
SECURITY ASSISTANCE LEGISLATION AND POLICY

Fiscal Year 1992 Security Assistance Legislation: A Status Report

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INTRODUCTION

On 1 October 1991, at the start of Fiscal Year 1992, the security assistance community found itself lacking an appropriate legislative base, as Congress had failed to pass either an authorization act or a regular appropriations act for the new year. Moreover, by the end of 1991, as this article was being finalized, the situation remained fairly static: FY 1992 security assistance operations were being funded by a temporary *Joint House Continuing Appropriations Resolution*, and hope had faded for the passage of an authorization act for FY 1992. The only significant new legislation relating to security assistance was contained piecemeal in several other acts, as described later in this article.

Such a legislative condition is not especially unique. No security assistance authorization act has been passed in over six years, or since the 8 August 1985 enactment of Public Law 99-83, the *International Security and Development Cooperation Act of 1985* which contained security assistance and related authorizations for both 1986 and 1987. In the four fiscal years which followed (FY 1988-1991), the authorizations for security assistance and other foreign assistance programs were provided in special language contained in the annual appropriations legislation.¹ Similarly, continuing resolutions (CRs) were a common governmental funding source in the late 1980s. Such resolutions typically had been used as stopgap measures until regular appropriations acts could be passed. However, the CR lost its temporary and limited character in FY 1987 and FY 1988 when security assistance was funded throughout each of the two years in so-called *omnibus continuing resolutions* which also affected numerous other government programs. As shall be shown, a comparable condition may apply in FY 1992.

The absence of the two principal annual laws associated with security assistance, therefore, has been a fairly common event in past years. What is particularly different about the current fiscal year is that the original prospects for passing both an authorization act and an appropriations act were quite high, for significant and promising changes had occurred in the legislative process. By the summer of 1991, most observers felt fairly optimistic that the two bills would be passed. Unfortunately, their optimism proved to have been misplaced. The discussion which follows helps explain these developments, and also describes the several new items of security assistance-related legislation that were enacted.

¹The same conditions applied in both FY 1984 and FY 1985 for which Congress also failed to pass annual authorization acts.

THE FOREIGN ASSISTANCE AUTHORIZATION BILL

A foreign assistance authorization bill is a reflection of Senate and House attitudes on U.S. foreign policy, and is therefore viewed as an important Congressional statement, even if it fails to be enacted. The failure of Congress to pass such a bill in recent years has generally been attributed to strong partisan political differences in the Senate, particularly within the Senate Foreign Relations Committee (SFRC) which has cognizance in the Senate over this legislation. While the House Foreign Affairs Committee (HFAC) and the full House regularly have been successful in passing a House version of an authorization bill, the leadership in the SFRC [Chairman Claiborne Pell (D-RI) and ranking minority member Jesse Helms (R-NC)] reportedly have generally been in conflict, over basic foreign policy issues, and this has precluded agreement within the committee on a bill which could be sent out to the full Senate for consideration.² As a consequence, the SFRC has fallen in prestige and authority; moreover, since enabling authorizations have had to be incorporated in the appropriations legislation, the Appropriations Committees in both Houses have substantially enhanced their roles in U.S. foreign policy and in associated U.S. foreign assistance programs.

A basic change in organizational strategy occurred within the SFRC in 1991, and was widely seen as having significantly altered the legislative process. In order to break through the partisan impasse in the SFRC, Pell and Helms agreed to forego their normal personal management of the authorization bill and they shifted most of the responsibility for structuring the bill to a newly strengthened SFRC Subcommittee on International Economic Policy. Pell and Helms further agreed to the appointments of Senator Paul S. Sarbanes (D-MD) and Senator Mitch McConnell (R-KY) as the joint managers of the foreign assistance authorization bill.³ This approach worked: on 11 June by a vote of 17 to 2, the SFRC voted out its version of an FY 1992-1993 authorization bill (S. 1435, redesignated as H.R. 2508); and with Sarbanes and McConnell managing it on the floor, the bill easily cleared the Senate by a vote of 74-18 on 26 July.

For its part, the HFAC had earlier approved its version of a two-year authorization bill (H.R. 2508) by voice vote on 4 June, and the bill was then passed 274-138 by the full House on 20 June. Since there were considerable differences in the two versions of the bill, a Joint Conference Committee comprised of selected members of the SFRC and the HFAC met in September and reported out their agreement to a joint version of the bill on 27 September. The Senate promptly approved the Conference Committee Report on 8 October, and it appeared that a similar action would soon occur in the House. It was at this point, however, that the bill ran into problems that reflected important contemporary political issues which were only indirectly related to U.S. security assistance considerations.

The bill which passed through both Houses and emerged from the Conference Committee incorporated many of the changes and additions to security assistance legislation which had been proposed a few years earlier; a special HFAC Task Force was established in 1988 to study existing foreign assistance legislation, and to make recommendations for needed alterations in the law. The Task Force, headed by Representatives Lee Hamilton (D-IN) and Benjamin A. Gilman (R-NY), submitted a report in February, 1989, which contained sweeping changes to the Foreign Assistance Act of 1961 and to the Arms Export Control Act.⁴ Although the 1989 effort failed to

²Doherty, Carroll J., "Panel Unanimously Approves Authorization Measure," *Congressional Quarterly*, June 8, 1991, p. 1523.

³Ibid.

