the entire study.]

Legislative Oversight

Aside from its widely-recognized power of the purse which it uses to regulate the size of military assistance grant and loan programs, Congress exercises a range of other more explicit oversight measures. Typically, Congressional oversight takes the form of "restraints, restrictions, and reports." [28] This is particularly true of military cash sales which, by their very nature, are not part of the scrutiny of the Congressional authorization and appropriations process. The broad and diverse nature of Congressional concerns are far too extensive to fully examine herein, but are reflected in the listings of general and country-specific prohibitions on the use of military assistance which are provided in Appendices B-1 and B-2. In addition, a listing of detailed Department of Defense reporting requirements, contained in no less than 44 separate statutory provisions, is provided in DOD 5105.38-M, *Security Assistance Management Manual*, published by the Defense Security Assistance Agency.

Based on a review of the legislative framework governing military assistance, and supplemented by a study of Congressional hearings and committee reports, certain general observations tend to emerge, as follows:

- In contrast to the executive branch--which has typically been an enthusiastic advocate of military assistance--Congress has been a wary and skeptical participant.

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• Unable or unwilling to directly administer military assistance by itself, Congress has delegated various far-reaching program implementation authorities to the President.

• Increasingly uncomfortable with this delegation, especially following the Vietnam war period and other episodes involving the sale of sophisticated equipment to Third World nations, Congress has continually instituted means of exacting greater control over and accountability from the executive branch.

• Yet, in the process of establishing such controls over executive branch implementation, Congress has prescribed various legislative "escape clauses" which allow the executive branch significant flexibility, particularly in responding to emergencies.

These executive-legislative interactions take the pattern of a continuous institutional dilemma. The basic nature of this dilemma is that while Congress is empowered to conduct a military assistance program, it finds such programs unpopular among its constituencies and therefore distasteful, whereas the executive branch sees many foreign policy benefits to be derived from the program, but lacks the necessary power to conduct it without Congressional approval. The resulting program is an unhappy compromise between the two branches, with each frequently contesting the direction in which the other prefers to go. These various observations are demonstrated in the ensuing discussion.

Congress: The Wary Partner

Congress has long faced an internal conflict with regard to military assistance. On one hand, many Congressional members wish to support the military assistance program for a variety of reasons, including ideological orientations, a desire to support the President of their political party, empathy for one or more recipient countries, or other personal or institutional reasons. On the other hand, Congressional members are well aware of the American public's general disdain for military assistance and the absence of a constituency for the program.[29] As a result, it is not surprising to see Congress display "political schizophrenia" with respect to military assistance, as illustrated in its legislative approval of appropriations and the delegation of implementing authorities to the President, coupled with calls for restraint and demands for direct oversight. The dominant Congressional personality is the latter: that of the wary partner to what some cynically refer to as the second oldest profession--the sale of arms.[30]

Evidence of this Congressional split-personality can be found in both the Foreign Assistance Act of 1961 (FAA) and the Arms Export Control Act (AECA), as illustrated by the following citations.[31]

• In Section 1, AECA, Congress declares "an ultimate goal of the United States continues to be a world which is free from the scourge of war and the dangers and burdens of armament," while simultaneously recognizing that "the United States and other free and independent countries continue to have valid requirements for effective and mutually beneficial defense relationships" Moreover, since "it is increasingly difficult and uneconomic for any country, particularly a developing country, to fill all its legitimate defense requirements from its own design and production base," military sales are authorized. However, the Congressional sense is "that all such sales be approved only when they are consistent with the foreign policy interests of the United States. . . ."

• After begrudgingly citing the basic rationale for arms sales, Congress proceeds in Section 1, AECA, with the caution "that particular regard . . . [be] given, where appropriate, to proper balance among such sales, grant military assistance, and economic assistance as well as to

the impact of the sales on programs of social and economic development and on existing or incipient arms races."

- The concern that grant military assistance and arms sales can lead to undesirable consequences is addressed in both the FAA and the AECA. Section 501, FAA, states: "In furnishing such military assistance, it remains the policy of the United States to continue to exert maximum efforts to achieve . . . universal regulation and reduction of armaments. . . ." Similarly, Section 1, AECA, carries this concern further, even declaring a proactive role for the "United States to exert leadership in the world community to bring about arrangements for reducing the international trade in implements of war" and for the President to "seek to initiate multilateral discussions for the purpose of reaching agreement among the principal arms suppliers and arms purchasers" with regard to arms transfer restraint.

- Finally, Section 1, AECA, reports "the sense of the Congress that the aggregate value of defense articles and defense services" sold through FMS government-to-government or through commercially licensed contractor sales channels "in any fiscal year shall not exceed current levels." [32]

One can sum up the above statutory declarations of policy as follows: (1) other friendly countries have legitimate defense needs; (2) the United States recognizes these needs and will transfer arms under special conditions; (3) arms transfers can lead to arms races and instability; (4) the United States, as a leading supplier, should take a leadership role in seeking multilateral restraint; and (5) the United States, at a minimum, should limit its arms sales to the "current levels," which when the law was enacted represented fiscal year 1975 levels. When these and similar provisions in the FAA and the AECA are considered, it appears reasonable to conclude that Congress regards arms transfers as a dangerous, albeit necessary, endeavor. Further, notwithstanding the real or perceived instances of partisan or interest-group politics, it is largely through this legalistic framework of overt restraint that Congress has successfully sought to review and even contain military assistance. The manner by which it has chosen to accomplish this has led to frequent confrontations with its more assertive partner in the military assistance process--the executive branch, which has to deal with countries and situations directly.

The Executive as the "Zealous Deputy"

Webster's Dictionary defines a "deputy" as a person appointed as a substitute with power to act. While this term is admittedly misleading and even inaccurate in describing the constitutional role of the executive *vis-a-vis* the Congress in military assistance, it does suggest one basic truth: the executive's role in military assistance is essentially that which has been delegated to it by Congress. It is commonly agreed that foreign affairs (of which military assistance and sales are an integral part) involve shared constitutional powers, and even that the President is in charge of American foreign policy. While this may well apply for most foreign policy issues, we submit that Congress, not the executive, possesses and exercises the basic constitutional power to authorize the military assistance grant and sales programs. This authority fundamentally resides in Section 8, Article I, of the Constitution, which assigns Congress the power to regulate commerce with foreign nations, including by implication the commerce in U.S. defense articles, services, and training; further, Section 3, Article IV, furnishes another source of Congressional authority in its provision that, "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . ." [33] As impractical and unwise as it might be, according to one specialist in American public law, "Conceivably Congress could have regulated arms sales and transfers by firms and private purchasers without involving the President." [34] Another source observes, "The authority of the executive branch to sell arms to other countries, as well as its authority to regulate commercial exports, derives from legislation." [35] Specifically, through the FAA and the AECA, Congress

has provided authority to the executive to administer the military assistance grant and sales programs subject to statutorily-prescribed standards and conditions.

In a manner of speaking, Congress, through the FAA and the AECA, has "invested" the President with a wide range of authorities. For instance, Section 503, FAA, states, "The President is authorized to furnish military assistance, on such terms and conditions as he may determine, to any friendly country or international organization" Similarly, Section 21, AECA, authorizes the President to sell defense articles and defense services from Department of Defense stocks. Still, this authority is not without its statutory limits. Section 3, AECA, prescribes that before U.S. defense items are sold or leased, the President must make a finding that the furnishing of such items "will strengthen the security of the United States and promote world peace." Further, Section 2, AECA, even specifies the executive cabinet officer--that is, the Secretary of State--who, under the direction of the President, is "responsible for the continuous supervision and general direction" of the sales program.

The FAA and AECA do not loosely delegate authorities; rather, they pinpoint quite exactly the manner and conditions of such delegations. Essentially this degree of specificity is Congress' way of protecting its "policy turf," ever recognizing that Congress and the executive often approach military assistance from disparate behavioral perspectives. Whereas the Congress is wary of the negative aspects of military assistance, the executive is positive and upbeat. Further, while it is rare to find members of Congress expounding the virtues of military assistance, the executive assumes an advocative role. For example, in his State of the Union address on February 6, 1985, President Reagan sought future support for his Administration's military assistance program, stating, "The Congress should understand that dollar for dollar security assistance contributes as much to global security as our own defense budget." [36] Later, in his signing statement relative to the security assistance authorization bill on August 8, 1985, Reagan observed, "Security assistance is, quite simply, the most effective instrument we have for helping to shape a more secure international environment." [37] Complementary themes resound throughout executive-prepared statements and documents. Secretary of State George Shultz paraphrases President Reagan in noting that "security-related assistance . . . gives us tremendous mileage," and Secretary of Defense Caspar Weinberger depicts security assistance as acting "both as an instrument of foreign policy and defense policy." [38]

In his 1973 study, Richard Fenno ascribes a leadership role to the President and his cabinet in the fashioning of the foreign assistance program, primarily due to a lack of Congressional initiative to play a more primary role. [39] While various events suggest a resurgence of interest and power on the part of Congress during later years, the evidence suggests that Congress still looks to the executive as the sponsor and defender of the military assistance program. [40] It is pertinent that one researcher, through his discussions with Congressional members, found that these members feel "the President can be more persuasive on the [military assistance] subject than anyone else," and that the President "must exercise his leadership and speak out to convince the electorate of the need for our involvement abroad and our foreign assistance programs." [41]

Considering the behavioral dispositions of the two branches--with one *usually for* and the other *sometimes for, unsure, or against* military assistance--it is a wonder that we have any workable program at all. Notwithstanding these obstacles, the two branches have managed to continue going forward, but not without some significant disagreements along the way. Much of the conflict and consternation between the Congress and the executive relative to military assistance matters has been attributed to Congressional micro-management in the form of control and oversight mechanisms--the topic to be examined next. In view of the magnitude of specific statutory controls, the discussion necessarily centers on a few selected examples and issues which we feel are highly illustrative of the process and environment. Readers who wish to examine a broader scope of controls and oversight mechanisms are invited to review Appendices B-1 and B-2 at the end of this paper.

Control and Oversight Mechanisms

The current degree of Congressional control and oversight over military assistance has its origins in several directly and indirectly related factors, including Congressional and public disenchantment with the Vietnam War, President Nixon's exercise of budget impoundment authority, Nixon's withholding of information from the Congress under the doctrine of executive privilege, and so on.[42] While these events individually and collectively tended to steer the Congress toward a new reassertiveness, the Vietnam War in particular soured the public attitude toward military assistance. Following Vietnam, military assistance came to be perceived as the principal instrument for entangling the United States with Third World countries to the degree that U.S. forces might become directly embroiled in future regional conflicts.[43]

Advance Reporting Requirements and the Demise of the Legislative Veto. At a time when U.S. involvement in the Vietnam War was winding down, another variation of military assistance was gaining in momentum. This assistance took the form of cash sales of sophisticated U.S. military equipment, with much of the equipment being sold to the oil-rich governments of the Middle East and the Persian Gulf. An eventual Congressional desire to control sales of this nature led to one of the more significant bouts between Congress and the executive branch, only to be followed by the involvement of the Supreme Court in ruling on a seemingly unrelated case and thereby, acerbating an already contentious military assistance issue.

For a period of six years following the adoption of the *Foreign Military Sales Act of 1968* (FMSA)--the predecessor of the AECA--the executive had statutory authority to sell arms without any requirement to consult with, or notify Congress before a prospective sale agreement was actually concluded. Until 1974, the FMSA merely required the Secretary of State to report significant arms sales semiannually to Congress, which meant that Congress generally learned about such sales transactions only after they were negotiated and signed. With few exceptions, the interested House and Senate committees were never consulted in advance of major weapon sales.[44]

Eventually, pressures began to build in Congress for greater control over prospective arms sales agreements. Complaining that the American Congress and public first learned of the 1973 sales to Persian Gulf countries only after the American media picked up on a foreign press report, Senator Gaylord Nelson (D-WI) was critical of the way several high-dollar value arms sales were transacted "without Congressional and public debate, discussions, or deliberations." [45] Senator Nelson, together with Representative Jonathan Bingham (D-NY), co-sponsored what was popularly referred to as the Nelson-Bingham Amendment. This amendment, which ultimately was enacted as Section 36(b) of the FMSA, provided that any government-to-government sale under FMS procedures valued at over \$25 million could be blocked by the passage of a concurrent resolution of disapproval within 20 calendar days following the notification of such proposed sale to Congress.[46] Such concurrent resolutions would require only a simple majority vote in each House, without Presidential approval, thereby constituting a "legislative veto" of the executive's actions.[47] On December 30, 1974, through the amendatory language of the Foreign Assistance Act of 1974, the Nelson-Bingham Amendment formally took effect.

