

COVER FEATURE

Another Year of Austerity: The Fiscal Year 1988 Security Assistance Budget

By

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We now face the stark possibility that we will be unable to meet our basic foreign policy objectives because of budget constraints The issue is not just another bureaucratic battle for funds. Rather it has to do with our ability and willingness as a nation to remain engaged with the world, to continue to shoulder the responsibilities of world leadership. [1]

George P. Shultz
Secretary of State

Secretary Shultz's comments above, which were presented in Congressional testimony in August 1987, served to foreshadow the reality of substantive budget cuts and constraints on funding which Congress subsequently established for Fiscal Year 1988 security assistance programs. As Table 1 on the following page illustrates, security assistance funding for FY 1988, at \$8,017.16 million represents an overall 15 percent reduction from the Administration's budget request of \$9,440.76 million. Moreover, it continues the recent trend in annual budget cuts, with FY 1988 representing a reduction of 17 percent in total program funding since FY 1985 (as measured in current year dollars).

In addition to these budget cuts, Congress placed mandatory earmarks (i.e., required minimum funding levels) on 99 percent of the Foreign Military Sales Credit (FMSCR) account, 60 percent of the Military Assistance Program (MAP) funds, and 96 percent of the Economic Support Fund (ESF) account. Such earmarks, coupled with the budget reductions, severely reduced the discretionary authority of the Administration to allocate program funds among recipient nations. In a letter to Congress on 29 January 1988 (reprinted in its entirety elsewhere in this issue), Secretary Shultz reported that these funding limitations had required the elimination of security assistance programs in some 30 countries, and serious cuts in program funding for such important countries as Portugal, Turkey, Jordan, Thailand, and many others. Particularly disturbing is the reduced funding available for "front-line" countries, i.e., those countries faced with externally supported subversion and aggression, and also for countries which provide the U.S. with military basing, transit, port call, communications, and exercise facilities. In the Secretary's view, "These reductions and constraints, taken together, have so emasculated our economic and military programs of security assistance that our national interest will suffer severe damage if we do not find some relief soon." [2]

TABLE 1
Congressional Funding for Security Assistance Programs (FY 85-FY 88)
(\$ in millions)

	<u>FY85</u> <u>Appropriations</u>	<u>FY 86</u> <u>Appropriations*</u>	<u>FY 87</u> <u>Continuing</u> <u>Resolution</u>	<u>FY 1987</u> <u>Supplemental</u> <u>Appropriations</u>
Foreign Military Sales (FMS) Credit Program	\$4,939.5	\$4,966.8	\$4,040.4	13.0
Military Assistance Program (MAP)	805.1	748.4	900.0	50.0
International Military Education and Training Program (IMET)	56.2	52.2	56.0	0.0
Economic Support Fund (ESF)	3,841.0	3,546.6	3,550.0	300.0
Peacekeeping Operations (PKO)	44.0	32.5	31.7	0.0
TOTALS	<u>\$9,685.8</u>	<u>\$9,346.5</u>	<u>\$8,578.1</u>	<u>363.0</u>

	<u>FY 1988</u> <u>Budget</u> <u>Request</u>	<u>FY 88</u> <u>Continuing</u> <u>Resolution</u>	<u>FY 88</u> <u>Reductions</u> <u>from Request</u>	<u>% of Reductions</u> <u>in Appropriations</u> <u>FY 85-FY88</u>
Foreign Military Sales (FMS) Credit Program	\$4,421.15	\$4,049.00	8.4%	18%
Military Assistance Program (MAP)	1,329.80	700.75	47.3%	13%
International Military Education and Training Program (IMET)	56.00	47.40	15.4%	16%
Economic Support Fund (ESF)	3,587.50	3,188.32	11.1%	17%
Peacekeeping Operations (PKO)	46.31	31.69	31.6%	28%
TOTALS	<u>\$9,440.76</u>	<u>\$8,017.16</u>	<u>15.1%</u>	<u>17%</u>

* Reflects 4.3 percent reductions in all programs as required by Gramm-Rudman-Hollings budget deficit legislation.

These funding issues will clearly have a major impact on the management of security assistance programs in FY 1988. Similarly, a wide array of important new legislative provisions have been enacted for FY 1988 which will also affect such management. Accordingly, this article continues our annual practice of furnishing the security assistance community with an analytical review of the major features and significance of new security assistance legislation. The article opens with a general discussion of the Congressional authorizations and appropriations process for FY 1988. This is followed by a program-by-program analysis covering funding issues as well as new and related statutory provisions. The objective throughout this report is to furnish a comprehensive guide to new statutory provisions which have been added to the legislative framework governing security assistance.

THE LEGISLATIVE PROCESS

Shortly after three o'clock on the morning of 22 December, Congress completed action on House Joint Resolution 395, the omnibus Continuing Appropriations Resolution (CR) for Fiscal Year 1988. The bill was signed into law (P.L. 100-202) by the President later that afternoon as a weary Congress adjourned for 1987. Earlier, beginning on 30 September, a series of four "stopgap" or interim CRs were enacted to permit continued government operations until the final CR was enacted. The lengthy delay was prompted by intensive partisan wrangling over a variety of diverse, politically charged issues, ranging from deficit reductions and tax increases, to funding for the Nicaraguan democratic resistance (i.e., the Contras), and the so-called "Fairness Doctrine" which requires radio and television broadcasters to air all sides of controversial issues. In the wake of these and numerous other controversial issues, and for the second consecutive year (and the third time in U.S. history), Congress was unable to pass any of the 13 annually required appropriations bills, and all 13 were again incorporated in the final CR which Rep. Trent Lott (D. Mississippi) characterized as a "descending red ink BOMB--bloated omnibus money bill." [3]. The CR includes the *Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988*, which funds security assistance programs, and which since FY 1982 has been included in annual CRs, albeit under a variant title, the *Foreign Assistance and Related Programs Appropriations Act*. The appropriations for security assistance, which total \$8,017.16 million, are miniscule (1.3%) when compared to the \$603.9 billion in overall new government-wide spending authority covered by the CR. At that level, the FY 1988 CR is the largest single spending measure in U.S. history.

The FY 1988 funding reductions in security assistance reflected in Table 1 might well have been more severe. In the fall, it appeared likely that the security assistance program appropriations recommended in August by the House Appropriations Committee would prevail. Those program levels totaled some \$7,832.74 million or \$184.42 million less than the bill which finally passed. [4] However, the November "budget summit compromise" between Congressional leaders and Administration officials resulted in an overall budget agreement which "freed up several hundred million dollars for foreign aid." [5] It was these additional funds that provided the increases in the security assistance accounts that appeared in the final bill. Despite these increases, and the complaints of some members of the House that "too many increases in foreign aid" had been made, Representative David R. Obey (D. Wisconsin), Chairman of the Foreign Operations Subcommittee of the House Appropriations Committee, is reported to have stated: "We cut foreign aid more deeply than any other section" of the continuing resolution. [6]

A second piece of legislation associated with security assistance, the annual authorization bill (technically entitled *The International Security Assistance and Development Cooperation Act of 1988*), failed to be enacted for FY 1988. The House Foreign Affairs Committee sent its version of an authorization bill to the full House on 5 August 1987, where it languished until November when debate finally began; passage occurred on 10 December. In the Senate, however, the Foreign Relations Committee reported out its bill on 22 May 87, but no floor vote was ever taken.

Consequently, as in FY 1984 and FY 1985 when no authorization bills for those years were enacted, authorizations for FY 1988 are limited to those contained in the CR. Among various effects of the failure of the authorization committees to pass an authorization bill is the increased legislative role that has been acquired by the appropriations committees in shaping foreign policy. This is evident in the increasing number of non-appropriations-related authorities and limitations contained in the CR. A further and more explicit result of the absence of an authorization act is the failure to obtain passage of many of the legislative initiatives which were sought by the Administration to improve the management of security assistance. Ironically, the majority of the technical and substantive initiatives proposed by the Administration for FY 1988 were endorsed by Congress in the House and Senate bills, but failing enactment, these initiatives will have to await the passage of a future authorization bill.

THE FOREIGN MILITARY SALES CREDIT (FMSCR) PROGRAM

Funding issues present the major problem associated with the FY 1988 FMSCR Program. At \$4,049.0 million, the FY 1988 appropriation for FMSCR is only \$4.44 million (0.1 percent) below that of the aggregate FY 1987 CR and Supplemental (\$4,053.44); however, this year's appropriation is \$372.15 million (over 8 percent) less than the level proposed to Congress by the Administration in its original budget request for FY 1988 (\$4,421.15 million).

Added to the obvious problems presented by such a significant budget cut are the expanded funding earmarks placed by Congress on this program. As illustrated in Table 2 below, funding for six countries (Israel, Egypt, Turkey, Greece, Portugal, and Morocco) was earmarked, meaning that the entire specified funding levels had to be allocated to these countries. The total of these six earmarks amounts to \$4,019.0 million, or 99.3 percent of the entire FMSCR appropriation. Thus, only \$30 million was left available to the Administration for discretionary allocation to other countries. The Administration originally sought FMSCR funds for 14 countries, but the limited, non-earmarked funds which were available permitted allocation among only three additional countries (Thailand, Indonesia, and Portugal), thus limiting the overall program funding to only nine countries.

It is interesting to note that Rep. Obey reportedly asked the Administration in May, "if they would support a two percent reduction in the Foreign Military Sales account for all earmarked countries." Such a reduction, if agreed upon, would "enable the [House Appropriations] Committee to more fully fund the Administration's request for non-earmarked countries" However, the Administration apparently "declined to support the two percent reduction," reportedly because of the funding restrictions attached to the proposal. Thus, as the HAC report concludes, the Committee was "left with no choice but to provide funding for non-earmarked countries at a level below what it desired to do." [7]

As in previous years, Congress continued to authorize "forgiveness" for selected country FMSCR loans, i.e., the release of a specified country from its contractual liability for the repayment to the U.S. government of the principal and interest on a portion or all of its annually appropriated FMSCR loans. The Administration had proposed forgiven credits only for **Israel and Egypt** for their entire FMSCR appropriations (\$1,800.0 million and \$1,300.0 million, respectively). All other country credits were proposed as "concessional credits," i.e., loans to be repaid at rates of interest no lower than 5 percent per annum, rather than at the higher market rates of interest associated with conventional Department of Treasury loans. Congress did grant full forgiveness to Israel and Egypt at the proposed funding levels. However, in an unexpected departure from general previous practice, Congress extended forgiveness to a portion of the FY 1988 credits to be made available to **Turkey** (\$156.0 million) and to **Pakistan** (\$30.0 million). All other FMS credits for FY 1988 are authorized to be issued at concessional rates of interest.

TABLE 2
FY 1988 FMS CREDIT PROGRAM
 ((\$ in Millions)

Total FY 1988 Appropriation: \$4,049.0

FY 88 Appropriations

<u>Country</u>	<u>Budget Request</u>	<u>Forgiven Loans</u>	<u>Concessional Loans</u>	<u>% of FY 88 Appropriation</u>
ISRAEL	\$1,800.00	\$1,800.0*	---	44.5%
EGYPT	1,300.00	1,300.0*	---	32.1%
TURKEY	235.00	156.0*	178.0*	8.2%
GREECE	435.00	---	313.0*	7.7%
PAKISTAN	290.00	30.0*	230.0	6.4%
MOROCCO	---	---	12.0*	0.3%
THAILAND	10.00	---	23.5	0.6%
INDONESIA	20.00	---	4.0	0.09%
PORTUGAL	40.00	---	2.5	0.06%
SPAIN	265.00	---	---	---
JORDAN	12.00	---	---	---
OMAN	5.15	---	---	---
MALAYSIA	4.00	---	---	---
CAMEROON	2.50	---	---	---
<u>GABON</u>	<u>2.50</u>	<u>---</u>	<u>---</u>	<u>---</u>
TOTALS	\$4,421.15	\$3,286.0	\$763.0	100.0%

* Congressional Earmarks

Several other features of the FMSCR Program for FY 1988 warrant discussion. The first involves special authorities for the Government of Israel. To the extent Israel requests the use of its credit funds for "advanced fighter programs or for other advanced weapons systems," it may use the following: up to \$150 million for research and development in the U.S., and no less than \$400 million "for the procurement in Israel of defense articles and defense services, including research and development." Congress has for several years provided such authorities to Israel, although the FY 1988 \$400 million level for procurement in Israel exceeds by \$100 million the previous annual authorities granted for this purpose. Both authorizations have been used in prior years to support the now-cancelled Israeli LAVI (i.e., Lion) advanced jet fighter program. The available funds for FY 1988 are most likely to be used, as the Administration had agreed earlier, to pay the cumulative costs of terminating previously approved U.S. and Israeli contracts for the LAVI.