The legislative veto device was popular in military assistance as well as other substantive legislative areas because it provided the Congress an opportunity to hedge on its bet. On one hand, Congress could delegate certain powers to the executive branch, while retaining the ultimate power to override specific executive branch decisions with which it disagreed. By its very nature, the legislative veto enabled Congress to become selectively involved in major sales cases. This involvement was not always welcomed by executive branch officials, as illustrated by President Ford's May 1976 veto message relative to a foreign assistance authorization bill which contained a

legislative veto provision that was even more far reaching than the Nelson-Bingham Amendment:
[48]

This bill contains an array of objectionable requirements whereby virtually all significant arms transfer decisions would be subjected on a case-by-case basis to a period of delay for Congressional review and possible disapproval by concurrent resolution of the Congress. These provisions are incompatible with the express provisions in the Constitution that a resolution having the force and effect of law must be presented to the President and, if disapproved, re-passed by a two-thirds majority in the Senate and the House of Representatives. They extend to the Congress the power to prohibit specific transactions authorized by law without changing the law and without following the constitutional process such a change would require. Moreover, they would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers.

In the aftermath of this Presidential veto, Congress adopted some concessions in a restructured bill, yet retained several provisions which were initially objected to by President Ford. Nevertheless, on June 30, 1976, President Ford signed into law *The International Security Assistance and Arms Export Control Act of 1976*, which, inter alia, changed the title of the FMSA to the AECA, and further modified various provisions affecting arms sales. Section 36(b) of the AECA was adjusted to require notification in the instance of the proposed sale of \$7 million of major defense equipment, as well as the \$25 million of defense articles and services initially required by the 1974 legislation. The period for Congressional review was increased from 20 to 30 calendar days, and the amount of information that the President had to supply to the Congress in connection with such proposed sales was substantially increased. Commercially licensed sales exceeding the \$7 million and \$25 million thresholds were also made subject to advance notification, but not to the legislative veto.[49]

In later years, the legislative veto provision was extended to commercial sales (less those sales to NATO, NATO members, Australia, Japan, and New Zealand), selected third country transfers (i.e., transfers of equipment from the original purchaser government to another government), and leases of defense articles and services.[50] In 1981, the dollar thresholds for those items subject to Congressional notification and legislative veto were increased to \$14 million for major defense equipment and \$50 million for other defense articles and services, and Congress also added a new reporting threshold of \$200 million for design and construction services when sold under FMS.[51]

The legislative veto mechanism within the AECA continued to be an irritant for the executive branch for several years. During his 1982 confirmation hearing, Secretary of State George Shultz, in responding to a question about the this feature of the legislation governing arms sales, implied that Congress had perhaps gone too far in managing the executive branch. Shultz indicated, "I would prefer to see legislation which provides substantive guidance to the Executive and contains procedures for effective oversight by Congress, without involving Congress directly in the execution of the laws it has enacted." [52]

Despite the occasional rhetoric, up to the time of the 1983 Supreme court ruling, the executive branch had never been confronted with a successful concurrent resolution of disapproval relative to an arms sale. The threat of a legislative veto, however, is said to have modified the manner, timing, or even the withdrawal by the executive branch of certain sales notifications. For instance, following the introduction in the House of a concurrent resolution of disapproval, the 1975 sale of Hawk air defense missiles to Jordan proceeded only after the executive branch advised Congress that the Government of Jordan had pledged to permanently install the missile system at fixed sites in a defensive mode, thereby foregoing the movable deployment mode which Congressional critics had opposed. In 1977, a proposed sale of Airborne Warning and Control System (AWACS)

aircraft to Iran was withdrawn in the wake of a concurrent resolution initiative which successfully cleared the House International Relations Committee. The Carter Administration later resubmitted the proposal to Congress, but it was overcome by events following the change in government in Iran.[53] The sale of five AWACS aircraft to Saudi Arabia in 1981 represented the first time that the issue ever came to a two-house vote. In October, 1981, the House of Representatives voted 301-111 and the Senate 48-52 for a resolution of disapproval. Lacking the required Senate majority to support the resolution, Congress could not prevent the AWACS sale from proceeding.[54] Thus, despite Presidential doubts as to the advisability and constitutionality of the legislative veto with regard to arms sales, the issue was never fully tested in the U.S. Supreme Court until the June 1983 Chadha case was heard.[55]

Following the Chadha decision which struck down the legislative veto, Congress recognized that it had lost a substantial means of control over executive decisions to transfer arms. Noting the Congress' apprehension, the executive branch tried to mollify any fears which Congress may have had. In this regard, Deputy Secretary of State Kenneth Dam, in July 1983, testified before the Senate Committee on Foreign Relations:[56]

Under the Chadha decision, we believe that the procedures for legislative vetoes in several sections of the Arms Export Control Act are not valid, but that the reporting and waiting periods remain. The Court decision in no way alters the elaborate structure of reporting, consultation and collaboration that the Executive Branch and the Congress have worked out over recent years to ensure effective Congressional oversight.

While the Reagan Administration was trying to assure Congress that the Chadha decision was not going to lead to executive branch excesses or cut Congress out of the consultative process, at least one member of Congress offered an alternative approach to the control and oversight aspect. In 1983, Senator Robert C. Byrd (D-WV) offered a bill which incorporated a joint resolution of approval mechanism. Under the Byrd proposal, for all proposed FMS and direct commercial sales having a value of \$200 million or more, Congress would have to *affirmatively vote to approve the sale* within thirty calendar days; otherwise the sale would not proceed. The administration's position relative to the Byrd amendment was that "it would be unwise" for three reasons: (1) the President would no longer be able to use arms transfers in combination with other policy instruments because he would never know whether he would be able to deliver on what he would propose; (2) the proposal would slow things down to an unacceptable degree; and (3) it is doubtful whether Congress would be inclined to devote the time to respond to such sales 15 or 20 times a year, as would be required.[57]

Two years later and before the legislative veto defect in the AECA was corrected, Congress expressed concerns about proposed sales of aircraft and missiles to Jordan. In anticipation of such sales, Congress included provisions in the FY 1985 continuing appropriations resolution and in the FY 1986 authorization act for security assistance reflecting its view that no FMS financing be provided to Jordan for the procurement of advanced military weapons systems:

unless Jordan is publicly committed to the recognition of Israel and to negotiate promptly and directly with Israel under the basic tenets of United Nations Resolution 242 and 338. Furthermore, any notification to Congress of proposed sales of these types of systems must be accompanied by a Presidential certification of Jordan's public commitment to these conditions.

The Reagan Administration had opposed this certification, with President Reagan terming it an "unnecessary and inappropriate restriction." [58]

Subsequent to the enactment of the Jordanian provisions, the Reagan Administration provided advance notification to Congress in October 1985 of a long-awaited proposed \$1.9 billion arms

sale to Jordan, consisting of advanced fighter aircraft, missiles, and vehicles. Shortly thereafter, a joint resolution opposing the sale was introduced in the Senate with the promise of majority senatorial support; similar support was being lined up in the House. In November 1985, President Reagan signed a Senate-initiated compromise resolution which delayed the proposed sale until March 1986 unless direct and meaningful Middle East peace negotiations occurred before then.[59] However, in view of continued strong Congressional opposition, the executive branch decided to place the proposed sale to Jordan on an indefinite hold.

On February 12, 1986, President Reagan signed an obscure bill into law which corrected the legislative veto problem uncovered in the Chadha decision. Identified as Public Law 99-247, the relatively brief statute amended the AECA by substituting a *joint resolution* for a *concurrent resolution* of disapproval. Within months after this law became effective, Congress proceeded to use the joint resolution mechanism in reaction to another arms sale notification submitted by the executive branch. A formal notification was transmitted to Congress on April 8, 1986, which related to proposed Letters of Offer from the Departments of the Army, Navy, and Air Force to sell U.S. defense articles and services to Saudi Arabia at an estimated cost of \$354 million. The package included AIM-9L and AIM-9P4 Sidewinder air-to-air missiles, Harpoon anti-ship missiles, and Stinger air defense missiles.[60] Initially, the degree of Congressional opposition seemed sufficient to halt the proposed Saudi sale. The Senate approved Senate Joint Resolution 316 opposing the sale by 73-22 on May 6, 1986; the following day, the House of Representatives approved the same resolution on a 356-62 vote.[61] Then on May 21, President Reagan vetoed the joint resolution. However, shortly before the veto action, the Saudi government withdrew its request for the Stinger missiles portion of the sales package, reducing the sale from \$354 million to \$256 million. It was thought that the removal of the request for Stingers would improve the odds against any attempt to override the veto since these manportable anti-aircraft weapons had been a focal point of Congressional opposition.[62] In his veto message, the President referred to the rise of religious fanaticism and violence in the Middle East, and added that turning down the sale would send "the worst possible message" about America's dependability and courage.[63] Finally on June 5, 1986, the Senate, by a single vote (66-34), sustained the President's veto. Following the vote, Senator Richard Lugar, Chairman of the Senate Foreign Relations Committee, observed, "We have established the ability of the President to make an arms sale to a moderate Arab state." [64] Furthermore, President Reagan stated that the vote "confirms America's commitment to a security relationship that has served both the United States and Saudi Arabia well over the past 40 years." [65]

If the executive branch thought that the joint-resolution-of-disapproval legislative fix (P.L. 99-247), coupled with the ordeal of decreasing the scope of the Saudi sale, had earned it some temporary relief from further new Congressional oversight measures, it soon was jolted back to reality with the appearance of a new bill, entitled the "Arms Export Reform Act." This bill was initially introduced in September, 1986, by Senator Joseph R. Biden, Jr. (D-DE) and Representative Mel Levine (D-CA) and was subsequently reintroduced by them in January 1987.[66] Exhibiting a remote similarity to the dormant Byrd Amendment, the Biden-Levine bill would require an *affirmative majority vote* in both the House and Senate in order for "sensitive" military equipment sales (e.g., aircraft, tanks) to proceed, with the exception of sales to NATO members, Japan, Australia, New Zealand, or any country which is a party to the Camp David Accords or an agreement based on such Accords, i.e., currently Israel and Egypt. Moreover, sensitive sales to these exempted nations, as well as nonsensitive sales (e.g., trucks) to all countries, would still continue to be subject to the joint-resolution-of-disapproval process if the current section 36(b), AECA, dollar thresholds were exceeded. According to Representative Levine, this bill would ensure that "controversial arms sales . . . [only] survive . . . with the support of a majority of Congress." Sounding a theme similar in tone to Senator Nelson in 1974, Mr. Levine further stated:[67]

Mr. Speaker, this is an important piece of legislation which will ensure Congress its rightful and constitutional role in the consideration of matters of national security and national interest, and in the formation of foreign policy. Let those nations that wish to purchase sophisticated arms from the United States be under no illusion that the Executive can make promises of sale, on his own, without input from Congress Whether the executive likes it or not, Congress is an equal partner in the formulation of foreign policy.

Relative to Representative Levine's concern over sensitive sales, it is pertinent to note that Congress had earlier addressed the issue of such sales. The August 1985 authorization act for security and development assistance enacted an amendment originally introduced by Senator John Glenn (D-OH), which was aimed at further strengthening the effect of the Nelson-Bingham advance reporting framework. This provision focuses on changes made to a weapon system after the original Section 36(b), AECA, notification had been furnished to Congress.[68] It deals with the issue of sensitive technology and enhancements to defense equipment previously sold but not delivered, and requires that Congress be notified at least 45 days in advance before the delivery of such enhanced equipment. Moreover, should the cost of such enhancements exceed the \$14/50/200 million thresholds, the executive must furnish a new numbered certification under Section 36(b). According to one source, "This provision was spawned by the Reagan Administration's decision to add sensitive radar equipment to F-16 warplanes sold to Pakistan." [69] In the minds of the members supporting this amendment, another decision area, once solely a matter of executive discretion, is now exposed to specific Congressional scrutiny.

The Arms Embargo Mechanism. The Nelson-Bingham amendment and the Glenn amendment constitute Congressional methods to control, on a case-by-case basis, the determination as to which countries are allowed to buy U.S. arms, as well as to control the types of weapons they may purchase. While these reporting mechanisms may appear harsh and unwarranted to executive officials as well as to prospective foreign buyers, they are modest in contrast to the actions Congress took in the aftermath of the 1974 Greek-Turkish conflict over Cyprus.

The circumstances surrounding the Cyprus conflict have been extensively examined in the literature and, therefore, a detailed account need not be repeated herein. Suffice to say that in early 1975, at the strong objection of the executive, Congress imposed an embargo on arms sales to Turkey, a NATO member and longstanding recipient of American military and economic assistance. The embargo reflected a widespread Congressional view of Turkey as the aggressor in the Cyprus conflict and, therefore, as a violator of its agreement to use U.S. arms solely for defensive purposes.[70] Some studies also suggest that Congress was swayed in its decision by a strong Greek-American political lobby.[71] It is instructive to examine the statutory control apparatus which the Congress used at that time, and also in subsequent incidents.

Section 4, FMSA (and, since 1976, the AECA) provides that U.S. defense articles and services may be sold or leased "to friendly countries solely for internal security, for legitimate self-defense," and other related defensive uses. By virtue of the U.S.-Turkish sales agreements, which contained language of this sort, Turkey was obligated to comply with these conditions. Since Turkey had not complied, reasoned several Congressional members, some form of U.S. sanctions were necessary, and this led Congress to prescribe an arms embargo. The Congressional motivation may be explained, in part, by the following:[72]

Many members in Congress saw in the arms to Turkey issue an opportunity to underscore the principles for which the United States stands. They felt that American credibility and self-respect had been badly tarnished by Watergate, and thought the Nixon Administration's lack of concern for possible violations of U.S. law by Turkey was another manifestation of the "corrupt and lawless" character of the

administration. In their view, it was up to Congress to restore the image of the United States. . . .

Unsettled by the U.S. action, the Turkish government took steps to close more than 20 U.S. military installations in Turkey. Ultimately, the embargo, imposed in early 1975, was lifted in two phases. First, by the fall of 1975, the Ford Administration was successful in having the embargo partially lifted. In the second phase, the Carter Administration, reversing its original campaign stance, persuaded Congress to lift the embargo completely by the fall of 1978. The Carter Administration was said to have prepared for the legislative battle in a nearly unprecedented way. Resources were mobilized under the coordination of the State Department's Bureau for Congressional Relations, and involved not only officials from the regional bureaus at State, but also representatives of the Pentagon and intelligence communities as well.[73]

Unfortunately, the Cyprus issue is still far from settled. With a declaration on the part of the Turkish Cypriot community that their portion of the island is an independent Cypriot republic, the debate has reheated in recent years. In 1983 Representative Mario Biaggi [D-NY] even called for Congress to reimpose the arms embargo against Turkey,[74] and a Senate committee proposed making assistance to Turkey conditional on its actions in Cyprus. The Turkish government, in turn, warned U.S. officials that the Congressional move to cut aid to Turkey was straining relations between it and the United States. Further, Secretary of Defense Caspar Weinberger told a group of NATO ministers in 1984 that the Senate committee's bill "isn't in the best interest of NATO" and that the Administration would work to reverse the objectionable language.[75] The Administration's effort proved successful. Still, as late as September 1986, the Senate Appropriations Committee was disposed to criticize Turkey concerning "the continued presence of large numbers of Turkish troops on the island of Cyprus" and directed the State Department "to prepare . . . a detailed report on the situation in Cyprus. . . ."[76] Thus, the Cyprus issue continues to fester and still influences such anomalies as the 7-to-10 Greek-Turkish military assistance funding ratio, which was addressed in an earlier section of this paper.

Ironically, in sharp contrast to the Turkish arms embargo and the sanctions issue, the Congressional and executive roles have been reversed with respect to Israel. On June 7, 1981, the Government of Israel carried out an air attack with U.S. purchased F-15 and F-16 aircraft against the Iraqi Osirak nuclear reactor under construction outside Baghdad. As a result of this action, the U.S. Secretary of State, pursuant to a reporting requirement imposed by Section 3(c)(2), AECA, submitted a statement to Congress noting "that a substantial violation of the 1952 [Mutual Defense Assistance] Agreement [between the United States and Israel] may have occurred." Later, the President directed the suspension of shipments of additional F-16 fighter aircraft to Israel, but was soon faced with strong Congressional pressure to lift the suspension. Shortly thereafter, on August 17, 1981, the Secretary of State announced that the President had lifted the suspension of military aircraft deliveries to Israel.[77]

In a subsequent incident involving the 1982 Israeli incursion into Lebanon, the Reagan Administration in June, 1982, indicated that there would be a delay in the earlier planned sale of 75 F-16 fighters to Israel. The President claimed that he was forbidden by law from proceeding with the sale inasmuch as Israel was "occupying" Lebanon. For several months prior to the removal of the sales delay, several pro-Israeli members of Congress demanded that the President relent on his sanctions. In fact, Senator Alfonse D'Amato (R-NY) and 13 other Senators introduced a resolution stating that the President should proceed with the sale without further delay. On March 20, 1983, the Administration lifted the restriction and notified Congress that Israel would be allowed to make the F-16 purchase.[78] In announcing the removal of the restriction, the Administration cited Israel's agreement to withdraw from Lebanon as a "significant step" toward settlement.[79] These two cases furnish support for the general view found in the literature that it is difficult for the President to stick to any sanctions against Israel. One source observed that any

support in Congress for an arms cut-off to Israel is generally tempered by the timing of forthcoming elections: "Nobody wants to appear anti-Israel during an election." [80]

A third incident involving Israel illustrates a situation wherein neither the executive nor the Congress sought to apply sanctions as a result of a possible Section 3(c)(2), AECA, violation. On October 1, 1985, Israeli planes, which earlier were acquired from the United States, bombed the headquarters of the Palestine Liberation Organization (PLO) near Tunis. The Reagan Administration initially supported the raid, stating it appeared to be a "legitimate response" to "terrorist attacks." One day later, the Administration modified its public stance toward the raid, noting it was "understandable as an expression of self-defense," but "cannot be condoned." However, on October 4, 1985, the United States abstained from voting on a U.N. Security Council resolution, which nevertheless passed by 14-0 vote, condemning Israel's "armed aggression" in the raid. [81]

The above incidents involving real or suspected Section 3(c)(2) violations illustrate at least two things. First, the AECA contains powerful sanctions which have been exercised on certain occasions. Second, with the exception of the Israeli raid on Tunis, Congress and the executive have been on opposite sides of the fence regarding the use of such sanctions. This implies that the application or non-application of sanctions of this sort stem more from political than legalistic considerations.

Political, Social, and Economic Controls. Another variation of Congressional controls relates to legislative provisions prohibiting military assistance to countries with political, social, or economic policies or practices in conflict with U.S. policies or ideals. Section 620, FAA ("Prohibitions Against Furnishing Assistance") provides a natural baseline by which to examine Congressional behavior in this regard during the 1969-1987 period of our study. This section was first enacted in 1963. Originally applying to Cuba, it became a repository of restrictions, and contains such classics as prohibitions of assistance to communist countries, to countries which have nationalized, expropriated, or seized property owned by U.S. corporations or citizens without proper reimbursement, and to countries with which U.S. diplomatic relations have been severed.

Within the political realm, human rights provisions are perhaps the best known and most contentious in nature. The basic prohibitions relating to human rights are found in Section 502B, FAA. This provision, enacted in 1976, prohibits security assistance to any government "which engages in a consistent pattern of gross violations of internationally recognized human rights." Section 502B also contains the most comprehensive definition of security assistance found anywhere in the FAA or the AECA. For purposes of human rights considerations, security assistance includes FMS and commercially-licensed sales, as well as the loan and grant programs. Further, although not specifically mentioned by name, human rights considerations are often part of the motivation behind other restrictions. For instance, Section 660, FAA, prohibits the use of FAA-related funds for training foreign police, law enforcement, or internal intelligence or surveillance forces--areas which are traditionally susceptible to human rights violations.

In recent years, Congressional wrath relative to human rights matters has centered on such countries as Argentina, Chile, El Salvador, Guatemala, and the Philippines. For instance, Chile is prevented by Section 726 of the *International Security and Development Cooperation Act of 1981* from receiving military assistance or purchasing U.S. defense items until such time as "the Government of Chile has made significant progress in complying with internationally recognized principles of human rights" and other specific conditions. Similar prohibitions on assistance to Chile have continued to be enacted. [82] As a second example, Section 545 of the FY 1987 foreign assistance appropriations act instructed the executive branch to withhold \$5 million of military assistance to El Salvador, until such time as the President reported to Congress that the Government of El Salvador had concluded investigations with respect to the 1981 murders of two U.S. land reform consultants and the director of the El Salvador Land Reform Institute, and

pursued "all legal avenues to bring to trial and obtain a verdict of those who ordered and carried out" the murders.[83]

Concerns over terrorism, airport security, and narcotics constitute other areas which have been incorporated into law in recent years as restrictions or prohibitions on the provision of U.S. assistance. For example, Section 620A, which was initially added to the FAA in 1976 and further modified in 1985, prohibits assistance to countries which grant sanctuary to international terrorists. Also, several anti-terrorism provisions dealing with the maintenance of foreign airport security were added by the 1985 authorization bill. In addition to requiring assessments by the Secretary of Transportation of security measures maintained at foreign airports, the President is now authorized to prohibit U.S. and foreign air carriers from providing air service between the United States and any high risk airport. Moreover, the President is required to suspend all assistance under the FAA and the AECA for any country in which an insecure airport is located, and which the Secretary of State has determined to be "a high terrorist threat country." [84]

Another politically-related issue area, in which Congress has seen fit to impose potential sanctions, involves a foreign nation's opposition to U.S. foreign policy. Since 1983, Congress has included a provision in the annual joint continuing appropriations resolution (e.g., Sec. 528(b), P.L. 99-591) to the effect that "none of the funds appropriated or otherwise made available . . . shall be obligated or expended to finance directly any assistance to a country which the President finds . . . is engaged in a consistent pattern of opposition to the foreign policy of the United States." One method which Congress has established for ascertaining this degree of support or opposition is a country's behavior in the United Nations. The law tasks the Permanent Representative of the United States to the United Nations to prepare an annual report "consisting of a comparison of the overall voting practices in the principal bodies of the United Nations during the preceding twelve-month period . . . with special note of the voting and speaking records of each country on issues of major importance to the United states . . ." [85]

Table 2, which draws on the annual report prepared by the Department of State, reflects the coincidence of the votes of selected member states with the votes of the U.S. during the regular session of the 40th United Nations General Assembly in the fall of 1985.[86] As is apparent, Israel--the major recipient of U.S. grant military assistance--had the highest level of voting coincidence. By contrast, the levels of coincidence for several other MAP and FMSCR recipients fell well below 50 percent. The State Department report further identifies ten key votes (out of a total of 201 issues) which were of special importance to the United States, and documents each country's specific voting behavior relative to these ten issues. Although the report does not tabulate country percentages of coincidence with U.S. votes for these ten issues, the level of support appears to be higher for them than for the totality of issues as shown in Table 2.

TABLE 2
VOTING RECORD OF SELECTED COUNTRIES
 40th United Nations General Assembly
 Fall, 1985
 [% OF CONCIDENCE WITH U.S. VOTES]

Israel	92%	Philippines	22%
United Kingdom	87%	Thailand	22%
Portugal	75%	Pakistan	16%
Canada	70%	Sudan	16%
Japan	66%	Egypt	15%
Australia	60%	Indonesia	14%
Spain	56%	Saudi Arabia	14%
Turkey	38%	Jordan	14%
Greece	33%	Kuwait	12%
El Salvador	30%	Soviet Union	12%

There is a lingering concern on the part of Congress and the executive branch as to how the U.S. Government should react, in practice, to the voting data. Specifically, at below what percentage level can it be concluded that a country consistently opposes U.S. foreign policy? Further, and especially important, does a country's voting behavior in the United Nations provide a reliable indicator of such support or opposition? In May, 1984, the House of Representatives entertained an amendment to the annual foreign assistance authorization bill, sponsored by Representative Robert S. Walker (R-PA), which would require that in order to qualify for foreign aid, a country must vote with the U.S. position at the United Nations at least 15 percent of the time. The amendment was adopted by the House, but only after being modified to direct the President to merely consider the United Nations vote as one of a group of criterion when considering the furnishing of U.S. assistance.[87] On another occasion in 1984, a Reagan Administration witness was asked the following question by Senator Robert W. Kasten (R-WI) at a foreign assistance appropriations hearing: "Will you be taking these [United Nations voting] factors into account as you allocate the 1985 appropriations, as well as the 1986 request?" The Administration witness replied in the affirmative, after being exposed to Senator Kasten's earlier observation: "There may be explanations for these [minimal percentage of coincidence] votes, but if this question were put to the American people, I think that it is likely that they would suggest that not a dime go to any of these countries." [88] Finally, in 1986, the House Committee on Appropriations expressed concern during the hearings on foreign assistance, "that the pattern of voting at the U.N. of certain U.S. allies and major U.S. aid recipients have in recent years been very inconsistent with the voting pattern of the United States," and urged "the Administration to work closely with major U.S. aid recipients to more frequently reach accord with these countries" [89]

The executive branch, for its part, has attempted to encourage Congress not to overreact to the United Nations voting data. In its 1986 annual report, the Department of State cautions its primary reader--Congress, to which the report is addressed--to bear in mind "that behavior in the United Nations is but one dimension of a country's relations with the United States," while acknowledging that "votes in the U.N. are often regarded, rightly or wrongly, as expressions of world opinion on major issues," and therefore important in their own right. [90] However, based on the authors' discussions, there is little desire on the part of the executive to deny assistance to countries based on such voting practices.