Other significant aspects of the FY 1988 FMSCR Program apply to Greece and Turkey. As shown in Table 3, Congress substantially reduced the Administration's proposed overall military assistance funding levels (i.e., FMSCR plus MAP) for these two countries: Greece was reduced from a proposed total of \$435.0 million, to \$343.0 million, a cut of \$92.0 million; and Turkey was cut by \$295.0 million, from \$785 million to \$490 million. Additionally, the Administration originally proposed a distribution of such assistance to Greece and Turkey at a ratio approximating 5.54 to 10; however, Congress adhered to its policy of previous years in distributing military assistance to the two countries on the basis of a 7-to-10 ratio.[8]

TABLE 3
FY 1988 DISTRIBUTION OF MILITARY ASSISTANCE TO
GREECE AND TURKEY
(\$ in Millions)

	<u>Administration Proposal</u>		<u>FY 1988 Appropriations</u>	
	<u>Greece</u>	<u>Turkey</u>	<u>Greece</u>	<u>Turkey</u>
FMSCR	\$4.35.0	\$235.0	\$313.0	\$334.0
MAP	---	550.0	30.0	156.0
TOTALS	<u>\$435.0</u>	<u>\$785.0</u>	<u>\$343.0</u>	<u>\$490.0</u>
RATIO	<u>5.54 : 10</u>		<u>7 : 10</u>	

Also significant is the \$30 million MAP appropriation for Greece, which the House Appropriations Committee recommended be provided to Greece if Turkey were to receive any grant military assistance .[9] This represents the first such MAP funding for Greece since the MAP Merger Program was begun in Fiscal Year 1982. (See the discussion of MAP which follows.)

The 7-to-10 distribution of military assistance to Greece and Turkey was also injected by the Congress into the legislation covering the "**Modernization of Defense Capabilities of Countries of NATO's Southern Flank**" [Section 516, Foreign Assistance Act (FAA) of 1961, as amended.] This legislation, first enacted in the *National Defense Authorization Act for Fiscal Year 1987* (P.L. 99-661, 100 Stat 3816), and generally referred to as the "Southern Region Amendment" (SRA), permits the provision on a grant basis of excess U.S. defense articles to nations on NATO's Southern flank (i.e., Portugal, Greece, Turkey, Italy, and Spain). In the FY 1988 CR, Congress has now required that the annual distribution of excess defense articles to Greece and Turkey be applied in such a way that the value of the articles "closely approximates the ratio of the amount of military assistance" provided to the two counties (i.e., the 7-to-10 ratio). The objective of such a distribution is to maintain the military balance in the Eastern Mediterranean.[10] (See also the discussion of the extension of the "Southern Region Amendment" which appears later in this report.)

A further new important legislative provision affecting primarily Greece and Turkey, but applicable as well to any country, is related to the unresolved situation in **Cyprus**. The new provision, which was initiated in the House Appropriations Committee, places a prohibition on the transfer to Cyprus of any U.S. defense articles sold or provided in the future to other counties.[11] Under this new provision, *any* future agreement "for the sale or provision of any article on the United States Munitions List" must expressly state the following: "The article is being provided by the U.S. only with the understanding that it will not be transferred to Cyprus or otherwise used to further the severance or division of Cyprus." Additionally, the President is required under this new statutory requirement to, "report to Congress any substantial evidence that equipment provided under such an agreement has been used in a manner inconsistent with the purposes of this subsection." [12]

A final aspect of P.L. 100-202 which relates to the FMSCR Program involves a detailed legislative plan for helping countries with substantial indebtedness reduce their FMS-incurred debt. Due to the complexity of this new legislation, it is treated separately in this article under the section, "Special Legislative Provisions."

THE MILITARY ASSISTANCE PROGRAM (MAP)

From FY 1982 through FY 1987, Congressional funding for the grant aid Military Assistance Program (MAP) increased annually as had also the annual number of recipient countries. From a FY 1982 appropriation of \$176.5 million, which provided funding for four countries, the MAP account grew to \$950.0 million in FY 1987, accommodating 38 countries and regional programs.[13] In fact, the FY 1987 appropriation was the highest funding level for MAP since FY 1966.[14]

Both of the above trends have now come to a halt with the FY 1988 CR. Congress appropriated only \$770.75 million for MAP in FY 1988, a major 47 percent cut (or \$629.05 million) below the Administration's request of \$1,329.8 million. This reduction together with the earmarking of 60 percent of the FY 1988 MAP appropriation, limited the Administration's allocation of MAP funds to only a total of 21 country and regional programs as indicated in Table 4. This stands in marked contrast to the 40 country and regional programs the Administration had originally proposed funding in FY 1988.[15]

TABLE 4
FY 1988 MAP FUNDING ALLOCATIONS
(\$ in Millions)

<u>Country/Regional Program</u>	<u>Funding Level</u>	<u>Country Regional Program</u>	<u>Funding Level</u>
Africa Civic Action	\$ 3.00	Philippines	\$125.00*
Chad	5.50	Portugal	80.00
Djibouti	1.00	Senegal	0.75
El Salvador	85.00	Somalia	5.50
Greece	30.00*	Thailand	20.00
Guatemala	7.00*	Tunisia	27.00*
Honduras	40.00	Turkey	156.00*
Jordan	26.50	Yemen	1.00
Kenya	5.00	Zaire	3.00
Malawi	0.50		
Morocco	40.00*	General Costs	28.00*
Niger	1.00	<u>MAP (Sec. 506)</u>	<u>10.00</u>
		TOTAL	\$700.75

* Congressional Earmark

The substantial cut in MAP funds, of course, can be attributed in large part to the overall budget cuts enacted for FY 1988. However, Congressional perceptions and opinions of this grant aid program and its objectives also came into play. For example, the Senate Appropriations Committee (SAC) reported its concern over the growth in MAP funding since FY 1983, in the expansion in the number of participating countries, and in the specific increases requested by the Administration for FY 1988. Thus, the SAC Report stated that "MAP funds should be reserved--as originally intended when the program began--for key nations that have severe financial problems," and "is not to be provided to those countries that are in better financial straits." The SAC also presented its view that, "MAP is not intended to be used for political purposes," but rather "is intended to underwrite military programs of nations in need of security assistance." The

Committee further argued that the MAP-funded Civic Action Program for Africa, "has goals that could just as readily be carried out through programs administered by the Agency for International Development" (AID). Finally, the Committee reported that it was not clear "that all of the [Administration's] MAP requests for Africa, Central America, and Asia are based on a hard assessment of which programs are essential to U.S. interests." The SAC concluded that it was "not feasible to fund every request the Administration would like to have approved," and that in light of severe budgetary constraints, the rationale for continuing several marginal programs, particularly in Africa, "is in need of reexamination." [16] In view of such critical Congressional perceptions in a very restrictive budgetary environment, it is not surprising, therefore, that Congress made such a major reduction in the MAP appropriation for FY 1988.

MAP Funds Management

Additional criticism of MAP arose in the House Appropriations Committee (HAC) with respect to program funds management. Since FY 1982, grant MAP funding has been employed to finance the FMS acquisition by recipient countries of U.S. defense articles, services, and/or training. [17] This has been accomplished through the transfer of a country's MAP funds into the FMS Trust Fund where they are merged with that country's cash deposits and/or any available FMSCR monies to fund the country's FMS cases. This "MAP Merger Program," as it is commonly termed, is authorized under the provisions of Section 503(a)(3) of the FAA which permits such funding transfers. However, the HAC objected to this practice and recommended a prohibition on the obligation of MAP funds into the Military (i.e., FMS) Trust Fund Account. The HAC claimed that such a prohibition "will permit a clear view of how grant MAP funds are being used." [18] The Administration opposed this recommendation on the grounds that such desired visibility of MAP funding obligations is already present. Further it argued that such a change would necessitate the unnecessary establishment of a separate major accounting system for MAP, thereby adding to the already complex financial management required for FMS cases. Congress, however, chose to adopt the HAC recommendation, and in the FY 1988 CR required that "after September 30, 1989, none of the funds appropriated under this heading [i.e., Military Assistance] shall be made available for the purposes of Section 503(a)(3) of the FAA of 1961." [19] Thus, unless the Administration is successful in convincing Congress to withdraw this legislative provision, a new, separate accounting system will have to be established to manage MAP funds in FY 1990 and thereafter.

Defense Equipment Drawdowns

The FY 1988 CR also includes an important amendment to a provision in the legislation covering grant military assistance known as the "Special Authority" of the President (i.e., Section 506, FAA of 1961). This special authority permits the President, upon notification to the Congress, to authorize the drawdown of U.S. defense articles, services, and training (up to a cumulative value of \$75 million per fiscal year) to meet the emergency defense requirements of a foreign country or international organization. The HAC took issue with the Administration's practice of "providing drawdowns months and even years" after a notification of an emergency had been furnished to Congress. [20] To assure that future "drawdowns take place to address emergency situations and to [also] maintain control over the process," the HAC recommended, and Congress subsequently approved, adding the following new conditions to the provision of such emergency assistance. [21] Any future drawdowns of defense articles, services and training under the Section 506 authority must be delivered to the recipient country or international organization not more than 120 days "from the date on which Congress received notification of the intention to exercise the authority" of Section 506. If for some reason delivery is delayed but is to be made after the 120 day period expires, before such a delivery can then be effected, a new formal Congressional notification will be required, to include an explanation for the previous delay in furnishing the items. [22]

Section 506 Drawdown Reimbursement

Finally, in a related action, Congress included a requirement in the CR that \$10.0 million of the FY 1988 MAP account be used for either of two purposes: (1) to make reimbursement to the Armed Services for the cost of defense articles, services, and/or training provided to the Philippines in 1986 under the emergency authority of Section 506 of the FAA; or alternatively (2), for an "additional amount" to be used for the general costs of administering MAP, "if the Secretary of Defense so directs in writing." [23]

The Administration had originally requested \$46.0 million for MAP general costs for FY 1988, but Congress subsequently reduced this to not more than \$28.0 million. [24] At that very restrictive level, the Administration would have been forced to make major cuts in the number of personnel assigned to overseas security assistance organizations who are funded out of the MAP general costs account. Consequently, the Administration elected to use the additional \$10 million to supplement the MAP general costs account, rather than as a reimbursement for the 1986 Section 506 drawdowns for the Philippines. Though this latter option was not employed, its availability was nevertheless noteworthy in that it represented the first time since FY 1982 that Congress had specified any funds for such Section 506 reimbursements. In that year, \$7.1 million was so authorized. [25] Cumulative, unreimbursed Section 506 drawdowns since FY 1981 currently total \$165.0 million.

THE INTERNATIONAL MILITARY EDUCATION AND TRAINING (IMET) PROGRAM

Apart from a FY 1986 Gramm-Rudman-Hollings induced reduction in funding for the grant International Military Education and Training (IMET) program, Congress provided annual appropriations increases for IMET from FY 1981 (\$28.2 million) to FY 1987 (\$56.0 million). The Administration did not seek a budget increase for IMET for FY 1988, but rather requested funding to continue at the FY 1987, \$56.0 million level. The House Appropriations Committee (HAC) endorsed that request, but the Senate Appropriations Committee (SAC) proposed a reduction of \$8.6 million, to \$47.4 million. [26] Although it recognized the proven worth of IMET as "a valuable element in the U.S. military assistance effort," the SAC concluded that, as with other military assistance programs, "the funding level requested [for IMET] must be reduced due to severe budgetary constraints imposed on the Committee." [27]

The Conference Committee on the CR upheld the SAC recommendation, and so the FY 1988 appropriation, at \$44.7 million, is 15 percent below both the FY 1987 level as well as the Administration's FY 1988 budget proposal. At the current level, grant IMET funds have been allocated for FY 1988 among 101 countries, five less than in the budget request, and it is estimated that these funds will provide training for 5,793 foreign military personnel, substantially below the originally proposed 7,707 students.

Several committee recommendations regarding the conduct of the IMET Program, while not enacted, nevertheless warrant comment. First, the SAC strongly endorsed the concept of using IMET-funded mobile training teams (MTTs) to provide overseas in-country training. DOD policy has been rather restrictive on this issue, and guidance in the DOD *Security Assistance Management Manual* (SAMM) generally supports FMS-funded rather than grant IMET-funded MTTs. [28] However, the SAC report made the following points: "Training provided to foreign countries by MTTs working in the environments within which the trainees must themselves operate is more likely to be responsive and suited to local conditions. It is also likely to be more cost effective on a cost per trainee basis than similar training provided in the U.S." [29] Thus, SAC concluded that there should be "greater use of MTTs in the IMET program." [30]

The SAC also reported its belief that, "in furtherance of a basic goal of IMET . . . , foreign military officers who visit the United States under the Professional Military Education (PME) Program should meet with senior Congressional officials and staff on a regular basis." Such visits would be designed to enhance these officers understanding and awareness of U.S. democratic institutions and the constitutional role of Congress. Noting that the Committee would "be interested in meeting with a number of these officers," the SAC discussion of this issue concluded with the statement, "The Committee directs that the appropriate IMET program managers take steps necessary to facilitate such meetings."[31]

For its part, the HAC expressed continuing concern over an issue that it has raised repeatedly since 1985--namely, the continued requests for IMET funding for high income countries. These are identified as countries with a GNP per capita income exceeding \$5,500. Reflecting its view that IMET funding should be limited to less prosperous countries, the HAC provided the following instructions to the Administration: "If in the future the Administration includes IMET funding for high income countries . . . , the Committee directs the Defense Security Assistance Agency to provide a specific justification for the request."[32]

No direct legislative changes to procedures for the conduct of the IMET Program were effected in the FY 1988 legislation. However, three training-related matters merit review.

Argentina and Brazil

For several years the Administration has sought special Congressional authority to provide IMET-funded training for military personnel from Argentina and Brazil. Such special authority was required because funded training was precluded by Sections 669 and 670, FAA, for both countries because of their unsafeguarded nuclear facilities. Also, troublesome human rights conditions in both countries contributed to this exclusion policy. In March 1987, Lieutenant General Philip C. Gast, USAF, then Director of the Defense Security Assistance Agency, testified before Congress on this issue, as follows:

We should extend the IMET Program to Argentina and Brazil, countries which as you know have made great strides in restoring democracy over the last several years. We need to complement these strides by enhancing our historic military-to-military relations. The U.S. would of course remain sensitive about human rights.[33]

The SAC supported the Administration's request, and the Conference Committee agreed. Thus, the FY 1988 CR finally provides authority to furnish IMET grant assistance to Argentina or Brazil, "as long as such country continues to have a democratically elected government and the assistance is otherwise consistent" with other sections of the FAA.[34]

Cooperative Training Agreements

Reductions in the cost of U.S. provided military training is authorized for selected nations under the provisions of Section 21(g) of the Arms Export Control Act (AECA). Specifically, that section provides authority for the President to enter into standardization agreements (STANAGS) with NATO member nations, as well as Japan, Australia, and New Zealand "for the cooperative furnishing of training on a bilateral or multilateral basis, if the financial principles of such agreements are based on reciprocity." In essence, such agreements provide lower cost training for these nations' military students receiving training in the U.S., and vice versa.

The FY 1988 CR extends this Presidential authority under the AECA to include "major non-NATO allies." [35] For the purposes of this new provision, "major non-NATO allies" means those countries so-designated for purposes of Section 1105 of the *National Defense Authorization Act of*

FY 1987. Countries so designated presently include Australia, Japan, the Republic of Korea, Egypt, and Israel. The existing legislation had already included both Australia and Japan; and both Korea and Egypt, as grant IMET recipients, already enjoy the benefits of lower cost training under the "FMS-IMET" pricing policy. Thus, the only country to actually benefit from the new legislation will be Israel.

Funding for USARSA

The U.S. Army School of the Americas (USARSA) provides education and training to military personnel from countries in Central and South America and the Caribbean. Since late 1984, when USARSA was relocated to Fort Benning, Georgia, from Fort Gulick, Panama, Congress had continued to permit IMET funding for the school's operations. However, in 1986 Congress notified the Department of Defense that such funding would be terminated at the end of FY 1987, and that future funding would have to come from the regular DOD budget.[36] Accordingly, in the *National Defense Authorization Act of FY 1987*, Congress directed that the fixed costs of operating and maintaining USARSA be paid from O and M funds available to the U.S. Army; further, Congress prohibited the inclusion of O and M fixed costs in the tuition fees charged for foreign military personnel attending the school.[37] Thus, while IMET monies may continue to be used to fund such foreign student attendance, the fixed costs of operating and maintaining the school must be fully borne by the U.S. Army. Overall, the FY 1988 cost savings to the IMET account resulting from this new method of funding is estimated at \$2.8 million.

Student Housing at DLIELC

One additional security assistance training-related item was included in the Military Construction Appropriations Act, 1988 contained in P.L. 100-202. That act authorizes an appropriation of \$12.0 million for the construction of foreign student officer housing at the Defense Language Institute English Language Center (DLIELC) at Lackland AFB, Texas. In the Appropriations Conference Committee report discussing Air Force Military Construction, Congress directed the Air Force "to construct future planned projects [at DLIELC] with funds made available "through the FMS, MAP, or IMET programs.

THE ECONOMIC SUPPORT FUND (ESF)

The ESF, which is managed by the U.S. Agency for International Development (USAID), is the second largest funded U.S. security assistance program, ranking just below the FMSCR Program. ESF monies provide grant and loan economic assistance "to allies and developing countries of strategic concern to the United States;" and ESF programs, "range from the provision of balance-of-payments support through cash transfer or commodity import mechanisms to the financing of discrete development assistance activities." [38]

For FY 1988, the two appropriations committees differed by over \$59.4 million in their funding recommendations for ESF; The HAC reported out the low figure, \$3,128,906,000, while the SAC proposed \$3,188,320,000.[39] The Conference Committee adopted the higher SAC level, which was subsequently enacted, but which represents an 11.1% reduction from the Administration's budget request of \$3,587.5 million. Moreover, the FY 1988 appropriation represents a 17.2 percent cut from the total FY 1987 ESF appropriations (CR and Supplemental) of \$3,850 million.

As reflected in Table 5 below, the FY 1988 ESF account, like the FMSCR account, was very heavily earmarked by Congress. A total of not less than \$3,086.0 million (representing 96.8 percent of the ESF account) was specifically designated for 13 countries and 5 special programs, plus Sub-Sahara Africa (where a \$90.0 million noncountry specific earmark was allocated among 9

other countries).[40] This left only \$102.32 million of available non-earmarked ESF funds, which the Administration chose to allocate among 6 additional countries and one other regional program. In sum, the FY 1988 ESF appropriation provided funding for a total of only 34 country and special programs, as compared to the Administration's original ESF budget proposal for funding 45 country and special programs.[41]

TABLE 5
FY 1988 ESF PROGRAM ALLOCATIONS
(\$ in Millions)

<u>Country</u>	<u>FY 1988 Allocation</u>	<u>Country</u>	<u>FY 1988 Allocation</u>	<u>Special Programs</u>	<u>FY 1988 Allocation</u>
Bolivia	7.32	Oman	13.00	Afghan	
Chad	10.00**	Pakistan	220.00*	Humanitarian	22.50*
Costa Rica	90.00*	Philippines	174.00*	Cambodian Non-Communist	
Cyprus	15.00*	Poland	1.00*	Resistance Forces	3.50*
Djibouti	3.25**	Portugal	32.00	International fund for	
Egypt	815.00*	Senegal	10.00**	Northern Ireland and	
El Salvador	185.00*	Seychelles	3.00**	Ireland	35.00*
Guatemala	80.00*	Somalia	25.00**	Latin America and	
Honduras	85.00*	South Africa	3.40**	Caribbean Region	15.00*
Israel	1,200.00*	Spain	3.00	Middle East	
Jordan	18.00*	Sudan	14.35**	Regional	7.00*
Kenya	10.00**	Thailand	5.00	South Pacific	
Liberia	11.00**	Tunisia	10.00*	Tuna Treaty	10.00
Morocco	20.00*	Turkey	32.00		
				Total	#3,188.32***

* Country-Specific Congressional earmarks.

** Reflects allocation of noncountry-specific Congressional earmark of \$90 million for sub-Saharan Africa.

*** Does not include \$12.50 million reobligated from FY 1987.

As in prior years, Congress attached a wide variety of provisions to the earmarked funding identified for specific countries. For example, the entire ESF account for **Israel** (earmarked as a grant of \$1.2 billion) was again stipulated to be made available as a direct cash transfer, to be disbursed by October 31, 1987, or within 30 days of the enactment of the CR (January 21, 1988), whichever was later.[42] Also, an additional provision in the CR attached to the Israeli ESF account, as in past years, provides that, "it is the policy of the United States" that Israel's ESF funds, "shall not be less than the annual debt repayment (interest and principal) from Israel to the United States Government in recognition that such a principle serves United States interests in the region." [43]

The FY 1988 CR also provides that a direct cash transfer of not more than \$115.0 million once again be furnished to **Egypt** from her earmarked grant of \$815.0 million. Congress also stipulated that this cash transfer was being provided "with the understanding that Egypt will undertake significant economic reforms which are additional to those which were undertaken in previous fiscal years. . . ." [44] Additionally, Congress designated that not less than \$2.0 million of Egypt's ESF appropriation be provided in the form of Commodity Import Program assistance.

Two additional FY 1988 CR provisions affecting the Israeli and Egyptian ESF appropriations should be noted. First, Congress directed the President, "in exercising the authority to provide

cash transfer assistance" to the two countries, to "ensure that the level of such assistance does not cause an adverse impact on the total level of non-military exports from the United States," to either Israel or Egypt.[45] Secondly, Congressional intent regarding the substantial level of funding for the two countries, which together represents 63.2 percent of the FY 1988 ESF appropriation, is reflected in the following statement in the CR: "It is the sense of Congress that the recommended levels of assistance for Egypt and Israel are based in great measure upon their continued participation in the Camp David Accords and upon the Egyptian-Israeli peace treaty." [46]

Also, Section 564 of the CR earmarks no less than \$5.0 million of the FY 1988 ESF appropriation for Middle East regional cooperative programs. Of that amount, not less than \$1.0 million is to be made available for "Arab-Israeli Peace Scholarships;" not less than \$500,000 of that amount is designated for Israeli students studying in institutions of higher learning in Arab countries, with the other \$500,000 for Arab students involved in similar studies in Israel.