While the thrust of Congressional restrictions and guidance in general tend to focus on political issues, there are some legislative provisions which relate to social and economic considerations. For instance, Section 505(g), FAA, states that "no assistance under this chapter should be furnished to any foreign country, the laws, regulations, official policies, or governmental practices of which prevent any United States person . . . from participating in the furnishing of [grant] defense articles or defense services . . . on the basis of race, religion, national origin, or sex." A similar prohibition against discrimination is contained in Section 5, AECA, involving transactions of a sales or credit nature.

Congress has an even greater fixation on economic matters, particularly those related to the pricing of defense items and associated fiduciary controls. Sections 21 and 22 of the AECA, which collectively consist of over six pages of fine print, provide rather detailed guidance as to the requirements for collecting certain costs attendant to government sales and the necessity to collect a country's money in advance of the delivery of an item. The pricing and financial areas have been criticized in numerous reports prepared over the years by the General Accounting Office (GAO), with individual studies usually being specifically requested by one or more Congressional members.

Required by the law to collect all specified costs associated with government defense sales transactions, executive officials sometimes feel that Congress is "nickel and diming" foreign countries to death. The executive has requested, and in many cases received, certain legislative

relief from the requirement to collect all costs, especially from countries with which the United States has entered into major alliances. The AECA currently allows for waivers of certain investment costs (e.g., research and development) for sales to NATO members, Australia, Japan, and New Zealand. On the other hand, the executive was less successful in obtaining permanent relaxation of the full costing of FMS-purchased training. Such relaxation, which resulted in the pricing of training on a marginal or additional cost basis, was obtained for fiscal year 1985; however, the provision was rescinded in fiscal year 1986. Thus, the Department of Defense must today maintain several tiers of tuition costs which, in turn, result in different prices for military training for different groups of countries, as illustrated earlier in this paper.[91]

Recent revelations about the transfer of American arms to Iran, interestingly enough, have raised Congressional concerns not only about serious political and legal improprieties, but also about such issues as pricing and the accountability of funds. It has been suggested in the press that the TOW anti-tank missiles sold to Iran, albeit through rather clandestine procedures which are outside the scope of conventional military assistance transfer procedures, were considerably under-priced.[92] Referring to the Iranian sale and the use of Swiss bank accounts, as well as the possible misuse of foreign aid funds in the Philippines during the Marcos era, Representative John Bryant (D-TX) on January 6, 1987 introduced the Foreign Assistance Accountability Act "to prohibit diversion of our foreign assistance funds to unauthorized uses and to strengthen our accounting procedures" Mr. Bryant closed his statement with the following: "Enactment of this legislation will be a major improvement in Congress' ability to exercise its responsibility to the American people in foreign assistance policymaking." [93]

Congress also has imposed statutory restrictions or sanctions on recipient nations which do not meet their loan repayment obligations. Section 620(q), which was added to the FAA in 1966, provides that, "No assistance shall be furnished under this Act [meaning MAP, IMET, Economic Support Fund (ESF) and other economic assistance] to any country which is in default, during a period in excess of six calendar months" on a loan principal or interest repayment. Similar language has appeared intermittently since 1976 in the annual foreign assistance appropriations acts. The latter provision--known as the "Brooke Amendment" after its sponsor, former Senator Edward W. Brooke (D-MA)--tends to contain the same language year in and year out, to wit: "No part of any appropriation . . . shall be used to furnish assistance to any country which is in default during a period in excess of one calendar year . . . on any loan made . . . pursuant to a program for which funds are appropriated under this act." [94] Of the two provisions, the Brooke Amendment is most stringent in that: (1) the Brooke sanctions apply to all funded assistance (i.e., FMS loans, MAP, IMET, ESF, loans, etc.), whereas Section 620(q) is more limited; and (2) the Brooke amendment does not contain an "escape clause" as does Section 620(q), FAA, which provides that sanctions do not have to be applied if "the President determines that assistance is in the national interest," and he so notifies Congress.

As noted in a 1985 General Accounting Office report, nine countries have been sanctioned under the Brooke amendment over the past several years.[95] While under such sanctions, the country may not even utilize new MAP or IMET grant allocations, let alone new loan funds, until such time as the delinquent payment is made in full. Interestingly enough, based on the authors' discussions with government officials, the Brooke amendment is regarded both as a negative hindrance to the foreign policy objectives of the military assistance program, and conversely, as a positive incentive for gaining greater financial discipline on the part of recipient countries.

Special Presidential Authorities. While a thorough reading of the FAA, the AECA, and other military assistance-related legislation leads one to conclude that the President is tightly constrained in what he can and cannot do, Congress nonetheless has provided the President with some breathing room to respond to emergencies and other crises. In fact, these "escape clauses" are rather widespread and may be classified in one of two ways: specific and general special Presidential authorities.

Specific Presidential authority is that which is contained within, or is directly referenced to, a particular statutory provision. For instance, Section 36(b), AECA, requires sales of a particular disposition, destination, and dollar threshold be reported to Congress 15 or 30 days in advance of their being presented to a foreign government as an official U.S. offer. However, this same provision allows for the President to waive the advance reporting period if he "states in his certification that an emergency exists which requires the proposed sale in the national interest of the United States" Similarly, Section 502B, FAA, allows the President to continue assistance to a country with human rights violations if "the President certifies [to Congress] . . . that extraordinary circumstances exist warranting the provision of such assistance." As indicated in Appendix B-1, numerous statutory provisions governing military assistance contain such specific Presidential waiver authority.

The more general Presidential emergency authorities are found in Sections 506 and 614 of the FAA. The first, Section 506, is commonly referred to as the *drawdown authority*. Under this provision, the President can authorize grant military assistance, drawn from existing Department of Defense stocks and services, up to a limit of \$75 million a year if he "determines and reports to the Congress . . . that . . . an unforeseen emergency exists" and "the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except this section" Such authority has been used over the past several years to permit emergency deliveries of military items to such countries as Thailand, Liberia, El Salvador, and Chad.[96]

A second provision, Section 614, FAA, the so-called *waiver authority*, has been the most frequently used and has the most extensive coverage of the various special Presidential authorities. Unlike Section 506, which is limited to the FAA, Section 614 applies both to grant programs under the FAA and to sales programs under the AECA.[97] Specifically, Section 614 allows the President to "authorize the furnishing of assistance . . . without regard to any provision" of any legislative act. However, there are limits to this special authority which restrict the provision of such assistance in any single fiscal year to not more than \$750 million in FMS cash sales, \$250 million in both FAA funds (e.g., MAP and IMET) and AECA funds (i.e., credit), and \$100 million in foreign currencies which have accrued to the U.S. Essentially, Section 614 does not create any new monies; rather, except for those restrictions which specifically forbid its use, Section 614 authorizes the President to waive all other legislative restrictions which would otherwise prevent a cash sale or the use of available grant or credit monies. Additionally, Section 614 is the only emergency authority which requires consultation with Congress before execution.

A final and extraordinary provision in Section 614(c), FAA, allows the President to expend up to \$50 million for assistance in situations for which "it is inadvisable to specify the nature of the use of such funds." Commonly termed the *cloaking authority*, this provision merely requires a Presidential certification to Congress (rather than a specified expense voucher) for each use of such funds. However, the authority is limited in that the \$50 million represents a cumulative ceiling which passes from one administration to the next. As discussed in a 1985 GAO report, the functional and financial control associated with this authority "is limited by design, and the authority and its use are little known within the executive and legislative branches." [98] However, from executive branch public disclosures, it is known that this authority was used at least three times from FY 1962 to FY 1966. On two of these occasions, it served as a means of preventing the disclosure of payments totalling \$11.25 million that were "made to Korean troops that fought in Vietnam." [99] The third known use has only been identified as "classified projects" for a "nonregional program" involving \$550,000. [100]

Summary and Conclusions

The period FY 1969-FY 1987 has associated with it a number of findings with respect to Congressional behavior regarding the funding of military assistance and the issue of program oversight. As was shown in the discussion on funding, Congress has been relatively supportive of the executive's budgetary requests, at least up through the FY 1985 period. This perhaps adds support to Fenno's observation, noted earlier, that the foreign assistance program is executive-led, as well as to Wildavsky's contentions that the budgeting and appropriation processes involve generally accepted bases from one year to the other as well as gradual increases to the bases over time.[101] Essentially, the military assistance budget grew during the period FY 1969-FY 1985 in a gradual manner. This funding expansion resulted both from incremental increases in the number of countries assisted, as well as from substantial raises in specific country program funding--increases which then were carried over into subsequent years.

Nonetheless, the years of gradual growth appear now to be in jeopardy. In FY 1986, for the first time in many years and in what appears to be the start of a no-growth period, program funding reductions were effected, largely in response to Congressional concern with the budget deficit issue and the Gramm-Rudman-Hollings mandate (P.L. 99-177) to cut an additional 4.3 percent from the appropriations. Moreover, the situation only further deteriorated in FY 1987, as Congress cut the military assistance budget request by 21 percent overall. Most significantly, not only are the overall levels of military assistance funds declining, but the situation has worsened by the increasing disposition of Congress toward imposing earmarks of monies for specified nations. This unparalleled episode in funding austerity caused one State Department official to lament that "Congress is denying us the resources with which to conduct any coherent policy. The foreign affairs budget [in FY 1987] has been devastated." [102] Such new realities pose challenges to previous precepts about foreign assistance budgeting, not so much in terms of executive behavior but rather with regard to Congressional behavior. While the executive branch is still playing according to the incremental-increase practice of the traditional budgetary game, Congress is refusing to go along in the absence of additional tax revenues--an accommodation which President Reagan continues to oppose.

While Congress has previously tended to be generally supportive of executive funding requests, it has imposed numerous restrictions and other oversight controls on the executive. Although such controls may be unwise from a foreign policy implementation perspective, since they tend to interfere with the effective execution of policy, Congress is certainly within its constitutional authority to enact such restrictions. Like the typical corporate officer who exercises authority only as a result of the process of delegation (and restraint) from the board of directors, the executive branch resents the imposition of oversight and other controls from above, instead seeking to operate with maximum flexibility and minimal interference on the part of Congress in its day-to-day affairs. However, in terms of the conduct of U.S. military assistance activities, Congress does not necessarily subscribe to the management textbook concept of *management by objectives*, which allow the manager a relatively free hand, within the context of broad guidelines, in running his operation. Rather, Congress today leans toward the direct micromanagement of military assistance, as evidenced by the growth over the period of this study in FAA and AECA prohibitions, limitations, regulations, and reporting requirements. This resulting state of affairs is described by one executive official in the following critique:[103]

Congress seems increasingly disposed to micromanage foreign policy. Rather than attempting to chart broad objectives in concert with the Administration, Congress seeks to enforce its will with respect to the details of policy execution. This is unhelpful--indeed, in the long term, it's self-defeating. No nation can manage its affairs with 535 Secretaries of State--even a country with the margins for error we possess.

In retrospect, the overall period FY 1969-FY 1987 tends to fall into three phases: FY 1969-FY 1974, in which Congress allowed the executive a considerable amount of leeway, especially with respect to arms sales; FY 1975-1985, in which Congress tightened up on certain controls (e.g., arms sale advance reporting) while gradually relaxing other requirements (e.g., cost waivers); and FY 1986-1987, which is similar to the second period except that the bottom has fallen out of the funding environment. As a further related phenomenon, FMS sales have fallen off due to a variety of factors, including a growing Third World debt, market saturation of previously purchased systems, a Congressional climate which makes it difficult to pursue sales to Arab nations which have not entered into peace negotiations with Israel, and greater competition from an expanding array of foreign arms suppliers (e.g., France, United Kingdom, Italy, Brazil, Israel, etc.).[104] Whereas Congressional members in the past often referred to the relatively large, if not rising levels of U.S. arms sales as a reason for greater controls, it will be interesting to see whether a slack military assistance market--caused both by reduced U.S. funding as well as reduced cash purchases--will have any effect on the Congressional appetite for oversight. Although some limited potential would appear to exist, therefore, for easing the restrictive Congressional approach to military assistance, the previously discussed Biden-Levine bill, together with the growing revelations of covert Iranian arms sales and Contra funding seem to strongly offset any such tendency. Notwithstanding the fact that these latter events represent secret intelligence operations, wholly divorced from the open process of military assistance conducted under the FAA and AECA, this open process cannot help but be soiled by the recent Iranian episode. Thus, we are inclined to predict a period of even greater efforts toward constraint by a Congress which may now feel well justified in its prior suspicions and in its reluctant participation in military assistance. For its part, the executive branch is quite likely to intensify its advocacy role by becoming more resolute in pushing for higher funding levels and in advancing those programs which it feels are critical to a meaningful foreign policy.