The FY 1988 CR also contains a variety of stipulations on the ESF accounts of several other countries. For the **Philippines**, in addition to its basic earmarked ESF appropriation of \$124.0 million, Congress authorized a further \$50.0 million in ESF monies for the implementation of an agrarian reform program. These additional funds are contingent upon the Government of the Philippines (1) initiating such a program, (2) requesting U.S. assistance for that program, and that (3) "a substantive majority of the resources for the implementation of that program . . . be provided by the Government of the Philippines or other non-United States donors, or both." The CR further directs that if these U.S. conditions on agrarian reform in the Philippines are not met by August 31, 1988, the special \$50.0 million appropriation may be made available to other countries or programs as ESF assistance.[47]

Several conditions have also been attached to the FY 1988 ESF funding for **El Salvador**. Congress was troubled by the possibility that the Government of El Salvador might use an amnesty program to release from prison the murderers of U.S. Marines in El Salvador. Consequently, Congress directed that 10 percent (or \$18.5 million) of El Salvador's FY 1988 ESF account be withheld from obligation until enactment of the FY 1989 appropriations act; and further, the withheld funds can only then be obligated if, by that date, the accused murderers had not been so released. Also, the CR authorizes the use of up to \$1.0 million of the ESF appropriation "to assist the Government of El Salvador's Special Investigative Unit for the purpose of bringing to justice those responsible for the murders of United States citizens in El Salvador." An additional \$25.0 million of the ESF appropriation was stipulated in the CR to be made available for earthquake relief, rehabilitation, and reconstruction assistance, of which no less than \$2.0 million is to be used for the "reconstruction and rehabilitation of the National University of El Salvador and other institutions of higher education." Detailed reports by USAID to Congress accounting for the expenditure of these and prior year earthquake relief funds are also now required.[48]

Other Congressional stipulations on the FY 1988 ESF appropriation include the following: a requirement that a "substantial majority" of the \$18 million appropriated for **Jordan** "shall be in support of the development program for the West Bank;" that \$20.0 million be available to carry out the **Administration of Justice** program (see discussion below), of which \$300,000 shall be provided for programs for **Haiti**, and not less than \$2.0 million be made available for programs for **Guatemala**; that \$1.0 million shall be provided "only for the support of the independent **Polish Trade Union "Solidarity"**"; and that not less than \$1.0 million be made available "only for the promotion of democratic activities in **Chile** leading to a transition to democracy." [49] Of final interest, the FY 1988 accounts includes earmarked funds for the following programs: \$35 million in ESF as this year's U.S. contribution to an international fund established in 1985 for economic development in **Northern Ireland and Ireland**[50]; not more than \$5.0 million from the ESF and MAP accounts for assistance to the **Cambodian Non-Communist Resistance Forces** [51]; and not less than \$45 million to be appropriated in equal parts from the ESF and the Development Assistance accounts to provide "food, medicine, or other humanitarian

assistance to the Afghan people . . ."[52] Accordingly, the Administration has allocated \$3.5 million in ESF funds for the Cambodian non-communist resistance forces, and \$22.5 million in such funds for Afghan humanitarian assistance.

Administration of Justice

For many years the United States has provided ESF funding for Administration of Justice programs to assist several countries in Latin America and the Caribbean which face serious problems in their systems of justice. This project has been conducted under the general provisions of Section 534, FAA.

Those particular Administration of Justice law enforcement programs conducted under Subsection 534 (b)(3) require a waiver of the "police training" prohibitions of Section 660 of the FAA. The FY 1988 CR amends the previous listing of the authorized programs which may be conducted notwithstanding the prohibitions of Section 660. These include:

- (A) programs to enhance professional capabilities to carry out investigative and forensic functions conducted under judicial or prosecutorial control;
- (B) programs to assist in the development of academic instruction and curricula for training law enforcement personnel;
- (C) programs to improve the administrative and management capabilities of law enforcement agencies, especially these capabilities relating to career development, personnel evaluation, and internal discipline procedures; and
- (D) programs, conducted through multilateral or regional institutions to improve penal institutions and the rehabilitation of offenders.[53]

The Conference Committee Report on the CR reflects the conferees views that this new provision "relates only to the development of academic instruction and curricula for training law enforcement personnel and does not provide authority for the actual training of law enforcement personnel, including police." [54]

Various other Administration of Justice programs not associated with police training were not amended by the CR. These programs range from support for legal training and the strengthening of professional legal organizations, to the provision of legal materials and publications and the modernization of legal codes and procedures.

One additional aspect of the FY 1988 CR as it applies to the Administration of Justice Program deserves notice. In an unexpected move, Congress amended Section 534(e) of the FAA to prohibit DOD personnel and members of the U.S. armed Forces from participating in these Administration of Justice training programs.[55]

PEACEKEEPING OPERATIONS (PKO)

The annual appropriation for the PKO program is the smallest of the five funded security assistance programs. Since the termination of funding for the Caribbean Peacekeeping Force (CPF) at the end of FY 1985, the PKO program has supported only two activities: the Multinational Force and Observers (MFO), an independent international organization which implements the security arrangements in the Sinai established in the 1979 Egyptian-Israeli Peace Treaty; and the United Nations Force in Cyprus (UNFICYP) which has helped since 1984 to preserve the peace in Cyprus.

The FY 1988 appropriation for PKO, at \$31.689 million, is identical to that of FY 1987, and is the only security assistance account not to have its appropriation reduced from the previous year.

However, and more importantly, the FY 1988 appropriation falls short by \$14.622 million (or 31.6 percent) of the Administration's PKO budget request for \$46.311 million. That request had proposed \$35.623 million for the MFO and \$10.688 for UNFICYP.[56] Confronted with the ongoing requirement for funding these two separate programs with a substantially reduced appropriation, the Administration, as it had done in FY 1987, again chose to allocate the PKO funds in equal proportion to the overall reduction in the PKO account. Thus, \$24,377.0 million has been allocated to the MFO, and \$7,312.0 will be available for the UNFICYP, the exact same funding allocations as in FY 1987.[57]

The budget reduction for the PKO account was originally recommended by the HAC and subsequently was also adopted by the SAC in its budget recommendation. In its report, the SAC pointed out that it had found "insufficient justification for appropriating what has been termed [by the Administration] a \$5,623,000 shortfall in the fiscal year 1987 contribution to the MFO in the Sinai." [58] For its part, the HAC restated its concern expressed in the FY 1987 budget report regarding the continuing operation of the UNFICYP "at a financial deficit, which the United States has disproportionately been absorbing." The HAC reported that this problem was a result of "the limited number of countries that were actually contributing to the peacekeeping operations;" and, expressing its dissatisfaction with the Department of State analysis of the problem, the HAC directed the Secretary of State "to thoroughly review the contributions of other nations to the Cyprus peacekeeping force before the committee's hearing on this program for FY 89." [59]

THE SPECIAL DEFENSE ACQUISITION FUND (SDAF)

The SDAF is designed to permit the acquisition of defense articles and services in anticipation of future foreign requirements, thereby reducing procurement lead times, permitting improved responses to emergency foreign requirements, and reducing the need for diverting or withdrawing this equipment from U.S. military stocks. Since FY 1982, when the SDAF was first implemented, the fund has been capitalized with various FMS-derived monies, i.e., charges for asset use and non-recurring research, development, and production costs, and sales from SDAF-procured items.[60] Under current law, total SDAF capitalization cannot exceed \$1,070.0 million, which applies cumulatively to the total of the amounts in the fund plus the value of defense articles held or on order by the SDAF.[61] Further, the amounts available for SDAF obligation in a given year are specified in the annual appropriations act. For FY 1987 Congress had provided authority for the obligation of up to \$315,820,000 for such SDAF procurements. The Administration had proposed increasing the FY 1988 obligation authority to \$350 million, and, as required in all SDAF procurements, reported it could support that program level "with the capital and pending receipts from expected SDAF sales." [62] The requested obligational level would have been the highest since the SDAF was first implemented in FY 1982.

Congress, however, was disinclined to raise the annual obligation authority. Rather, the two appropriations committees each recommended reductions. The SAC called for a cut in obligation authority to \$250 million, stating that although it believed "that the funds expended under SDAF have been reasonable in the past . . . , this limit is necessary to reinforce selectivity and caution in ongoing procurements." [63] The HAC proposed a deeper cut to \$236,865,000, and it was this lower level that was endorsed by the Conference Committee and subsequently enacted.[64]

Both appropriations committees also reflected displeasure with a reported initiative of the House Foreign Affairs Committee which would have permitted SDAF-acquired items to be furnished on a grant basis, presumably to help "base rights" countries. The SAC made the following observations on this issue:

The Committee would like to emphasize that it intends to preserve the original purpose of SDAF. Accordingly, the Committee will not support any proposal to

expand the existing authority to use SDAF for other purposes. The Committee most emphatically will not support the creation of a special Presidential drawdown authority for SDAF.[65]

A similar critical statement was issued by the HAC: "The SDAF was developed in order to provide equipment on a reimbursable basis and not as a program of providing additional military grant assistance." [66] In support of this view, the HAC recommended a new provision be included in the CR requiring payment for all SDAF equipment drawdowns.[67] The Conference Committee concurred, and such a requirement was subsequently enacted.[68]

The Administration had also requested a two-year SDAF obligation authority (i.e., FY 1988 and FY 1989) to aid in the effective expenditure of SDAF monies. In this regard, the Administration provided the following rationale:

Contractual opportunities have often been missed when the expiration of obligational authority precluded coordination of SDAF and Service acquisitions. As a result, each year some SDAF programs slip into the next year's procurement cycle. This expiration problem also effects the Services' procurements when SDAF participation was to have enabled the aggregation of a minimum procurement, or economic order quantity purchase.[69]

In 1986, the SAC had proposed granting such a two-year authority for FY 1987 and FY 1988, but its recommendation failed in that year's Appropriations Conference Committee. Congress similarly rejected the most recent proposal, and thus the CR again limits the obligation authority to one year, FY 1988.

THE GUARANTY RESERVE FUND (GRF)

Significant action taken on the GRF by Congress in the FY 1988 CR is best understood in the context of the functions and recent history of this fund. The GRF is an appropriated account which is drawn upon when countries with FMS loans obtained previously under the Guaranty Loan Program are in arrears in their loan repayments or have actually defaulted on those loans. The GRF functions as a revolving fund: monies drawn from the GRF are used to repay the lenders (e.g., the Federal Financing Bank administered by the Department of the Treasury); and any subsequent country repayments are used to restore the GRF.

In recent years, payments out of the GRF have exceeded collections credited; but after Congress appropriated an additional \$109 million for the GRF for FY 1985, it proved unwilling to appropriate any additional funds in FY 1986 and FY 1987. In FY 1986, however, Congress granted legislative authority to the Administration to use FMSCR appropriated funds to pay any financial claims on debts arising from the Guaranty Loan Program which the GRF was inadequate to meet.[70] Then, in the FY 1987 supplemental appropriations act (P.L. 100-71), Congress authorized the use of MAP appropriations as a further means of replenishing the GRF. The use of either FMSCR or MAP funds for this purpose, of course, would reduce the funds available in these accounts to finance country program acquisitions.

The reports of the two Congressional appropriations committees on the FY 1988 CR expressed their concern over the GRF and their interest in resolving the issue. The HAC was particularly concerned over what it characterized as the "cavalier attitude of Executive Branch officials in carrying out their fiduciary responsibilities *vis-a-vis* the Federal Financing Bank and the Guaranty Reserve fund." [71] With the GRF showing a cash balance of zero on December 31, 1986, and a projected deficit of \$509,635,000 on September 30, 1987, the HAC faulted the Administration on three counts: (1) failure to allocate any FY 1987 FMSCR funds to the GRF; (2)

failure to make any effort to collect the GRF debt owed to the FFB; and (3) failure to request any FY 1987 supplemental appropriations for the GRF, even though their need was obvious.[72] The accuracy of these criticisms is debatable, particularly in view of other DOD initiatives to rectify the problem, but it is clear the HAC was dissatisfied with the GRF situation. As its approach to a solution, the HAC recommended a minimum of \$532 million from the FY 1988 FMSCR Program account be earmarked for direct allocation to the GRF.[73] Such a proposal, if enacted, would have critically reduced the level of funding that the FMS account could provide for FY 1988 country programs.

For its part, the SAC admitted that it had "been an accomplice with the Executive Branch in avoiding the need to establish and maintain financial regularity in the FMS credit program." [74] The SAC, therefore, recommended permanent indefinite spending authority for the GRF, a proposal the Administration had proposed in the FY 1986 budget request but which Congress then rejected. The SAC also proposed authorizing "the President to sell or transfer existing guarantees of FMS debt, thereby reducing the debt servicing of heavily indebted FMS recipients." [75]

In the Conference Committee, these recommendations were considerably modified. Instead of earmarking \$532 million of the FMSCR account to replenish the GRF, the Committee agreed to provide a direct and separate appropriation of that identical amount for the GRF. Congress subsequently passed that provision--the first such additional appropriation for the GRF since FY 1985.[76] The Conference Committee Report also included the statement that, "The conferees intend for these funds to be treated as mandatory spending," i.e., that the Administration must use the \$532 million in meeting GRF obligations.[77] The net effect of the funding compromise associated with this \$532.0 million GRF appropriation was to reduce the FMSCR and MAP funds available for country program acquisitions by approximately \$250.0 million from FY 1987 funding levels. Finally, the Conference Committee adopted a very detailed plan for the transfer in FY 1989 of GRF obligations to the Department of the Treasury if the funds then available in the GRF are insufficient to meet those obligations. This complex provision was also enacted, and in essence, it provides "current indefinite borrowing authority" for the GRF for FY 1989 only.[78]

SPECIAL LEGISLATIVE PROVISIONS

FMS Debt Reform

After several years of effort, Congress has now provided in P.L. 100-202 (Title III, Military Assistance) a program for easing the debt burdens of various countries which have resulted from their acceptance in prior years of high interest rate FMS loans. An understanding of the new "FMS Debt Reform" provisions (as they are termed in P.L. 100-202), requires first a review of the evolution of the debt burden issue.

Since FY 1985, the entire FMSCR Program has consisted of "direct credit loans" based on annual direct Congressional appropriations of the full amount of the principal of these loans. However, prior to FY 1985, the majority of FMS loans were effected through monies provided by the Federal Financing Bank (FFB) which is administered by the Department of the Treasury. These loans were identified as "guaranty loans" inasmuch as a special appropriations account--the Guaranty Reserve Fund (GRF)--was established to provide a guaranty against country loan arrearages/defaults on the repayment of these loans to the FFB. Because various marketable monetary instruments of the Department of the Treasury (i.e., certificates, notes, bills etc.) provided the original source of monies for the FMS guaranty loans, such loans had to bear sufficient interest rates to meet the Treasury's obligations to the purchasers of these monetary instruments. Thus, until FY 1985 when reduced (i.e., "concessional") interest rate direct loans were introduced, all earlier guaranty loans were issued at market rates of interest. These market

rates were essentially interest rates which reflected the cost of money to the United States Government. [79]

In the early 1980s, as market rates rose to 12 percent per annum and higher, countries accepting FMS guaranty loans found themselves faced with an increasing financial burden; and this was generally exacerbated by high interest rates on other types of loans which these countries received. As the indebtedness levels of these countries escalated, both Congress and the Administration developed programs to help resolve the problem. In both 1985 and 1986 the Senate Appropriations Committee proposed plans to reduce the debt burden, but these efforts reportedly "failed on budgetary and procedural grounds." [80] For its part, the Administration set forth its own debt relief program in FY 1987; however, the Comptroller General subsequently ruled that it was "illegal for the Administration to implement the proposal without specific legislative authority." [81] Finally, Congress endorsed a plan for debt reform that originated in the Subcommittee on Foreign Operations of the Senate Appropriations Committee (SAC), but which was substantially altered by the Conference Committee prior to its passage in the FY 1988 CR.

The new program of FMS Debt Reform involves a dual approach--loan refinancing and interest rate reductions. The "loan refinancing" approach, which is limited to the period FY 1988-FY 1991, permits countries to prepay at par, or face value, the principal amounts (and arrearages) of their FMS guaranty and direct loans which mature after September 1989, and which bear interest rates of 10 percent or higher. Further, countries adopting this approach will not be subject to any prepayment penalties which may be stipulated in their original U.S. Government loan contracts. If a debtor country lacks sufficient resources of its own to make the necessary prepayment, it may borrow funds from private sector credit markets (e.g., investment, state-chartered, and national banks). As an inducement to the private sector to refinance these FMS loans at current, prevailing interest rates (i.e., rates presumably lower than a country's prior FMS loan interest rates), the President is now authorized to replace older guaranties, or to issue new guaranties of no more and no less than 90 percent against the new "private loans." Such guaranties would thus cover 90 percent of the outstanding principal, unpaid accrued interest, and arrearages throughout the life of the new loans. According to the Conference Report accompanying P.L. 100-202, "the liabilities resulting from the new guarantee program are [to be] covered by the Guaranty Reserve Fund. . . ." Also, it should be recognized that participating countries will have to locate private financial sources willing to risk the 10 percent that the U.S. Government will not guaranty.

The second approach to FMS debt reform involves Presidential authority to lower, or "buy down" annual interest rates on earlier guaranty loans for which recipient countries do not employ the refinancing approach. This alternative approach, therefore, does not apply to direct loans, and only may be used for guaranty loans which have annual interest rates exceeding 10 percent. Under this approach, the annual interest rates of all such guaranty loans may be reduced to 10 percent for the remaining life of the loans. To make up for the reduction in expected income resulting from such interest rate reductions, a new account of not more than \$270 million has been appropriated by Congress to be made available after October 1, 1988, contingent upon a Presidential budget request. Management of this account would rest with the Defense Security Assistance Agency (DSAA). Per Congressional intent, this interest rate buy down plan is to be made available to *all* countries having guaranty loans from the FFB that carry interest rates in excess of ten percent. However, there is an important limitation to this plan. Presuming a Presidential request for the authorized funding of \$270 million, Congress would then appropriate these monies as part of the overall budget authority for security assistance. Consequently, any use of these monies for interest rate reductions would reduce the military assistance funds (i. e., FMS credits and/or MAP grants) available for country program acquisitions. As a result, the Administration currently does not intend to implement the buy down plan in FY 1989.

Additionally, important new statutory repayment requirements apply to any countries that take advantage of either of the above plans. For those countries which adopt the "refinancing" option for one or more of their loans, they must thereafter bring their payments on any new, U.S. Government guaranteed private loans and any other AECA-related loans to within a 90 day repayment limit. Failure to adhere to this requirement would result in a suspension of their U.S. funded military assistance programs (i.e., FMSCR and MAP). Similarly, for those countries which adopt the "interest rate reduction" option, they must commit in writing that they will bring their payments current (i.e., within 90 days) on such reduced interest rate loans within two years from the time the interest rate reduction is effective, and thereafter remain no more than 90 days in arrears for the remaining life of all such loans. A suspension of all funded U.S. military assistance (FMSCR and MAP) is required during any period in which any such country fails to comply with its repayment commitment.

These new authorities have been designed not only to provide a general program for FMS debt relief, but they also have specific foreign policy objectives. Congress has authorized the President to utilize this new program "in efforts to negotiate base rights and base access agreements, and for other bilateral foreign policy matters."

Specific reporting requirements covering the implementation of this new program are also provided in the CR. A joint report to Congress by the Secretaries of State, Defense and Treasury must be submitted no later than March 1, 1989, "detailing the United States financial and foreign policy purposes served by the implementation of this authority on a country by country basis. . . ." A second joint report must be submitted no later than August 1, 1989.

Additionally, Congress established a new reporting requirement to permit its oversight of any special debt relief agreements proposed by the Administration other than those described above. This new provision, in a separate section of the CR, requires the Secretary of State to furnish to Congress "a copy of the text of any agreement with any foreign government which would result in any debt relief no less than thirty days prior to its entry into force . . . , together with a detailed justification of the interest of the United States in the proposed debt relief." [82] While this requirement does not apply to the new refinancing and interest reduction programs authorized in the CR, it would apply to any other debt relief proposal or agreement which involved "any and all debt repayment, debt rescheduling, and debt restructuring . . ." [83]

Finally, in a separate action related to debt reform, Congress rescinded \$32.0 million of the prior FMSCR appropriations for FY 1985 and FY 1986. This rescission, which was originally proposed by the HAC and initially called for a \$64.0 million rescission, reportedly was designed to protest the Administration's acceptance of prepayments by South Korea on some of its prior year loans. As noted earlier, the Comptroller General had concluded on July 21, 1987 that the Administration lacked authority to accept prepayment without legislative authority. [84] The Conference Committee report indicated that the Administration had accepted prepayments in 1987 after the Comptroller General's opinion had been published, and which "created a financial loss to the United States." [85] The conferees, who reportedly differed on this issue, finally agreed on a compromise which limited the rescission to \$32.0 million, but did not specify from which countries' FMSCR funds the rescission should be taken. [86]

Stinger Missile Sales

During the Congressional debate on the FY 1988 CR, substantial concern arose regarding the acquisition by terrorist groups of the U.S. Stinger manportable air defense missile. As a result, the Senate Appropriations Committee adopted a provision, sponsored by Senator Dennis De Concini (D, Arizona), which would have effected a total ban on Stinger sales to any country in the Persian Gulf region. Such a ban would have directly precluded a pending sale of this sophisticated missile system to the island nation of Bahrain. The Administration strongly urged Congress to permit an

exception to allow the sale to Bahrain to proceed, and Senator De Concini subsequently presented an amendment to his proposal on the Senate floor to exempt Bahrain from the ban, albeit with some unique special conditions attached. The amendment was passed, and was incorporated in the final CR.[87].

The following legislative provisions now apply with respect to the Stinger. No Stinger missiles may be provided, "directly or indirectly, by sale, lease, grant or otherwise," to any country in the Persian Gulf during FY 1988. An exception is permitted for the provision of such missiles to Bahrain upon a Presidential certification to Congress that: (1) such missiles are required by Bahrain "to counter an immediate air threat and/or to contribute to the protection of U.S. personnel, facilities, or operations;" (2) that the U.S. has no other appropriate system available to meet the requirement; (3) that the Government of Bahrain agrees to safeguards identified in the U.S. Government Letter of Offer and Acceptance (DD Form 1513) to protect against diversions of the missiles; and, (4) that Bahrain agrees to a U.S. "buyback of all remaining missiles and components which have not been destroyed or fired. . . ." This unique buyback feature, which has not previously been required in any U.S. arms transfer case, is to be implemented either "when another U.S. air defense system which meets the military requirements can be made available," or not more than 18 months from the enactment of the CR (i.e., no later than June 21, 1989). The President is also required to provide a report to Congress within three months after the enactment of the CR (i.e., no later than 20 March 1988) "which assesses the global threat caused by the proliferation of manportable ground-to-air missiles with technology comparable to the Stinger" and which emphasizes "the dangers of such missiles being used in acts of terrorism." Additionally, quarterly Presidential reports to Congress are required on the status of the delivery and future recovery of any Stinger missiles sold to Bahrain. Finally, before any letter of offer to sell or provide Stinger missiles to *any* country may be issued, Congress must now be provided an advance Presidential notification, regardless of the value of the sale or transfer. Such notifications must contain the same information as that required for certifications under Section 36(b), AECA; however, these new certifications do not legally constitute a Section 36(b) notification, which presumably must also be submitted if the sale value meets or exceeds the \$14 million major defense equipment reporting threshold.

Depleted Uranium Antitank Shells

Last year, the FY 1987 omnibus supplemental appropriations act introduced new legislative prohibitions dealing with certain types of U.S. antitank ammunition.[88] Section 567 of the FY 1988 CR contains similar restrictions. Specifically, the legislation prohibits the use of appropriated funds to facilitate in any way the sale to any country (with certain exceptions) "of M-833 antitank shells, or any comparable anti-tank shells containing a depleted uranium [DU] penetrating component." [89]

Exempted from these prohibitions are NATO member-countries, and any country which has been designated as a major non-NATO ally for the purposes of Section 1105, P.L. 99-661 (National Defense Authorization Act for Fiscal Year 1987). Countries so designated presently include Australia, Japan, Israel, Egypt, and the Republic of Korea. Also, it should be noted that these legislative prohibitions have been interpreted to apply to all such sales to non-exempt countries, including sales financed with a purchaser country's own cash resources.[90]

Aircraft in Central America

Acting on what it reported to be a "lack of notification concerning [the transfer of U.S. F-5E] aircraft to Honduras," the Senate Appropriations Committee proposed a revised Congressional notification procedure for the use of U.S. funds for aircraft for Central America.[91] The new provision was upheld by the Conference Committee and subsequently enacted as Section 535 of the CR.

The revised provision, which previously applied only to El Salvador, now applies to any country in Central America. It now requires that during FY 1988 Congress be notified in writing at least 15 days prior to the U.S. transfer by grant, FMS, or commercial sale, of any helicopters, or other aircraft for military use to any Central American country.[92] Further, the new statute also requires the Secretary of State to notify Congress of any third party foreign transfers during FY 1988 of such aircraft to Central America.[93]

Special Notification Requirements

As discussed above, Congress was dissatisfied with what it viewed as a failure of the Administration to provide proper advance notification of the grant MAP-funded transfer to Honduras in FY 1987 of F-5E aircraft. Although the Administration believed it had acted properly under existing Congressional notification requirements, nevertheless, the HAC recommended a revision to the general notification provisions which would have required "that funds not be obligated or commitments entered into for the MAP for FMS programs that have not been justified to the Appropriations Committees." Also, to account for any post-justification changes in the proposed use of such funds, the HAC proposal called for a 15-day Congressional notification period prior to the actual use of MAP/FMS funds.[94] The SAC also recommended a revision to the Congressional notification requirements, but it was more explicit than the HAC proposal. In addition to requiring initial justifications for projections of future acquisitions by types, quantities, and estimated costs, the SAC proposal called for: updated listings of proposed acquisitions; and reprogramming notifications for (1) any increase in country-level programs, and for (2) any increases in amounts for proposed acquisitions of Major Defense Equipment, other than conventional ammunition.[95] The resultant Conference Committee compromise reflects elements of both proposals.