Notes:

28. Drischler, Alfred Paul, "The Activist Congress and Foreign Policy," *SAIS Review*, Summer-Fall, 1986, p. 198.
29. Graves, Ernest, "U.S. Security Assistance in the 1980s," *The Washington Quarterly*, Winter 1984, p. 150. Negative public attitudes toward military assistance were recently illustrated in the *Great Decisions '86 National Opinion Ballot Report*, New York: Foreign Policy Association, August 1986. The report found its respondents (N=3,949) to be "nearly unanimous in their lack of enthusiasm for providing military assistance to Third World Countries," with 87% of the respondents agreeing that "where foreign aid is already being provided, present levels should be maintained but shifted away from military aid and toward development." Extensive extracts of this report may be found in "Public Opinion," *The DISAM Journal of International Security Assistance Management*, Fall, 1986, pp. 47-53.
30. Koch, Noel, "U.S. Security Assistance to the Third World," *Journal of International Affairs*, Summer 1986, p. 43.
31. The legislative provisions cited in this paper can be found in U.S. Congress, Joint Committee Print of the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations, *Legislation on Foreign Relations Through 1986, Volume I*, Washington D.C.: Government Printing Office, March, 1987. This document contains the FAA, AECA, and other related statutes, together with footnotes depicting the date of changes to various sections.
32. This provision was added to the AECA by the *International Security Assistance and Arms Export Control Act of 1976*, approved June 30, 1976. Accordingly, the base year for "current levels" was FY 1975, which had a combined total of FMS and Foreign Military Construction Sales (FMSCS) of \$15.758 billion. The source for this total is Defense Security Assistance Agency, *Foreign Military Sales, Foreign Military Construction Sales and Military Assistance Facts*, Washington, D.C., September 30, 1984, p.1.

33. There are a variety of views relative to Presidential and Congressional powers, especially in the area of foreign affairs. For instance, Sundquist, *op. cit.*, p. 16, makes a case for shared constitutional powers among the branches of American government, and further points to five main areas of "ambiguity" within the Constitution on which the executive-legislative conflict has centered, i.e., legislative initiation and leadership, the use of the veto, the scope of executive power, Congressional control of administration, and the Congressional right to information. Taking a somewhat different view, Crabb and Holt, *op. cit.*, p. 3, submit that: "Although recent years have witnessed a new Congressional militancy in foreign relations, the fact remains that the President is still in charge of American foreign policy. For the most part, Congress' powers are limited to telling the White House what it cannot do beyond America's borders. The power to decide what the United States will undertake in its relations with other countries--and to carry out specific programs like arms control or foreign aid or mediation in the Arab-Israeli dispute--resides with the chief executive." Neustadt sees the primary Presidential power not as coming from the constitutional base but as being projected from the person that holds the office--this primary power being the "power to persuade." (See Neustadt, Richard E., *Presidential Power*, New York: John Wiley and Sons, Inc., 1980, p. 10.) Cronin submits that on paper (in the Constitution), or in theory, Congress is the more powerful branch. (See Cronin, Thomas E., *The State of the Presidency*, 2nd ed., Boston: Little, Brown and Company, 1980, p. 188) Adding further light to this issue, Kegley and Wittkopf indicate that: "The Constitution specifically grants the President remarkably few powers with respect to foreign affairs. Article II provides that he shall have the power, upon the advice and consent of the Senate, to make treaties and appoint ambassadors and other public ministers and consuls, whereas a latter section authorizes the President to receive ambassadors and other ministers." Yet, when these constitutional provisions are combined with the President's role as chief legislative and executive officer and commander-in-chief of the armed forces, Kegley and Wittkopf contend that "the courts have repeatedly conferred on the President a broadly (if ambiguously) defined foreign affairs power by making him the 'sole organ' of the nation in its conduct of external affairs." See Kegley, Charles W., Jr., and Eugene R. Wittkopf, *American Foreign Policy: Pattern and Process*, 3rd ed., New York: St. Martin's Press, 1987, pp. 336-337.

While all of the above arguments are intriguing, the authors are inclined to look at the very substance of military assistance in an attempt to relate it to specific constitutional authorities. Essentially, military assistance involves the provision of defense articles or services by grant or sale. It does not have to involve treaties, the introduction of U.S. military forces or advisors into a country, or other areas generally under the constitutional purview of the President--although these, too, may occur. Grant military assistance must be appropriated by Congress (in accordance with Article I, Section 9, of the Constitution), with the President's role being that of providing "to the Congress Information of the State of the Union, and recommend[ing] to their consideration such Measures as he shall judge necessary and expedient . . ." (Article II, Section 3.) As stated in the text, the ultimate authority for arms sales resides in Article I, Section 8, and in Article IV, Section 3 of the Constitution.

34. Celeda, Raymond J., "Effect of the Legislative Veto Decision on the Two-House Disapproval Mechanism Applicable to the Sales, Transfer, and Lease or Loan of Arms," a paper reprinted in U.S. Congress, House, Committee on Foreign Affairs, Hearings, *The U.S. Supreme Court Decision Concerning the Legislative Veto*, 98th Cong., 1st Sess (Washington, DC: U.S. Government Printing Office, 1983), p. 333.

35. Farley, Philip J., "The Control of United States Arms Sales," in Alan Platt and Lawrence D. Weiter, eds., *Congress and Arms Control*, Boulder, CO: Westview Press, Inc., 1978, pp. 111-133. Despite Congress' key role in military assistance, it is pertinent to note that the public attributes a dominant foreign policy role to the President. During a 1982 opinion survey, 70 percent of the public perceived the President as having a "very important" role in determining the foreign policy of the United States. The President was followed by the Secretary of State (64 percent), the State Department (47 percent), and Congress (46 percent). See Rielly, John E., ed., *American Public Opinion and U.S. Foreign Policy, 1983*, Chicago: The Chicago Council on Foreign Relations, 1983, p. 33.

36. President Reagan's statement is referenced in Weinberger, Caspar W., *Annual Report to the Congress, Fiscal Year 1987*. Washington D.C.: Government Printing Office, February 5, 1986, pp. 263-264.

37. From President Reagan's statement on signing into law the International Security and Development Cooperation Act of 1985 (P.L. 99-83, August 8, 1985).

38. Shultz, George, Secretary of State, *U.S. Foreign Policy: Assessing Budget Priorities*, Address before the Overseas Writers Club, Current Policy No. 836, Washington, D.C., May 14, 1986, p. 2; and Weinberger, *op. cit.*, p. 264.

39. Fenno, Richard F., Jr., *Congressmen in Committees*, Boston: Little, Brown and Company, 1973. Further, in their 1987 edition, Kegley and Wittkopf, *op. cit.*, p. 417, submit that "in foreign affairs, it takes little skill to tell 'who's driving' (the President) or for that matter, 'who's braking' (Congress). Hence, the term *initiator-respondent* continues to accurately portray executive-Congressional functions and linkages in foreign policy making. . . ."
40. Lugar, Richard G., "U.S. Arms Sales and the Middle East," *Journal of International Affairs*, Summer, 1986, p. 27.
41. Graves, *op. cit.*, p. 150.
42. Sundquist, *op. cit.*, pp. 1-4.
43. Graves, *op. cit.*, p. 150.
44. Moose, Richard M., and Daniel L. Spiegel, "Congress and Arms Transfers," in Andrew J. Pierre, ed., *Arms Transfers and American Foreign Policy*, New York: New York University Press, 1979, p. 236.
45. Celeda, *op. cit.*, pp. 339-341.
46. Farley, *op. cit.*, pp. 123-124; Celeda, *op. cit.*, pp. 343.
47. The concurrent resolution of disapproval constituted a "legislative veto" of the Executive's actions. As the term was employed and was operative prior to the 1983 Supreme Court case which declared it unconstitutional, a legislative veto was a Congressional action, authorized by law, overturning administrative actions. (See Woll, Peter, and Robert H. Binstock, *America's Political System*, 4th ed., New York: Random House, 1984, p. xviii.) Generally, the legislative veto mechanism delayed an administrative action from 30 to 90 days, during which time Congress could vote to approve or disapprove it. Traditionally, the Congressional action took several forms--varying from a committee chairman's veto, or a committee veto, or a one-house veto (by simple resolution of either house), to a two-house veto (by concurrent resolution). (See Fisher, Louis, *The Politics of Shared Power: Congress and the Executive*, 4th ed, Washington, D.C.: Congressional Quarterly Press, 1981, p. 92.) None of these legislative veto devices actually involved the formal enactment of laws (e.g., joint resolutions), which in themselves could be approved or rejected (vetoed) by the President.
48. Ford, Gerald R., "Veto of Foreign Assistance Bill, May 7, 1976," *Presidential Documents*, Vol. 12, No. 19, 1976, pp. 828-829.
49. Celeda, *op. cit.*, pp. 343-346. Also, Public Law 97-113, approved December 29, 1981, reduced the Congressional review period from 30 to 15 calendar days for NATO, NATO members, Australia, Japan, and New Zealand.
50. As a result of its denial of access to U.S. Navy ships which may carry nuclear weapons or are nuclear-powered, New Zealand possibly stands to lose its preferential treatment under the FAA and the AECA. In this regard, in January, 1987, Representative William J. Broomfield (R-MI) introduced the "New Zealand Military Preference Elimination Act." See the *Congressional Record*, Vol. 133, No. 2, January 7, 1987, pp. E-64 and E-65. At the time this paper was being prepared for presentation (March, 1987), it did not appear that this Act had significant Congressional support.
51. In addition to establishing legislative vetoes relative to FMS and direct commercial sales, Congress also wrestled with the issue of FMS vs. commercial sales channels. In 1973, Senator J. W. Fulbright supported legislation "to get the State and Defense departments out of the arms sales business and get these transactions back to a free enterprise, commercial basis, where they belong." (See U.S. Senate, Committee on Foreign Relations, *Foreign Military Sales and Assistance Act*, Washington, D.C.: Government Printing Office, 1973, p. 5; and Moose and Spiegel, *op. cit.*, p. 231.) As a consequence, Section I of the FMSA was amended in 1973 to indicate that defense sales should be made through commercial channels with the U.S. Government reducing its sales and credit financing roles "as soon as, and to the maximum extent, practicable." Later, with the passage of the International Security Assistance and Arms Export Control Act of 1976, Congress reversed itself. Not only was the 1973 commercial sales preference policy removed, but Congress further adopted a provision prohibiting the sale of major defense equipment having a value of \$25 million or more through direct commercial channels; rather, such items

exceeding this dollar threshold could only be sold through FMS government-to-government channels. This provision, contained in Section 38(b)(3) of the AECA, initially provided an exemption for NATO and NATO members, and in 1977 Australia, Japan, and New Zealand were added to the exemption list. In 1979, the dollar ceiling for commercial sales was increased from \$25 million to \$35 million, and in 1980 was further increased to \$100 million. Then in 1981, at the initiative of Senator John Glenn (D-OH), the requirement was entirely repealed, meaning that major defense equipment of any dollar amount could be sold through FMS or direct commercial channels. In essence, during the 1973-1981 period, Congress shifted from a preference for commercial sales, to a restriction on commercial sales, to a neutral stance relative to commercial and FMS sales channels

52. Woll, *op. cit.*, p. 424. The observations of Secretary of State George Shultz are contained in the article "Shultz Opposes Arms Sales Veto," *Dayton Journal Herald*, July 23, 1982, p. 5.

53. U.S. Congress, Library of Congress, Congressional Research Service, *Executive-Legislative Consultation on U.S. Arms Sales*, Congress and Foreign Policy Series No. 7, Washington, D.C.: Government Printing Office, 1982, pp. 10-15. On September 28, 1977, the House International Relations Committee, by a vote of 19-17, approved House Concurrent Resolution 275, which was directed at prohibiting the sale of AWACS aircraft to Iran. As a consequence of the House committee vote and the potential for similar action in the Senate, President Carter, formally withdrew the AWACS sale notification.

54. Destler, *op. cit.*, pp. 3-14; *Reagan's First Year*, Washington D.C.: Congressional Quarterly, Inc, 1981, p. 45. During the AWACS sale debate in 1981, and prior to the Senate vote on this issue, President Reagan provided assurances in a letter to the Senate majority leader that certain conditions would be met by Saudi Arabia before the planes were transferred. This was to gain greater Congressional support for the sale. Then, in 1985, Congress put those assurances into the law by requiring a Presidential certification. On June 18, 1986, President Reagan presented a certification to Congress that the necessary conditions "have now been met." (See Felton, John, "Its Official: Saudis to Get AWACS Planes," *Congressional Quarterly Weekly Report*, June 21, 1986, pp. 1389-1390.)