This new statutory provision requires that Congress be notified 15 days prior to the commitment of MAP or FMSCR funds for the provision of any major defense equipment (other than conventional ammunition) which was either (1) not previously justified to Congress (i.e., in the annual *Congressional Presentation Document*), or (2) exceeds by 20 percent the quantities previously justified to Congress.[96] These requirements apply to proposed FMS letters of offer which are financed in whole or in part with FMSCR or MAP funds, and similarly apply to direct commercial contracts financed in whole or in part with FMSCR funds. Since the *Congressional Presentation Document* has not previously included information identifying specific proposed sales cases falling within the above criteria, these new legislative requirements have now made it necessary to provide this information to Congress. Accordingly, the Defense Security Assistance Agency submitted a classified current program listing to Congress on January 25, 1988, and a similar listing is planned for inclusion in a classified annex to the forthcoming *FY 1989 Congressional Presentation Document*. Because of these new notification requirements, and the 15 day notification period, the Defense Security Assistance Agency (DSAA) stated in a message to the security assistance community, "It is imperative that the most extensive possible planning of expenditures of FMSCR and MAP be conducted and be conveyed to DSAA Operations as soon as it is known." [97]

Military Coups

Since 1985, annual appropriations CRs have contained a provision requiring the termination of U.S. funded assistance to any country where the "duly elected" head of government is deposed by a military coup or decree.[98] For FY 1988, the CR retains the same prohibitions, but includes an additional provision which would permit the resumption of assistance to such a country if the President determines and reports to Congress that "subsequent to the termination of assistance a democratically elected government has taken office." [99]

Extension of Southern Region Amendment

As noted earlier in the discussion of the FMSCR program regarding Greece and Turkey, the "Southern Region Amendment" (Section 516, FAA of 1961) was enacted in 1986 to permit the provision in FY 1987 and FY 1988 of excess defense articles, or articles programmed to be excess, to help modernize the defense capabilities of countries on NATO's southern flank. Although Section 516 defined member countries on the southern flank of NATO as including Greece, Italy, Portugal, Spain, and Turkey, the Conference Committee report accompanying the 1986 enabling legislation pointed out that, "The conferees understand that, at the present time, this provision would authorize the transfer of equipment [only] to Greece, Portugal, and Turkey." [100]

Section 8143 of the Department of Defense Appropriations Act, 1988, contained in the FY 1988 CR (P.L. 100-202) includes several amendments to the Southern Region Amendment (SRA). First, Section 8143 extends the SRA authority through FY 1989. Secondly, the SRA is amended in several places to emphasize the fact that the defense articles to be furnished must truly be "excess" items. Finally, Section 8143 extends eligibility for country participants in the SRA "to major non-NATO allies on the southern and southeastern flank of NATO which are eligible for United States security assistance." Under current U.S. policy, two countries, Egypt and Israel, meet these new eligibility qualifications. Finally, as discussed earlier, the CR also requires that the annual distribution under the SRA of excess defense articles to Greece and Turkey be applied to closely approximate the general 7-to-10 ratio used in the provision of military assistance to the two countries.[101]

War Reserve Stockpile for Allied Forces or other Forces (WRSA)

Congress fully approved the Administration's request for authority to increase the value of the War Reserve Stockpile for Allied Forces (WRSA) in FY 1988 by a total of \$116.0 million. Further, Congress also approved the addition of Thailand to the Republic of Korea as the only non-NATO countries where stockpiles of defense articles are permitted.[102] These stockpiles consist of defense articles which remain under the title and control of the U.S. The authority for an increase in the stockpiles does not represent new appropriations authority, but rather permits the transfer into the stockpiles of current U.S. stocks at the Congressionally authorized value. The Administration plans to use \$10 million of the value of authorized additions to establish the stockpile in Thailand, with the remaining \$106 million in such authority designated for South Korea.[103]

Reciprocal and Commercial Leasing

Two separate provisions of the FY 1988 CR relate to the leasing of U.S. defense articles. The first, "reciprocal leasing," extends to FY 1988 a provision first enacted for FY 1987 which permits the U.S. to enter into cross-leasing agreements, at no charge, with the Government of Israel.[104] The original FY 1987 legislation was proposed in the Senate and was designed as a general provision to be available to any eligible country. However, Congress subsequently limited the authority to Israel, and this limitation continues in FY 1988.[105]

The second provision, "commercial leasing" is new for FY 1988. Having its origin in the Senate Appropriations Committee, this new provision authorizes FMS credits to be used by Israel and Egypt "for the procurement by leasing (to include leasing with an option to purchase) of defense articles from United States commercial suppliers . . ."[106] However, this authority does not apply to any Major Defense Equipment, "other than helicopters and other types of aircraft having possible civilian applications." [107] A Presidential determination is required for each such lease; it must state that "there are compelling foreign policy or national security reasons for those

[specific] defense articles being provided by commercial lease rather than by government-to-government sale" under the AECA.[108]

Assistance to Pakistan

One of the most controversial issues confronting Congress during the final weeks of deliberation on security assistance appropriations for FY 1988 involved the question of aid to Pakistan. This strategically placed South Asian nation has proven a useful source for assistance to the resistance forces fighting the Soviets in neighboring Afghanistan. Moreover, although Pakistan has in recent years improved its air defense and air transport capabilities with the acquisition of U.S. F-16 fighter and C-130 cargo aircraft, it remains in urgent need of upgrading much of its ground force equipment. It also has substantial economic problems. These include a total external debt exceeding \$12 billion, with a debt servicing requirement in FY 1988 expected to reach almost \$2 billion, representing over 20 percent of its projected total foreign exchange earnings. To aid Pakistan, the Administration proposed \$290 million in FMSCR and \$250 million in ESF for FY 1988 as the initial increment of a reported six-year, \$4.2 billion overall security assistance program.[109]

Pakistan, however, is widely believed by many in Congress and elsewhere to be engaged in an ongoing nuclear weapons development program. Such a program brings Pakistan into direct conflict with the nuclear non-proliferation provisions of Section 669, FAA of 1961, the "Symington Amendment" (so-named for its legislative sponsor, former Senator Stuart Symington, D., Missouri). The Section 669 provisions essentially deny any U.S. funded military assistance or economic assistance to any country involved in the transfer or receipt of nuclear enrichment equipment, materials, or technology unless an agreement exists whereby any such transfers are conducted under multilateral auspices and management, when available, and the recipient country agrees to participate in the nuclear safeguards system established by the International Atomic Energy Agency.

Mindful of Soviet aggression in Afghanistan, Congress, in 1981, authorized the granting of a special waiver for Pakistan of the prohibitions of Section 669 which thereby made it eligible to receive U.S. assistance. However, Congress limited the special waiver authority to a six-year period, ending on September 30, 1987. Responsibility for authorizing the waiver was placed with the President who was required to determine that the furnishing of assistance to Pakistan was "in the national interest of the United States.[110] President Reagan issued the required determination on February 11, 1982.

That waiver authority expired as Congressional committees were involved in debating the FY 1988 appropriations bill and attempting to develop a plan for dealing with Pakistan. The issue was intensified by the report of the October arrest of a Pakistani-born Canadian citizen, Mr. Arshad Z. Perez. He was subsequently convicted in the U.S. on December 17, 1987, of conspiring with a retired Pakistani brigadier general to try "to export to Pakistan a speciality steel used in uranium-enriching centrifuges. . ."[111] This case recalled a similar incident in 1984 when a Pakistani national was convicted in the U.S., "for attempting to illegally export to Pakistan equipment of potential application to nuclear explosives . . ."[112] It was this 1984 case which prompted Congress to pass legislation denying assistance to any non-nuclear weapons state involved in the illegal export, or attempt to export, from the United States any nuclear weapons-related material, equipment, or technology.[113]

Faced with these multiple considerations, it is not surprising that the two appropriations committees took different approaches in recommending a policy on aid to Pakistan. The House Appropriations Committee (HAC) proposed a new Section 669 Presidential waiver authority, but limited it to the period January 15 to September 30, 1988. The HAC also proposed requirements for a detailed Presidential report on the Pakistani uranium enrichment program, to include any

measures taken by Pakistan to prevent further incidents of illegal exports of nuclear-related material, and also any Pakistani-furnished assurances against any procurements which would "contribute significantly to the ability of Pakistan to manufacture a nuclear explosive device." [114]

For its part, the Senate Appropriations Committee (SAC) approved another six-year exemption for Pakistan, terminating on September 30, 1993. However, the SAC introduced a novel and extremely complex set of regulatory provisions that would have linked the nuclear weapons development programs of Pakistan with those of India. Treating the issue in terms of a regional approach, identified as "The South Asia Provision," the SAC proposal, in essence, would have permitted assistance to either Pakistan or to India if the President were to determine that the other country was producing materials for nuclear weapons. [115]

As the FY 1988 CR was sent into the Conference Committee with these very different and highly detailed HAC and SAC provisions, one might have anticipated a compromised resolution which incorporated elements of each Committee's proposals. However, what actually resulted was the surprising elimination of all of the substantial reporting and regulatory provisions which had been proposed by the two committees. The Conference Committee merely reported out a waiver of the Section 669 prohibitions which was subsequently enacted and which authorizes the President to exempt Pakistan for approximately a two-and-a-half year period, until April 1, 1990. [116] The renewed waiver authority, therefore, permits the Administration to allocate the FY 1988 security assistance funding to Pakistan as earmarked in the CR, i.e., \$260.0 million in FMS credits (of which \$30.0 million will be "forgiven" credits) and \$220.0 million in ESF grants.

MISCELLANEOUS COUNTRY-SPECIFIC LEGISLATION

As in previous years, the FY 1988 CR includes a variety of prohibiting, limiting, and regulating provisions governing the furnishing of security assistance to several countries. The most widely publicized of these involve **Panama**, where in June 1987 a pro-government mob attacked the U.S. Embassy. Shortly thereafter the Reagan Administration decided to withhold assistance to Panama, citing actions by the Noriega government to violently suppress domestic political demonstrations and to curb political freedoms. Both the HAC and SAC supported the Administration's human rights-based decision. [117] Accordingly, Congress subsequently enacted legislation which prohibits any U.S. assistance to Panama [including any previously appropriated assistance] in FY 1988 "and any fiscal year thereafter," to include a prohibition on the funding of any U.S. participation in joint military exercises conducted in Panama during the period January 1, 1988 through December 31, 1988. [118] The prohibition on aid to Panama, however, excluded certain categories of assistance, to include: developmental assistance provided through private and voluntary, or non-governmental associations/agencies; food, medicine, and disaster relief assistance; assistance under the Inter-America Foundation Act; financial aid to Panamanian students studying in the U.S.; and assistance for any termination costs arising from the suspension of U.S. assistance. [119]

Under the new legislation, any future provision of U.S. assistance to Panama is dependent upon a Presidential certification to Congress that:

- (1) the Government of Panama has demonstrated substantial progress in assuring civilian control of the armed forces and that the Panama Defense Forces and its leaders have been removed from non-military activities and institutions;
- (2) the Government of Panama is conducting an impartial investigation into allegations of illegal actions by members of the Panama Defense Forces;
- (3) a satisfactory agreement has been reached between the governing authorities and representatives of the opposition forces on conditions for free and fair elections; and

(4) freedom of the press and other constitutional guarantees, including due process of law, are restored to the Panamanian people.[120]

The legislation also adds that if the above conditions are certified as having been met, then it is the "sense of Congress" that in addition to restoring U.S. assistance, "increased levels of such assistance should be considered for Panama." [121]

In a related action, Section 571 of the CR established a trade sanction on Panama by eliminating its annual "sugar quota allocation." In effect, this new provision establishes a prohibition on the importation into the United States of "sugars, sirups, or molasses that are products of Panama . . ." This sanction may be lifted, however, if the President certifies that "for the entire duration of the [sugar] quota year, freedom of the press and other constitutional guarantees, including due process of law, have been restored to the Panamanian people."

Also of interest regarding this situation in Panama is a requirement established in the SAC Report which "directs the Department of State and Defense to provide the Committee with a report within 90 days of enactment of this legislation [i.e., March 21, 1988] which details the advisability of moving the United States Southern Command [USSOUTHCOM] from Panamanian soil." [122] The SAC pointed out that, "It is clear that General Noriega has used the presence of SOUTHCOM in his country as an indication of U.S. military support for his rule;" and the Committee concluded, "If that is the case, and General Noriega continues in power, serious consideration should be given to moving SOUTHCOM." [123]

The failure of the Government of **Haiti** to hold a scheduled national election on November 29, 1987, plus its acts of suppression and voter intimidation (including the deaths of nearly 20 unarmed citizens and many additional wounded), prompted Congress to suspend assistance to Haiti during FY 1988 (including any such assistance previously appropriated and obligated). [124] The suspension of aid for Haiti, however, is not all-encompassing; as in the case for Panama, certain exceptions are permitted. Thus, Haiti may continue to receive: private, non-governmental development assistance; assistance involving the donation of food and medicine; disaster relief and refugee assistance; assistance under the Inter-American Foundation Act; financial aid for the education of Haitians in the U.S.; and assistance for continuing migrant and narcotics interdiction operations. [125] In a "sense of Congress" statement included in the legislation, Congress further recommended that, "in order to further encourage the Government of Haiti to adhere to the constitutionally mandated transition to democracy, the President should "also effect the following additional sanctions: (1) suspend Haiti's eligibility for benefits under the Caribbean Basin Economic Recovery Act; and (2) seek international cooperation to encourage such adherence by the Government of Haiti through the imposition of an international arms embargo and comprehensive trade and financial sanctions." [126] The lifting of the suspension on aid to Haiti is contingent upon the Government of Haiti "fully and faithfully" adhering to "the democratic process set forth in the Haitian Constitution approved by the Haitian people on March 29, 1987, especially those provisions relating to the provisional Electoral Council. . . ." [127]

Two separate sections of the CR prohibit assistance to **Mozambique** where the Government has expropriated property of the Catholic Church and has permitted a substantial number of Soviet and Eastern Bloc military and security personnel to operate. Section 589 specifically prohibits any U.S. funded "military assistance" for Mozambique. Section 590 extends this prohibition to *all* U.S. funded assistance, but permits such assistance to be provided if the President reports to Congress on the extent to which:

- (1) the Government of Mozambique has entered into a dialogue with the Catholic Church regarding the return of church property;
- (2) the Government of Mozambique has taken steps to assure against future expropriation of private

property without due process and just compensation; and (3) the number of Soviet and Eastern bloc military and security personnel are being reduced.[128]

Both appropriations committees demonstrated concern over **Liberia** and what the HAC characterized as "the deteriorating economic and political situation in Liberia and the future of democracy and human rights in that country." [129] While not establishing a direct prohibition on assistance to Liberia, as in the above-discussed countries, Congress did require that the provision of military assistance or ESF aid for Liberia be contingent upon detailed certifications to Congress from both the Administrator for USAID and the Secretary of State. The requirements for the USAID Administrator's certification, in addition to identifying significant reforms by the Government of Liberia in a wide variety of critical national economic management areas, also calls for a statement that the Liberian Government "has ceased diverting and misusing United States assistance, and has paid all amounts owed to the local currency accounts . . . for the shortfalls in its payments for fiscal years 1983 and 1984. . . ." [130] The Secretary of State's certification requires a report that the Government of Liberia has made significant progress in a wide variety of human rights areas, such as freedom of assembly, press, and speech, as well as the maintenance of an independent legislature and an independent judiciary. This latter certification must further indicate that significant progress has also been made toward, "providing full access to all [Liberian] political prisoners by internationally respected human rights organizations for the purpose of investigating human rights abuses. . . ." [131] Finally, the CR adds that these new restrictions on aid to Liberia, "are in addition to any other statutory requirements applicable to assistance for Liberia." [132]

Special, narcotics-related provisions have been attached in the CR to the furnishing of U.S. funded assistance to **Peru, Jamaica and Bolivia**. In the case of Peru and Jamaica, the President, in making required determinations and reports to Congress on providing assistance to these countries, must "take into account the extent to which each country is sufficiently responsive to United States Government concerns on drug control and whether the added provision of assistance for that country is in the national interest of the United States." [133] For Bolivia, the President must determine the extent to which the Government of Bolivia has "significantly disrupted the illicit coca industry in Bolivia;" has cooperated with the U.S. in drug interdiction operations; has met narcotics eradication targets for 1985, or has adopted a plan for doing so with U.S. assistance in 1988 and beyond; and is making substantial progress toward the plan's objectives. [134] A related provision in the CR states that any security assistance funds withheld from a country because of its failure to take "adequate steps to halt illicit drug production or trafficking" may be reprogrammed for additional assistance "for those countries which have met their illicit drug eradication targets or have otherwise taken significant steps to halt drug production or trafficking." [135]

Additional country-specific legislative provisions in the FY 1988 CR include the following: a requirement that no U.S. security assistance funds for **Sudan, Jamaica, or Ecuador** be obligated or expended until appropriate notification of such planned obligations/expenditures is provided to the two Committees on Appropriations [136]; a prohibition similar to the foregoing on the obligation or expenditure of any FMSCR or ESF funds for **Lebanon** [137]; a prohibition on the use of any funds appropriated in the CR to finance *directly* any assistance or reparations to **Angola, Cambodia, Cuba, Iraq, Libya, the Socialist Republic of Vietnam, South Yemen, Iran, or Syria** [138]; a similar prohibition on the obligation of any funds in the CR to finance *indirectly* any assistance or reparations to any of the foregoing countries (except for Iran which is not included in this provision) [139]; a prohibition on the obligation or expenditure of ESF or military assistance funds for **Chile** [140]; and, in addition to other restrictions on assistance to **El Salvador** (see earlier discussion of ESF), a further provision requiring that \$5.0 million of the combined MAP, IMET, and FMSCR funds allocated to El Salvador be withheld from expenditure until the President reports:

following the conclusion of the Appeals process in the case of Captain Avila, to the Committees on Appropriations that the Government of El Salvador has (1) substantially concluded all investigative action with respect to those responsible for the January 1981 deaths of the two United States land reform consultants Michael Hammer and Mark Pearlman and the Salvadoran Land Reform Institute Director Jose Rodolfo Viera, and (2) pursued all legal avenues to bring to trial and obtain a verdict of those who ordered and carried out the January, 1981, murders.[141]

Similar provisions involving El Salvador have been in every annual appropriations act since the enactment of P.L. 98-473 in October 1984.[142] With no adequate resolution of this case during that period, a total of \$15.0 million in assistance has been withheld from El Salvador during the period FY 1985-FY 1987.

CONCLUSION

As revealed in the preceding discussion, Congressional appropriations for FY 1988 security assistance programs are well below those of the previous year, and substantially below those requested by the Administration. Of the overall 119 country and regional/special programs proposed for the FY 1988 Security Assistance Program, only two countries, Israel and Egypt, were fully funded at the requested levels; these two countries were also the only ones to receive full funding in FY 1987. The impact of the overall reductions in funding, together with the extensive earmarking of the FMSCR, MAP and ESF accounts, has, in the words of the Department of State, "almost eliminated our flexibility in allocating" security assistance resources.[143] Further, "The Administration is seriously concerned that these [FY 1988] funding constraints have meant such drastic cuts and even the elimination of many programs" for FY 1988.[144]

Since the enactment of the FY 1988 CR, the Departments of Defense and State and USAID have been consulting with the Congress on "ways to lessen the impact of the FY 1988 reductions," but no actions are expected to occur which could make up the shortfall for FY 1988.[145] In FY 1987, faced with similar budget cuts, the Administration proposed a supplemental appropriations bill involving \$758.0 million for security assistance programs. Congress subsequently passed a FY 1987 supplemental, but only provided therein an additional \$363 million.[146] No such source of partial relief is likely for FY 1988 inasmuch as an understanding was reached between Congress and the Administration during the November, 1987, "budget summit" that no supplemental funding would be sought for FY 1988.

Some small measure of funding relief may come in FY 1989. The budget proposal for next year, which was submitted to Congress on February 18, 1988, includes a request for an aggregate 3.4 percent increase in the five principal security assistance accounts. Although this is notably above the two percent increase which the November 1987, "budget summit" approved for overall foreign assistance in FY 1989, it is seen as vital in meeting fundamental security assistance requirements. If enacted at the requested level, the FY 1989 budget would raise funding to \$8,292.19 million, as compared to the \$8,017.16 million appropriated for FY 1988.[147] Notwithstanding such an increase, as the Department of State has reported, "It is highly unlikely that we will approach previous levels of assistance for several years." [148]

It is also clear from the preceding report that Congress brought into play for FY 1988 a wide variety of new legislative provisions governing security assistance. These range from prohibitions on sales of certain defense articles (i.e., Stinger missiles, antitank ammunition, etc.), and prohibitions on assistance to specific countries (Panama, Haiti, etc.), plus the expansion of previous authorities (the Southern Region Amendment, the War Reserve Stockpiles, etc.), and the introduction of new programs (FMS debt reform, commercial leasing, etc.). These various legislative provisions, together with the funding problems for FY 1988, present a complex

management problem for the security assistance community. Not only are there many more rules and procedures which must be developed for implementing the regulatory provisions of P.L. 100-202, but even more difficult will be the requirements for exacting maximum benefits from the minimal funds available for security assistance. Thus, FY 1988 will indeed be another year of austerity for security assistance, and, unfortunately, several more such years are likely.

NOTES

1. Prepared statement by Secretary Shultz to the Subcommittee on Foreign Operations of the Senate Appropriations Committee, 7 August 1987, *Department of State Bulletin*, October 1987, pp. 7,11. The entire statement was reprinted in *The DISAM Journal*, Winter 1987-1988, pp. 29-38.
2. Secretary of State message 029684 (301607Z Jan 88), Subject: FY 1988 Security Assistance Allocations.
3. *Congressional Record*, October 14, 1987, p. H 8604. The continuing resolution mechanism has long been used by Congress in the absence of one or more of the required annual appropriations bills. However, until recent years, the CR was limited to a specific time period, usually until Congress could agree on the formal appropriations bill(s). In recent years, Congressional inability to pass such formal bills has led to increasing reliance on the CR to provide funding for an entire year. Further, such annual CR's have come to include a growing number of separate appropriations bills, leading to FY 1987 and FY 1988 when all 13 of the annually required bills were wrapped into single CRs. Congressional members are among the most vocal critics of the CR, complaining about their individual inability to influence specific appropriations contained in such a massive bill. The Administration is also critical, particularly inasmuch as the all-encompassing CR ties the President's hands: lacking an item veto, his only final recourse in dealing with unacceptable provisions is to veto the entire bill, an act that would provoke a government shutdown. Finally, Congressional reliance on CRs projects an image of an abandonment of fiscal responsibilities and the breakdown of the U.S. budget process.
4. U.S. House of Representatives. *Foreign Operations and Export Financing, and Related Programs Appropriations Bill, 1988*. Report 100-2873 of the Committee on Appropriations to accompany H.R. 3186, August 6, 1987, p. 7. Hereafter cited as *HAC Report*. The security assistance program appropriations levels recommended by the Committee were as follows (dollars in millions): FMSCR, \$3,891.14; MAP, \$712.50; IMET, \$56.00; ESF, \$3,141.41; and PKO, \$31.69.
5. Felton, John. "Foreign Aid Funding Escapes Drastic Cutbacks," *Congressional Quarterly Weekly Report*, December 26, 1987, p. 3200.
6. *Ibid.*
7. *HAC Report, op. cit.*, p. 91.
8. The 7-to-10 ratio for the distribution of military assistance to Greece and Turkey has its origin in their 1974 conflict over Cyprus and in a provision of the International Security Assistance Act of 1977 which reflects Congressional interest in maintaining a balance of military strength among the two countries. The FY 1980 security assistance budget reflected the first Congressional application of the 7-to-10 ratio, although no explicit requirement for its application was established by statute. Moreover, despite occasional Congressional efforts, the ratio has never been incorporated in law as a statutory requirement. Nevertheless, the Congress has consistently applied the ratio in every budget year since FY 1980. Annual appropriations committee reports repeatedly refer to its employment in establishing military aid levels for the two countries; the latest such example is contained in the FY 1988 HAC Report, *op. cit.*, p. 97. Thus, the 7-to-10 ratio has become a fixed feature of U.S. security assistance.
9. *HAC Report, op. cit.*, p. 97.
10. Section 582, P.L. 100-202. Unless otherwise specified, all references to P.L. 100-202 which follow pertain to that portion of the FY 1988 CR which incorporates the *Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988*.