55. On June 23, 1983, the Supreme Court ruled, albeit in the form of a 7-to-2 divided opinion. The obscure case, *Immigration and Naturalization Service v. Chadha*, 103 S. Ct. 2764 (1983), had absolutely nothing in common with the AECA except for a legislative veto issue. Jagdish Rai Chadha, a foreign national whose U.S. student visa had expired, had contested Congress' legislative veto of a favorable Justice Department ruling which would have allowed him to remain in the United States; the impact of the legislative veto was that he would have to be deported. As the case developed, there was an appellate court ruling in Chadha's favor in 1980, and the Supreme Court affirmed the appellate court's decision in 1983. (See "An Epic Court Decision," *Time*, July 4, 1983, pp. 12-14.) Whereas the Chadha decision dealt with the unconstitutionality of a one-house legislative veto provision, the Supreme Court on July 6, 1983 further ruled that a two-house legislative veto provision contained in the Federal Trade Commission Improvements Act of 1980 was unconstitutional as well. (See "Legislative Veto Reiterated," *Congressional Quarterly Weekly Report*, July 9, 1983, p. 1406.) As a result, the consensus appeared to be that the legislative veto, in whatever form, was unconstitutional.

The Chadha decision was generally hailed as a major victory for the Executive Branch, inasmuch as Presidents had long viewed the legislative veto as an incursion upon executive authority. Several members of Congress, on the other hand, were disturbed by the Chadha ruling. It was noted that by striking down the legislative veto, the Supreme Court had taken from Congress one of its major tools to influence foreign policy. Moreover, the effect of the ruling was widespread in that dozens of budget, rulemaking, and foreign affairs and national security related laws contained legislative veto provisions, e.g., the War Powers Resolution, the Nuclear Non-Proliferation Act, DOD Authorization Acts, etc. (See Witt, Elder, "Legislative Veto Struck Down: Congress Moves to Review Dozens of Existing Statutes," *Congressional Quarterly Weekly Report*, June 25, 1983, pp. 1266-1268.)

56. Dam, Kenneth W., Deputy Secretary of State, Statement and Associated Testimony concerning the INS v Chadha Ruling, U.S. Congress, Senate, Hearings, *Legislative Veto: Arms Export Control Act*, 98th Cong., 1st Sess, Washington, D.C.: U.S. Government Printing Office, 1983, p. 20.

57. Byrd, Robert C., U.S. Senator, Statement of Impact of Chadha Ruling, U.S. Congress, Senate, Hearings, *Legislative Veto: Arms Export Control Act*, 98th Cong., 1st Sess, Washington, D.C.: U.S. Government Printing Office, 1983, p. 12; Dam *op. cit.*, pp. 27-28.

58. U.S. Department of Defense, *Selected Statements*, 85-4, August, 1985, p. 55; Samelson, Louis J., "Security Assistance Program Authorizations and Appropriations for Fiscal Year 1986," *The DISAM Journal of International Security Assistance Management*, Winter 1985-1986, p. 34.
59. Felton, John, "Senate Deals Blow to Reagan, Hussein on Arms," *Congressional Quarterly Weekly Report*, October 26, 1985, p. 2135.
60. "Proposed Arms Sales" in U.S. Congress, 99th Cong., 2nd sess., *Congressional Record-Senate*, Vol 132, No. 14, April 8, 1986, pp. S3899-S3901.
61. Pressman, Steven, "Both Chambers Say 'No' to Saudi Arms Deal," *Congressional Quarterly Weekly Report*, May 10, 1985, p. 1019. Prior to consideration of S.J. Res. 316, the House of Representatives vote was taken on the companion resolution H.J. Res. 589, on May 7, 1986.
62. Greenberger, Robert S., "Reagan Pulls Stingers from Saudi Package," *Wall Street Journal*, May 21, 1986, p. 34.
63. Roberts, Steven V., "Reagan Uses Veto in Favor of Sale of Arms to Saudis," *New York Times*, May 22, 1986, pp. A1, A19. Also, President Reagan's veto message relative to S.J. 316 and his letter to Senator Robert Dole regarding Saudi Arabia's decision to withdraw its request for Stinger missiles are contained in U.S. Congress, 99th Cong., 2nd. sess., *Congressional Record-Senate*, Vol. 132, No. 69, May 21, 1986, pp. S6332-S6333.
64. Shribman, David, "Senate Vote Clears Arms Sale to Saudi Arabia," *Wall Street Journal*, June 6, 1986, p. 24.
65. Alexander, Andrew, "Senate Clears Way for Saudi Arms Sale," *Dayton Journal Herald*, June 6, 1986, p. 1.
66. The substance of the initial Biden-Levine Amendment is contained in the *Congressional Record*, Vol. 132, No. 123, September 18, 1986, pp. S12909-S12913 and E3175-E3177. The reintroduced bill, with minor changes, is contained in the *Congressional Record*, Vol. 133, No. 14, January 29, 1987, pp. H467, S1397-S11400, and E302-E304.
67. *Congressional Record*, September 18, 1986, p. E3176. See also "Congress Proposes to Control All Major Arms Transfers," *Aviation Week and Space Technology*, September 22, 1986, p. 25. The Reagan Administration, in a letter to Congress dated January 21, 1987, expressed its opposition to the Biden-Levine bill, noting that the proposed legislation would "needlessly hinder a long-proven process of Congressional-executive coordination" The Administration is said to fear that the bill would effectively prevent all U.S. arms sales to Middle Eastern countries, with the exception of Israel and Egypt. See Dorsey, James M., "White House Mounting Assault on Arms Export Proposal," *Washington Times*, February 5, 1987, p. 5.
68. Samelson, FY 1986, *op. cit.*, p. 23.
69. Felton, John, "Congress Clears Foreign Aid Authorization Bill," *Congressional Quarterly Weekly Report*, August 3, 1985, p. 1541.
70. U.S. Congress, Committee on Foreign Affairs, "Congressional-Executive Relations and the Turkish Arms Embargo," *Congress and Foreign Policy Series No. 3*, Washington, D.C.: Government Printing Office, June 1981, p. 1.
71. Sundquist, *op. cit.*, p. 291, identifies Senator Griffin, then the minority whip, as attributing the Congressional action on Cyprus largely to domestic ethnic politics.
72. "Congressional-Executive Relations," *op. cit.*, p. 30.
73. *Ibid.*, pp. 1 and 27.
74. U.S. Congress, House of Representatives, Representative Mario Biaggi in *Congressional Record*, Vol. 129, No. 159, November 16, 1983, p. H9948.

75. Greenberger, Robert S. "Turkey Warns Weinberger that Aid Cut Proposal in Senate Hurts Ties with U.S.," *Wall Street Journal*, April 3, 1984, p. 36.
76. U.S. Congress, Senate, Committee on Appropriations, *Foreign Assistance and Related Programs Appropriations Bill, 1987*, Report No. 99-443, Washington D.C.: Government Printing Office, p. 125.
77. U.S. Congress, Library of Congress, Congressional Research Service, *Documents and Statements on Middle East Peace, 1979-82*, Washington, D.C.: Government Printing Office, June 1982, pp. 233 and 242.
78. "Reagan Resumes F-16 Sales to Israel," *Congressional Quarterly Weekly Report*, May 28, 1983, p. 1071.
79. Gwertzman, Bernard, "Shultz Says U.S. Will Lift Ban on F-16's Sale to Israel," *New York Times*, May 7, 1983, p. 4.
80. Wood, David. "No Strong Feeling Seen in Congress For Halting Military Aid to Israelis," *Los Angeles Times*, June 12, 1982, p. 6.
81. Israel Chronology: "Israel Attacks PLO Base in Tunis," October 1, 1985 and "UN Condemns Tunisia Raid," October 4, 1985, *Kaleidoscope: Current World Data*, Santa Barbara, CA: ABC-CLIO, 1985, p. 48.
82. The FY 1987 foreign assistance appropriations act prohibits any military assistance or Economic Assistance Fund appropriations from being obligated or expended for Chile; it also includes a "sense of Congress" statement that the U.S. "should oppose all loans to Chile from multilateral development institutions, except for those for basic human needs" until the Government of Chile takes concrete steps to restore democracy and has ended its gross abuse of human rights. Sec. 557, P.L. 99-591. See also Sec. 715, P.L. 99-83, which amends Sec. 726, P.L. 97-113, by authorizing the sale of U.S. safety-of-flight equipment to Chile.
83. *Legislation on Foreign Relations Through 1985, op. cit.*, p. 489.
84. Sec. 528, P.L. 99-591.
85. *Legislation on Foreign Relations Through 1985, op. cit.*, pp. 483-484.
86. United States Department of State, *Report to Congress on Voting Practices in the United Nations*. Washington, D.C., June 6, 1986. The Department of State source document reflects entries to the nearest one-tenth of a percent, whereas the entries in Table 2 were rounded by the authors to the nearest whole percent. The average overall voting coincidence with the United States for all other (158) U.N. members, including those in Table 2, was 23 percent.
87. U.S. Congress. Representative Robert S. Walker (R-PA) and others discussing an Amendment to the foreign assistance authorization bill, *Congressional Record*, May 9, 1984, p. H3596.
88. U.S. Congress. Senate, Committee on Appropriations, *Foreign Assistance and Related Programs Appropriations for Fiscal Year 1985 (Part 1)*, 98th Cong., 2nd sess. Washington, D.C.: Government Printing Office, 1984, pp. 286-287.
89. U.S. Congress. House of Representatives, *Foreign Assistance and Related Programs Appropriations Bill, 1987*, 99th Cong. 2nd sess, Washington, D.C.: Government Printing Office, 1986, p. 33.
90. U.S. Department of State, *op. cit.*, June 6, 1986, p. I-4.
91. See Samelson, FY 1986, *op. cit.*, p. 25, regarding FMS-purchased training costs. Also, it is instructive to identify the variety of costs which normally must be collected for FMS cases. In addition to the base (i.e., stock list or new procurement) cost of the articles or services being sold, the Department of Defense must collect other specified costs, to include: applicable non-recurring research and development costs on a pro rata basis; contract administration costs; packing, crating, and handling costs; and an overall administrative charge. The detailed procedures for collecting such costs are contained in the *Foreign Military Sales Financial Management Manual* (DOD 7290.3-M), September 18, 1986.

Of the various charges associated with FMS, it is the administrative charge which generally receives most attention from the foreign purchaser. This fee, usually applied as a three percent surcharge to the entire sales case, covers the cost of salaries, travel, office equipment, and associated expenses for the U.S. military and civilian personnel who administer the program. One might argue that if the military assistance and arms sales programs accomplish the foreign policy objectives envisioned by Congress in Section 1, AECA, and which are identified by the executive branch in its annual *Congressional Presentation* materials and public statements, the program should then be fully funded by direct U.S. appropriations. Notwithstanding the merits of this argument, Congress obviously believes that the arms sales program should be funded by a "user fee" (i.e., the FMS administrative charge), which is remotely similar to user fees for other U.S. programs, e.g., the excise tax on the sale of truck tires to fund highway maintenance. Thus, the AECA is interpreted to mean that the FMS program be conducted at no cost to the U.S. government.

92. Guidry, Vernon A., "\$12 Million Price U.S. Put on Weapons Was Based on their Original 1969 Cost," *Baltimore Sun*, December 2, 1986, p.1.; and Wilson, George C., "Arms Sale: Iran Received Bargain Rates, Documents Show," *Washington Post*, December 17, 1986, p. 22.

93. U.S. Congress. House, Representative John Bryant inserting "The Foreign Assistance Accountability Act," *Congressional Record*, January 6, 1987, p. E10.

94. *Legislation on Foreign Relations Through 1985, op. cit.*, p. 481.

95. U.S. General Accounting Office, "Military Loans: Repayment Problems Mount as Debt Increases," Report No. GAO/NSIASD-86-10, Washington, D.C., October 1985, p. 18.

96. Comptroller General of the United States, *Use of Special Presidential Authorities for Foreign Assistance*, Report No. GAO/NSIAD-85-79, Washington D.C., May 20, 1985, p. 8. Emergency authorities relative to the financial administration of the FMS program are found in the AECA. Sections 21(b), 21(d), and 22(b) AECA, provide authority for a foreign country to make payment upon delivery, or even up to 120 days after delivery of a defense item. This emergency authority overrides the normal requirement that payment be made in advance of delivery.

97. *Ibid.*, p. 29.

98. Comptroller General, *op. cit.*, p. v.

99. *Ibid.*, pp. 53-54.

100. *Ibid.*, p. 54.

101. Wildavsky, Aaron, *The Politics of the Budgetary Process*, 4th ed., Boston: Little, Brown and Company, 1984, pp. 108-109.

102. Speech by Michael H. Armacost, Under Secretary of State for Political Affairs, United States Department of State, *U.S. Foreign Policy Achievements and Challenges*, Current Policy No. 85, Washington, DC, Oct 18, 1986.