11. *Ibid*, pp. 43-44.
12. Section 562, P.L. 100-202, as amends Section 620C, FAA.
13. The initial FY 1987 MAP appropriation was \$900.0 million. A supplemental appropriation (P.L. 100-71) provided an additional \$50.0 million in MAP, earmarked for the Philippines.
14. U.S. Government, *Congressional Presentation for Security Assistance Programs for Fiscal Year 1988*, p. 335. Hereafter cited as *FY 1988 CPD*.
15. *Ibid.*, p. 53.
16. U.S. Senate. *Foreign Assistance and Related Programs Appropriation Bill, 1988*, Report 100-236 of the Committee on Appropriations to accompany S 1924, December 4, 1987, pp. 197-198, Hereafter cited as *SAC Report*.
17. Prior to FY 1982, appropriated MAP funds were used to transfer defense articles, services, and training directly to eligible foreign countries on a grant basis. During FY 1950-FY 1981, the U.S. expended over \$54 billion in support of this program. U.S. Government, *Defense Security Assistance Agency, Foreign Military Sales, Foreign Military Construction Sales and Military Assistance Facts*, September 30, 1986, p. 52.
18. *HAC Report, op. cit.*, p. 94.
19. Title III, Military Assistance, P.L. 100-202.
20. *HAC Report, op. cit.*, p. 107.
21. *Ibid*
22. Section 558, P.L. 100-202.
23. Title III, Military Assistance, P.L. 100-202.
24. *Ibid* and *FY1988 CPD, op. cit.*, p. 54.
25. *Foreign Assistance and Related Programs Appropriations, 1982* (P.L. 99-121).
26. *HAC Report, op. cit.*, p. 95, and *SAC Report, op. cit.*, p. 209.
27. *SAC Report, op. cit.*, p. 209.
28. Security Assistance Management Manual (SAMM) DOD 5105.38-M, pp. 10-10 through 10-13.
29. *SAC Report, op. cit.*, p. 209.
30. *Ibid*.
31. *Ibid*.
32. *HAC Report, op. cit.*, p. 95.
33. From a prepared statement by General Gast presented to the Arms Control Subcommittee of the House Foreign Affairs Committee on March 3, 1987. Reprinted in *The DISAM Journal of International Security Assistance Management*, Spring 1987, p. 52.
34. Section 588, P.L. 100-202, as amends Section 638, FAA. Also, the House Foreign Affairs Committee included a similar provision in its proposed authorization bill, H.R. 3100.

35. Section 580, P.L. 100-202, as amends Section 21(g), AECA.
36. U.S. Senate. *Foreign Assistance and Related Programs Appropriation Bill, 1987*, Report 99-443 of the Committee on Appropriations to accompany S. 2824, September 16, 1986, p. 120.
37. Section 319, P.L. 100-180 (December 4, 1987), as adds Section 4415 to Chapter 407, Title 10, U.S. Code.
38. *FY 1988 CPD*, *op. cit.*, p. 56, and *SAC Report*, *op. cit.*, p. 170.
39. *HAC Report*, *op. cit.*, p. 79, and *SAC Report*, *op. cit.*, p. 170.
40. Title II, Bilateral Economic Assistance, P.L. 100-202.
41. *FY 1988 CPD*, *op. cit.*, pp. 7-9.
42. Title II, Bilateral Economic Assistance, P.L. 100-202.
43. Section 531, P.L. 100-202.
44. Title II, Bilateral Economic Assistance, P.L. 100-202.
45. *Ibid.*
46. *Ibid.*
47. *Ibid.*
48. *Ibid.*
49. *Ibid.*
50. *Ibid.*
51. Section 540, P.L. 100-202.
52. Section 539, P.L. 100-202.
53. Section 579(a), P.L. 100-202, as amends Section 534(b)(3), FAA.
54. *Congressional Record*, December 21, 1987, p. H12679
55. Section 579(b), P.L. 100-202, as amends Section 534(e), FAA.
56. *FY 1988 CPD*, *op. cit.*, p. 61.
57. Department of State message 029684 (301607Z Jan 88), Subject: FY 1988 Security Assistance Allocations.
58. *SAC Report*, *op. cit.*, p. 228.
59. *HAC Report*, *op. cit.*, pp. 97-98. See Samelson, Louis J., "Congress and the Fiscal Year 1987 Security Assistance Budget: A Study in Austerity," *The DISAM Journal*, Winter, 1986-1987, pp. 22-23.
60. Section 51(b), AECA
61. Section 114c, Title 10, United States Code
62. *FY 1988 CPD*, *op. cit.*, p. 353:

63. SAC Report, *op. cit.*, p. 227.
64. HAC Report, *op. cit.*, p. 97.
65. SAC Report, *op. cit.*, p. 227.
66. HAC Report, *op. cit.*, p. 97.
67. *Ibid.*
68. Title III, Military Assistance, P.L. 100-202.
69. FY 1988 CPD, *op. cit.*, p. 353.
70. Section 106b, P.L. 99-83.
71. HAC Report, *op. cit.*, p. 25.
72. *Ibid*, pp. 25-26.
73. HAC Report, *op. cit.*, p. 27.
74. SAC Report, *op. cit.*, p. 31.
75. *Ibid.*
76. Title III, Military Assistance, P.L. 100-202.
77. *Congressional Record*, December 21, 1987, p. H 12677.
78. *Ibid.*
79. The term "market rates of interest" as employed in connection with FMS credit sales, is formally defined as "any rate of interest which is equal to or greater than the current average interest rate (as of the last day of the month preceding the financing of the procurement under this section) that the United States Government pays on marketable obligations of comparable maturity." Sec. 23(c)(2)(B), AECA.
80. Felton, *op. cit.*, p. 3201.
81. HAC Report, *op. cit.*, p. 17. The Administration's proposal involved two alternatives for meeting the problem of debt relief. The first, "prepayment at par," would have permitted countries to borrow money at lower interest rates from international capital markets, or use their own resources to liquidate high interest rate FMS loans without a prepayment penalty. The U.S. Government, however, would not guarantee any funds which might be borrowed to repay these loans. Alternatively, the proposal would have allowed the U.S. Government to reduce the original interest rates on the high interest rate FMS loans to a current market rate of interest, and capitalize the difference in payment between the old and new rates. The capitalized amounts would then have been repaid with interest at the end of the loans' original maturity. This latter approach therefore, would have enabled some countries to benefit from a temporary reduction in FMS servicing. See U.S. Government, *Congressional Presentation for Security Assistance Programs, Fiscal Year 1988*, p. 52.
82. Section 563, P.L. 100-202.
83. *Ibid.*
84. HAC Report, *op. cit.*, pp. 17-20.
85. *Congressional Record*, December 21, 1987, p. H 12677.

86. Title III, Military Assistance, P.L. 100-202.
87. Section 573, P.L. 100-202.
88. Section 508, P.L. 100-71, July 11, 1987.
89. Section 567, P.L. 100-202.
90. Defense Security Assistance Agency (DSAA-OPS-E) message 281519Z July 1987, Subject: "Restriction on Sale of M833 Anti-Tank Ammo."
91. *SAC Report, op. cit.*, p. 102.
92. Section 535(a), P.L. 100-202.
93. Section 535(b), P.L. 100-202.
94. *HAC Report, op. cit.*, p. 93.
95. *SAC Report, op. cit.*, pp. 49-50.
96. Section 523, P.L. 100-202.
97. DSAA-OPS-E message, 161546Z Feb 88, Subject: "FY 88 Security Assistance Legislative Provisions for Congressional Notification."
98. See Section 513, P.L. 99-190, December 19, 1985 and Section 513, P.L. 99-591, October 30, 1986.
99. Section 513, P.L. 100-202.
100. U.S. House of Representatives. *National Defense Authorization Act for FY 1987*. Conference Report to Accompany S. 2638, October 14, 1986, p. 518. See also Section 1101, P.L. 99-661, 100 Stat 3816, which added Section 516 to the FAA of 1961.
101. Section 582, P.L. 100-202.
102. Title III, Military Assistance, P.L. 100-202.
103. *FY 1988 CPD*, p. 356.
104. Section 556, P.L. 100-202, as amends Section 61(a), AECA.
105. *Cf.*, Samelson, 1987, *op. cit.*, p. 23.
106. Section 572, P.L. 100-202, as amends Section 23(a), AECA.
107. *Ibid.*
108. *Ibid.*
109. *FY 1988 CPD*, pp. 202-205.
110. Section 763, P.L. 97-113, 95 Stat 1561, which added Section 620E to the FAA of 1961.
111. *SAC Report, op. cit.*, p. 33.
112. U.S. House of Representatives. *International Security and Development Cooperation Act of 1985*. Report of the Committee on Foreign Affairs on H.R. 1555, April 11, 1985, p. 99.

113. Section 1204(a), P.L. 99-83, 99 Stat. 277, which amended Section 670(a)(1)(B) of the FAA of 1961.
114. *HAC Report, op. cit.*, p. 106.
115. *SAC Report, op. cit.*, pp. 33-35.
116. Section 557, P.L. 100-202, as amends Section 620E(d), FAA of 1961.
117. *HAC Report, op. cit.*, p. 44, and *SAC Report, op. cit.*, p. 32.
118. Section 570(a), P.L. 100-102.
119. Section 570(c), P.L. 100-102.
120. Section 570(a), P.L. 100-102.
121. Section 570(b), P.L. 100-102.
122. *SAC Report, op. cit.*, p. 32.
123. *Ibid.*
124. *Ibid.*, p. 41, and Section 569(a), P.L. 100-202.
125. Section 569(b), P.L. 100-202.
126. Section 569(c), P.L. 100-202.
127. Section 569(a), P.L. 100-202.
128. Section 590, P.L. 100-202.
129. *HAC Report, op. cit.*, p. 37.
130. Section 555(a)(1), P.L. 100-202.
131. Section 555(a)(2), P.L. 100-202.
132. Section 555(c), P.L. 100-202.
133. Section 534(a), P.L. 100-202. The basic requirements for these narcotics-related Presidential determinations are provided in Section 481(h)(3), FAA.
134. Section 534(b), P.L. 100-202.
135. Section 549, P.L. 100-202.
136. Section 546, P.L. 100-202.
137. Section 533, P.L. 100-202. It should be noted that no FMSCR or ESF funds were allocated by the Administration for FY 1988 for Lebanon.
138. Section 512, P.L. 100-202.
139. Section 554, P.L. 100-202.
140. Section 551(b), P.L. 100-202.

141. Section 542, P.L. 100-202.
142. See Samelson, Louis J., "Security Assistance Appropriations for Fiscal Year 1985," *The DISAM Journal*, Winter 1984-1985, p. 19 and note 18 on p. 34.
143. Department of State message, *op. cit.*
144. *Ibid.*
145. *Ibid.*
146. P.L. 100-71, July 11, 1987. See also Samelson, Louis J. "Supplemental FY 1987 and Pending FY 1988 Security Assistance Appropriations," *The DISAM Journal*, Fall, 1987, pp. 8-9.
147. The Administration's FY 1989 budget proposal includes the following funding requests for security assistance (\$ in millions): FMSCR, \$4,460.0 (all in forgiven credits); MAP \$467.0; IMET \$52.5; ESF, \$3,281.0; and PKO, \$31.7.
148. Department of State message, *op. cit.*

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