103. *Ibid.*

104. The Stockholm International Peace Research Institute (SIPRI) discusses the many reasons for the recent decline in overall world arms transfers. (See *SIPRI Yearbook, 1985*, London: Taylor and Francis, 1985, p. 345.) Based on a review of a U.S. Dept of Defense publication, annual foreign military sales (FMS) show the following decline:

FY 1982 - \$18.4 Billion
FY 1983 - \$15.9 Billion
FY 1984 - \$14.0 Billion
FY 1985 - \$11.7 Billion
FY 1986 - \$ 7.1 Billion

(See Defense Security Assistance Agency, *Foreign Military Sales, Foreign Military Construction Sales and Military Assistance Facts*, as of September 30, 1986, p. 3.) .

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Appendix B-1

Selected Legislative Prohibitions on the Provision of Military Assistance to Foreign Countries

Part I of the following listing provides an abbreviated summary of various general (non-country specific) provisions which prohibit the furnishing of U.S. military assistance (to include military sales, where specified) to a country (or countries) found to be in violation of an established stricture. Part II identifies current country-specific prohibitions and restrictions. The appropriate sources should be examined for the complete statutory provision, particularly with regard to the various conditions under which a Presidential waiver of a particular prohibition is authorized. It should also be noted that under the seldom-used provisions of Sec. 614(a)(1), FAA, the President may authorize the furnishing of assistance "without regard to any provision of" the FAA, AECA, "any law relating to recipients and credits accruing to the United States, and any Act authorizing or appropriating funds for use under" the FAA, "in furtherance of the purposes of" the FAA; to put these provisions in effect, the President must notify the Congress in writing that such an action "is important to the security interests of the United States."

Abbreviations used below to identify specific legislative sources include the following:

FAA	Foreign Assistance Act of 1961, as amended.
AECA	Arms Export Control Act, as amended
P.L. 99-83	International Security and Development Cooperation Act, 1985.
P.L. 99-570	International Narcotics Control Act of 1986.
P.L. 99-591	Foreign Assistance and Related Programs Appropriations Act, 1987.

Part I. General Conditions

- 1. *Violations of the use provisions governing the transfer/purchase of U.S. defense articles/services.*** Prohibits cash sales, FMS credits, and guaranties to any foreign country which is in substantial violation of the use, transfer, or security provisions of any agreement for the prior acquisition of U.S. defense articles/services. Limited Presidential waiver authority is available to permit cash sales and deliveries pursuant to previous sales. Sec. 3(c), AECA (22 U.S.C. 2753). Also, MAP assistance must be terminated for any country which violates an agreement regarding the assistance. No Presidential authority is provided to waive this provision. Sec. 505(d), FAA (22 U.S.C. 2314).
- 2. *Terrorism.*** Prohibits military sales for one year "to any government which aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism." Provides authority for a Presidential waiver. Sec. 3(f), AECA (22 U.S.C. 2753). A similar FAA provision excludes *all* U.S. assistance under the FAA and AECA (plus other acts), and expands the application to any government which "otherwise supports international terrorism;" no time limit is included, but a Presidential waiver is authorized. Sec. 620(A), FAA (22 U.S.C. 2371).
- 3. *Underdeveloped Countries.*** Prohibits FMS credit sales of sophisticated weapons systems (such as missile systems and jet aircraft for military purposes) to any underdeveloped country. Excludes Greece, Turkey, Iran, Israel, the Republic of China, the Philippines, and Korea. Provides authority for a Presidential waiver. Sec. 4, AECA (22 U.S.C. 2754).
- 4. *Discrimination.*** Prohibits military sales, sales credits, or guaranties to any country whose "laws, regulations, official policies, or government practices . . . prevent any United States person . . . from participating in the furnishing of defense articles or defense services . . . on the basis of race, religion, national origin, or sex."

No specific Presidential waiver is authorized. Sec. 5, AECA (22 U.S.C. 2755). A similar provision prohibits grant MAP assistance. Sec. 505(g), FAA (22 U.S.C. 2314).

5. **Foreign intimidation.** Prohibits military sales, sales credits, guaranties, or the issuing of export licenses for "any country determined by the President to be engaged in a consistent pattern of acts of intimidation or harassment directed against individuals in the United States." No specific Presidential waiver is authorized. Sec. 6, AECA (22 U.S.C. 2756).

6. **Export-Import Bank and Less Developed Countries.** Prohibits the Export-Import Bank from using any of its funds or borrowing authority to extend credit for the sale of defense articles/services to any economically less developed country. Sec. 32, AECA (22 U.S.C. 2772).

7. **Diversion of Development Assistance.** Prohibits foreign military sales and financing to any economically less developed country which the President finds to be diverting United States development assistance or its own resources to unnecessary military expenditures "to a degree which materially interferes with its development. . . ." No specific Presidential waiver is authorized, but sales and financing may resume when "the President is assured that such diversions will no longer take place. Sec. 35, AECA (22 U.S.C. 2775).

8. **Drugs.** U.S. assistance shall be suspended for any country which the President determines to be "an illicit drug producing country that has failed to take adequate steps to prevent narcotics and psychotropic drugs" produced, processed, or transported through such country "from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being smuggled into the United States" Sec. 481(h)(1), FAA. In addition to the above, no assistance under either the FAA or AECA shall be provided "to any country which the President determines has not taken adequate steps to prevent (A) the processing (in whole or in part) in such country of narcotics and psychotropic drugs or other controlled substances, (B) the transportation through such country of narcotics or psychotropic drugs or other controlled substances, and (C) the use of such country as a refuge for illegal drug traffickers." No specific Presidential waiver is provided in either provision. Sec. 481(h)(4), FAA (22 U.S.C. 2291).

9. **Human Rights.** "No security assistance may be provided to any country, the government of which engages in a consistent pattern of gross violations of internationally recognized human rights." This prohibition extends "to the police, domestic intelligence, or similar law enforcement forces" of such a country, and specifically prohibits "the export of crime control and detection instruments and equipment" to such a country. Limited Presidential waivers are authorized for the export of crime control and detection instruments and equipment and for IMET Program training. Sec. 502B, FAA (22 U.S.C. 2304).

10. **Indebtedness to U.S. Citizens.** No assistance under the FAA shall be provided to the government of any country that is in unresolved and uncontested debt to a U.S. citizen or person for goods or services furnished or ordered. A Presidential waiver is authorized. Sec. 620(c), FAA (22 U.S.C. 2370).

11. **Nationalization/Expropriation.** Assistance under the FAA or any other Act shall be suspended to any country the government of which "has nationalized or expropriated or seized ownership or control of property owned by any United States citizen, or by any corporation, partnership, or association not less than 50 per centum beneficially owned by United States citizens." A Presidential waiver is authorized. Sec. 620(e), FAA (22 U.S.C. 2370).

12. **Communist countries.** No assistance under the FAA may be furnished to any communist country. A Presidential waiver is authorized. Sec. 620(f), FAA (22 U.S.C. 2370).

13. **Loan Default.** No assistance under the FAA shall be furnished to any country "which is in default, during a period in excess of six calendar months, in payments to the United States for principal, or interest on any loan made to such country" under the Foreign Assistance Act. A Presidential waiver is authorized. Sec. 620(q), FAA (22 U.S.C. 2370). A more comprehensive prohibition is provided in the annual foreign assistance appropriations act which prohibits any appropriated foreign assistance funds from being furnished "to any country which is in default during a period in excess of one calendar year in payment to the U.S. of principal or interest on any loan made to such country by the United States pursuant to a program for which funds are appropriated" by the U.S. government. No specific Presidential waiver authority is authorized. Sec. 518, P.L. 99-591.

14. **Break in diplomatic relations.** No assistance under the FAA or any other Act shall be furnished to any country which severs diplomatic relations with the United States or with which the U.S. severs such relations. No specific Presidential waiver authority is authorized. Sec. 620(t), FAA (22 U.S.C. 2370).

15. **Nuclear Materials.** No assistance under the FAA or AECA may be provided to any country which delivers nuclear enrichment equipment, materials, or technology to any country (or which receives such items from any other country) without placing the items under multilateral management or without entering into a safeguard agreement with the International Atomic Energy Agency. A Presidential waiver is authorized. Sec. 669, FAA (22 U.S.C. 2429). Similarly, no assistance under the FAA and the AECA may be provided to any country which delivers nuclear reprocessing equipment, materials, or technology to any country (or which receives such items from any other country) or is a non-nuclear state which exports illegally (or attempts to export illegally) such items from the United States which would contribute significantly to the ability of such country to manufacture a nuclear explosive device if the President determines such to be the purpose. A Presidential waiver is authorized. Sec. 670(a), FAA (22 U.S.C. 2429a). Also, no assistance under the FAA or AECA may be provided to any country which transfers a nuclear explosive device to a non-nuclear state or is a non-nuclear-weapon state and either receives a nuclear explosive device or detonates a nuclear explosive device. A Presidential waiver, supported by a joint resolution of Congress is possible. Sec. 670(b), FAA (22 U.S.C. 2429a).

16. **Foreign Airport Security.** All assistance under the FAA and AECA shall be suspended for any country in which an insecure airport is located and which the Secretary of State has determined to be "a high terrorist threat country." This sanction may be lifted upon a determination by the Secretary of Transportation, in consultation with the Secretary of State, that effective security measures are maintained and administered at the applicable airport. Sec. 552, P.L. 99-83.

17. **Major Illicit Drug-Producing/Drug-Transit Countries.** Places an annual 50 percent limitation on the obligations and expenditures of all U.S.-funded assistance "for every major illicit drug-producing country or major drug-transit country." A Presidential determination is required as the means of releasing the remaining 50 percent of a specific country's assistance funds. Sec. 2005, P.L. 99-570, as amends Sec. 481(h), FAA.

18. **Military Coups.** Prohibits the obligation or expenditure of any foreign assistance appropriations "to any country whose duly elected Head of Government is deposed by military coup or decree." No specific Presidential waiver is authorized. Sec. 513, P.L. 99-591.

19. **Foreign Policy Opposition.** Prohibits the obligation or expenditure of any foreign assistance appropriations for "a country which the President finds . . . is engaged in a consistent pattern of opposition to the foreign policy of the United States." No specific Presidential waiver is authorized. Sec. 528, P.L. 99-591.

Part II. Country-Specific Prohibitions and Restrictions

1. **Angola, Cambodia, Cuba, Iraq, Libya, the Socialist Republic of Vietnam, South Yemen, and Syria.** No foreign assistance funds appropriated for FY 1987 or otherwise made available pursuant to P.L. 99-591, "shall be obligated to finance indirectly any assistance or reparation to" any of the above eight named countries "unless the President of the United States certifies that the withholding of these funds is contrary to the national interest of the United States." Sec. 560, P.L. 99-591.

2. **Afghanistan.** No funds authorized under the FAA may be used to furnish assistance to Afghanistan unless its government "has apologized officially and assumed responsibility for the death of Ambassador Adolph Dubs" and also "agrees to provide adequate protection for all personnel of the United States Government in Afghanistan." A Presidential waiver of this provision is possible if the President determines it is in the U.S. national interest "because of substantially changed circumstances in Afghanistan." Sec. 620D, FAA (22 U.S.C. 2374), enacted in 1979 (P.L. 96-53).

3. **Bolivia.** For FY 1986 and FY 1987, FMSCR, MAP, IMET, and ESF assistance may be provided to Bolivia only under the following narcotics-related conditions: (1) up to 50 percent of the aggregate amount of FY 1986 assistance will be provided only after the President certifies that Bolivia has enacted legislation establishing its legal requirements for coca; (2) the remainder of the FY 1986 assistance will be provided only after the President certifies that Bolivia has achieved the coca eradication targets for FY 85, as specified in a 1983 agreement with the U.S.; (3) for FY 1987, up to 50 percent of the aggregate amount of assistance allocated for Bolivia may be provided

after the President certifies that Bolivia has achieved at least half of the coca eradication target for calendar year 1986; and (4) the remaining amount of FY 1987 assistance may be provided after the President certifies that the Government of Bolivia has fully achieved the 1986 eradication target. Sec. 611, P.L. 99-83.

4. *Chile.* No military assistance or Economic Support Fund appropriations for FY 1987 may be obligated or expended for Chile. Also, this section of the FY 1987 Continuing Appropriations Resolution contains a non-binding "sense of Congress" statement reflecting the Congressional view that the U.S. "should oppose all loans to Chile from multilateral development institutions, except for those for basic needs" until the Government of Chile takes concrete steps to restore democracy and has ended its "gross abuse of internationally recognized human rights." Sec. 557, P.L. 99-591.

5. *Cuba.* No assistance may be provided under the FAA "to the present government of Cuba." Also, "the President is authorized to establish and maintain a total embargo upon all trade between the United States and Cuba." Section 620(a), FAA (22 U.S.C. 2370), enacted in 1962 (P.L. 87-195).

6. *El Salvador.* No FY 1987 foreign assistance funds "may be used to make available to El Salvador any helicopters or other aircraft, and licenses may not be issued . . . for the [commercial] export to El Salvador of any such aircraft" unless the House and Senate Appropriations Committees first receive at least 15 days advance notification by the Administration. Sec. 537, P.L. 99-591. Further, \$5 million of the combined MAP and IMET appropriations for El Salvador for FY 1987 must be withheld from expenditure until the President reports to the Appropriations Committees that the Government of El Salvador has "substantially concluded all investigative actions" associated with the January, 1981, murder of two U.S. land reform consultants and an El Salvadoran land reform official, and that it has obtained "a verdict of those who ordered and carried out the . . . murders." Sec. 545, P.L. 99-591. Also, all of the Economic Support Fund monies furnished to El Salvador which "are placed in the Central Reserve Bank of El Salvador . . . [must] be maintained in a separate account and not commingled with any other funds." Title II, P.L. 99-591. Finally, all foreign assistance authorized for FY 1986 and FY 1987 is to be suspended if the elected President of El Salvador "is deposed by military coup or decree." Sec. 702(g), P.L. 99-83.

7. *Greece and Turkey.* Security assistance for Greece and Turkey will be furnished only when it is intended solely for defensive purposes, including its use in fulfilling their respective NATO obligations. A Presidential certification to Congress of the above policy is required whenever FAA or AECA funds are requested from Congress for security assistance for Greece and Turkey; and similar certifications are required pursuant to a Sec. 36(b), AECA, Congressional notification of a proposed sale of defense articles or services to either country. Sec. 620C, FAA. Also, the authorized funding for MAP assistance to Turkey for FY 1986 and FY 1987 (up to \$215 million per year) is contingent upon "the understanding that the United States Government is acting with urgency and determination to oppose any actions aimed at effecting a permanent bifurcation of Cyprus." Sec. 101(f), P.L. 99-83.

8. *Guatemala.* For FY 1986 and FY 1987, MAP and FMSCR assistance and FMS sales may be provided to Guatemala only upon Congressional receipt of a Presidential certification that (1) for FY 1986, "an elected civilian government is in power in Guatemala and has submitted a formal written request to the United States for the assistance, sales, or financing to be provided," and (2) for both FY 1986 and FY 1987, "the Government of Guatemala made demonstrated progress during the preceding year: in achieving control over its military and security forces; toward eliminating kidnappings and disappearances, forced recruitment into the civil defense patrols, and other abuses by such forces of internationally recognized human rights; and in respecting the internationally recognized human rights of its indigenous Indian population." Further, all assistance allocated to Guatemala "shall be suspended if the elected civilian government of that country is deposed by military coup or decree." Sec. 703, P.L. 99-83.

9. *Haiti.* No MAP or FMSCR assistance is authorized for Haiti for FY 1986 or FY 1987, "except for necessary transportation, maintenance, communications, and related articles and services to enable the continuation of migrant and narcotics interdiction operations." Funds made available under the FAA may be used for police training programs with Haiti (notwithstanding the limitations of Section 660, FAA) "which shall be consistent with prevailing United States refugee policies, to assist in halting illegal emigration from Haiti to the United States." Sec. 705, P.L. 99-83.

10. *Jamaica and Peru.* Precludes the obligation of more than 50 percent of the foreign assistance funds made available for FY 1987 for each country "unless the President determines and reports to the Congress that the Governments of these countries are sufficiently responsive to the United States Government concerns on drug control

and that the added expenditures of the funds for that country [either Jamaica and/or Peru] are in the national interest of the United States." Excluded from this requirement are any funds made available to either country to carry out international narcotics control functions under the provisions of Sec. 481, FAA. Sec. 536, P.L. 99-591.

11. *Jordan*. Any Sec. 36(b), AECA, notification to Congress of "a proposed sale to Jordan of United States advanced aircraft, new air defense systems, or other new advanced military weapons shall be accompanied by a Presidential certification of Jordan's public commitment to the recognition of Israel and to negotiate promptly and directly with Israel under the basic tenets of United Nations Security Council Resolutions 242 and 338." A "sense of Congress" statement accompanies this provision and calls for the withholding of FMS financing for Jordan for such sales unless the above conditions are met. Sec. 130, P.L. 99-83.

12. *Mozambique*. No military assistance (MAP or IMET) may be provided for Mozambique for FY 1986 or FY 1987 unless the President certifies to Congress that the Government of Mozambique: (1) is making a concentrated and significant effort to comply with internationally recognized human rights; (2) is making progress in implementing essential economic and political reforms; (3) has implemented a plan by September 30, 1986, to reduce the number of foreign military personnel in Mozambique to no more than 55, and (4) is committed to holding free elections by September 30, 1986. Economic assistance is permitted, but is limited to use in the private sector of the economy with funds to be channeled to non-government entities to the maximum extent practicable. Sec. 813, P.L. 99-83.

13. *Pakistan*. All U.S. assistance (including sales of military equipment and technology) are conditioned on an annual Presidential certification and report to Congress that "Pakistan does not possess a nuclear explosive device and that the proposed United States assistance program will reduce significantly the risk that Pakistan will possess a nuclear explosive device." Sec. 902, P.L. 99-83, as amends Sec. 620E, FAA. Additionally, the President currently has the authority (expiring on September 30, 1987), to waive the nuclear materials prohibitions of Sec. 699, FAA, as apply to Pakistan, "if he determines that to do so is in the national interest of the United States." Sec. 620E(d), FAA (*cf.* Appendix B-1, Part I, Item 15 above).

14. *Paraguay*. No MAP or FMSCR funds may be used in FY 1986 or FY 1987 for assistance for Paraguay, "unless the President certifies to the Congress that the Government of Paraguay has ended the practice of torture and abuse of individuals held in detention by its military and security forces and has instituted procedures to ensure that those arrested are promptly charged and brought to trial." Sec. 706, P.L. 99-83.

15. *Philippines*. Assistance (MAP and FMSCR) for the Philippines in FY 1986 and FY 1987 may be deferred if significant progress is not achieved in a variety of specified human rights, criminal justice, economic reform, and military professionalism areas, or if "the Congress finds that such assistance is used to violate the internationally recognized human rights of the Filipino people." Sec. 901, P.L. 99-83. [Note: this was enacted on August 8, 1985, prior to the installation of the Aquino government.]

16. *Sudan and Liberia*. No foreign assistance funds appropriated for FY 1987 "shall be obligated or expended for Sudan or Liberia except as provided through the regular notification procedures of the Committees on Appropriations." Sec. 549, P.L. 99-591. Further, such funds may not be made available for Sudan "if the President determines that the Sudan is acting in a manner that would endanger the stability of the region or the Camp David process." Sec. 542, P.L. 99-591.

17. *Zaire*. FMSCR financing may not be provided to Zaire in either FY 1986 or FY 1987, but Zaire may receive up to \$7 million each year in MAP funds. Sec. 804, P.L. 99-83.

Appendix B-2

Selected Legislative Prohibitions, Restrictions, and Regulations for Executive Branch Conduct of Military Assistance Activities

The following listing identifies a variety of selected legislative prohibitions as well as restrictions and regulations enacted by Congress on the executive branch for the management and conduct of military assistance activities. These provisions clearly illustrate the point made in the text, i.e., the Congressional delegation of substantial authority to the executive branch, coupled with extensive restrictions on that authority.

Restrictions on combat involvement. Personnel performing defense services sold to foreign countries or international organizations under the AECA, "may not perform any duties of a combatant nature . . . outside the United States. . . ." This includes "any duties related to training and advising that may engage United States personnel in combat activities . . . in connection with the performance of those services." Sec. 21(c)(1), AECA. Also, "advisory and training assistance conducted by military personnel" assigned to overseas security assistance management duties "shall be kept to an absolute minimum." Such advisory and training assistance shall be provided primarily by other U.S. military personnel not assigned under Sec. 515 of the FAA, and "who are detailed for limited periods to perform specific tasks." Sec. 515(b), FAA.

Military personnel limitation. The number of uniformed military personnel assigned to a foreign country to perform security assistance management duties "may not exceed six unless specifically authorized by the Congress." A Presidential waiver of this limitation is authorized. Further, the total number of such personnel assigned to a country in a fiscal year "may not exceed the number justified to the Congress for that country in the Congressional presentation materials for that fiscal year;" this limit may also be waived with a notification to Congress 30 days prior to the introduction of additional military personnel. Sec. 515(c), FAA.

Restrictions on Sales Promotions. U.S. diplomatic and military personnel serving in overseas U.S. missions are required to be instructed by the President "that they should not encourage, promote or influence the purchase by any foreign country of United States military equipment, unless they are specifically instructed to do so by an appropriate official of the executive branch." Sec. 515(f), FAA.

Combat Readiness. Requires that sales of defense articles and defense services to foreign countries "which could have significant adverse effect on the combat readiness of the Armed Forces of the United States . . . be kept at an absolute minimum," and requires Presidential explanatory reports to Congress for any sales which may have such adverse effects. Sec. 21(i), AECA.

Credit Sales. Authorizes the President "to finance the procurement of defense articles, defense services, and design and construction services by friendly foreign countries and international organizations, on such terms and conditions as he may determine . . ." However, repayment of such financing is required in U.S. dollars "within a period not to exceed twelve years . . . unless a longer period is specifically authorized by statute" for a particular country or international organization. Also, interest rates shall be charged as determined by the President, but "may not be less than 5 percent per year." Sec. 23, AECA.

Sales to Sub-Saharan African countries. The President is directed "to exercise restraint in selling defense articles and defense services" and in providing associated financing for such sales "to countries in Sub-Saharan Africa." Sec. 33, AECA.

Military Sales Agent Fees and Other Payments. The various types of political contributions, gifts, commissions, and sales fees that may *not* be paid under contracts for Foreign Military Sales and Foreign Military Construction Sales are specified. Sec. 39, AECA.

Foreign procurement. Procurement outside the United States with AECA authorized funding is prohibited except upon a Presidential determination "that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base . . ." Sec 42(c), AECA.

Civilian contract personnel. Requires the President, "to the maximum extent possible and consistent with the purposes" of the AECA, to "use civilian contract personnel in any foreign country to perform defense services sold under" the AECA. Sec 42(f), AECA.

Excess defense articles. U.S. defense articles furnished to foreign governments are directed to be "excess defense articles . . . whenever possible rather than new articles provided through procurement." Sec. 502A, FAA.

Reduction and termination of grants. The President is directed to "regularly reduce" and, where appropriate, "terminate all further grants of military equipment and supplies to any country having sufficient wealth to enable it, in the judgement of the President, to maintain and equip its own military forces at adequate strength, without undue burden to its economy." Sec. 505(c), FAA.

Defense stockpiles. Except for stockpiles of defense articles in NATO member countries, no stockpiles in other foreign countries are permitted to exceed an annual ceiling value as specified in security assistance authorization legislation. Also, stockpiles are prohibited to be established overseas outside the boundaries of U.S. military bases (except for those in the Republic of Korea or in NATO member countries, or for stockpiles established prior to the enactment of the International Security Assistance and Arms Control Act of 1976). Further, this statute prohibits the designation of stockpiled articles as "excess defense articles" in assessing their value in a transfer of such articles "to or for use by any foreign country." Sec. 514, FAA.

Funds Use. Numerous restrictive provisions on the use of funds for administrative purposes associated with the conduct of U.S. foreign assistance activities are provided in Sec. 636, FAA. These include expenses for rentals, leases, attendance at meetings, aircraft support costs, entertainment, transportation, etc. Subsection (i) prohibits the use of FAA funds to acquire foreign-manufactured motor vehicles, but the President is authorized a waiver of this provision "where special circumstances exist . . ." Sec. 636(i), FAA.

Police Training. Prohibits assistance under the FAA "to provide training or advice, or provide any financial support, for police, prisons, or other law enforcement forces for any foreign government or any program of internal intelligence or surveillance on behalf of any foreign government within the United States or abroad." Exemptions include assistance under the Omnibus Crime Control and Safe Streets Act of 1968 or assistance in maritime law enforcement. Also exempt is any country with "a long standing democratic tradition [and which] does not have standing armed forces, and does not engage in a consistent pattern of gross violations of internationally recognized human rights;" in the House Foreign Affairs Committee Report on H 1555, April 11, 1985, which included this exemption, the Committee indicated that at that time only the following Eastern Caribbean countries met all three of these necessary qualifications: Costa Rica, Antigua and Barbuda, Barbados, Dominica, Montserrat, St. Christopher-Nevis, St. Lucia, and St. Vincent and the Grenadines. " Additionally, a Presidential certification may be made to waive this prohibition for two specified countries only (Honduras and El Salvador). Sec. 660, FAA (22 U.S.C. 2420).

CIA Operations. No funds appropriated under the authority of the FAA or any other Act "may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended for obtaining necessary intelligence . . ." A Presidential waiver is authorized when the President "finds that each such operation is important to the national security of the United States. Each such operation shall be considered a significant anticipated intelligence activity for the purpose of Section 511 of the National Security Act of 1947." Sec. 622, FAA.