⁴U.S. House of Representatives. *Report of the Task Force on Foreign Assistance to the Committee on Foreign Affairs*. February, 1989, 101st Congress, 21st Session, Report No. 93-740. For an outline of the Task Force

be adopted by the Congress, largely because of the internal Senate problems discussed above, many of the Task Force's legislative proposals were subsequently embraced by the Bush Administration and were incorporated in its legislative submission for foreign assistance authorizations for FY 1992. For example, the proposed legislation included the following: (1) major revisions/updates of statutory provisions throughout the FAA and the AECA; (2) numerous changes in FMS reporting procedures, including standardized Congressional notification periods with increased and common case value dollar thresholds; streamlined procedures for managing commercial arms sales and coproduction programs, and for the transfer of excess defense articles; new requirements for the financial management of the FMS program; and an expansion of the President's emergency military drawdown authority. These and numerous other changes survived the Conference Committee process, and the resultant bill, if enacted, would have impacted on the entire gamut of rules governing the conduct of U.S. military assistance. A detailed analysis was conducted by this author of the changes proposed in the Conference Committee Report on H.R. 2508; the preliminary report of this analysis, which focused on general security assistance requirements, exceeded thirty typewritten pages, and did not include any discussion of the bill's numerous country-specific provisions. To aid in the passage of the bill, the Conference Committee amended certain provisions to which the Administration had objected. However, not all of the changes were acceptable to the Administration, and the Committee report continued to include several controversial provisions which had been in the original House and Senate versions and which remained the source of a threatened Presidential veto. Although a veto proved not to be required, these various provisions did play a role in the failure of the bill, and they are briefly discussed below.

Family Planning Assistance and Funding for the United Nations Population Fund. These related issues reflect the Administration's "Mexico City Policy," so-named for an international family planning conference held there in 1984. At that Conference, the Reagan Administration announced a policy of prohibiting U.S. assistance to any foreign, non-governmental organizations that perform or actively promote abortions. Subsequently, the Bush Administration embraced the same policy, and it was unwilling to accept a provision in the proposed authorization bill which would have repealed the "Mexico City" restrictions. Similarly, opposition to the U.N. Population Fund reflected concern within the Bush Administration that a Congressionally-proposed \$20 million earmark for this U.N. family planning agency would permit funds to be provided to the People's Republic of China (PRC), a country which promotes a national policy of coerced abortions and sterilizations. In a 2 October letter, Deputy Secretary of State Eagleburger notified Congress that President Bush intended to veto any bill which would alter current U.S. abortion policy. Indeed, in 1989 President Bush vetoed a FY 1990 foreign assistance appropriations bill (H.R. 2939) largely because of a similar attempt to fund this same U.N. agency. Cognizant of the strength of the President's convictions on these related issues, the Conference Committee attempted to effect a compromise: the Mexico City policy repeal was deleted, and the language authorizing assistance for the U.N. Population Fund was strengthened to assure that China could not receive U.S. funds. However, the Administration viewed these changes as insufficient, and the compromise was rejected. Thereafter, a group of House abortion rights advocates led by Patricia Schroeder (D-CO) were successful in getting the Conference Committee to restore the language repealing the Mexico City policy, thereby further strengthening the likelihood of a veto.⁵

recommendations, see "Summary of the Task Force Report on Foreign Assistance," *The DISAM Journal*, Spring, 1989, pp. 58-9.

⁵Doherty, Carroll J., "Domestic Concerns Slow Authorization Measure," *Congressional Quarterly*, October 12, 1991, p. 2966.

Restraints on U.S. Arms Sales to the Middle East. A variety of arms control provisions were contained in the House and Senate versions of the authorization bill, all of which aimed at restraining U.S. arms sales to the Middle East. Much of the language associated with these provisions were directive in nature, i.e., they stated that the President *shall* do something--requirements which the Administration opposed as a Congressional usurpation of the foreign policy authority constitutionally reserved to the President. The Conference Committee altered most of the House/Senate provisions to read the President *should* do something, but the Committee report still contained a key provision opposed by the Administration which would require the President to impose a moratorium on arms transfers to the Middle East. This moratorium could be waived if two conditions were met: (1) the President would have to certify and report to Congress that the Secretary of State had made a good faith effort to convene an arms suppliers conference to negotiate multilateral restraints; and (2) the President would also have to provide Congress with a report of the Administration's conventional arms control plan for the region. Although these provisions were thought to provide the substance for a veto, the Administration actually adopted an identical form of the Conference Committee's proposal as it appeared in another law--the *Foreign Relations Authorization Act, Fiscal Years 1992 and 1993* (see discussion below).

Restrictions on Aid to Jordan. The House version of the authorization bill would have cut off all military aid to Jordan unless the President certified that Jordan: (1) had shown willingness to enter into negotiations with Israel; (2) recognized Israel's right to exist; and (3) did not provide aid to Iraq. These provisions represented an amendment to the authorization bill sponsored by Representative John Miller, R-WA. Despite strenuous opposition to this restrictive legislation by the State Department, the amendment passed the House by a vote of 410-8. However, the Senate bill contained no such provision, and the Miller amendment was eventually deleted by the Conference Committee. The proposal had, nevertheless, contributed substantially to the negative perceptions which the bill had come to evoke on Capitol Hill and in the White House.

Expansion of Cargo Preference Requirements. Managers of FMS programs in which Foreign Military Financing Program (FMFP) funds are used and ocean transportation is employed, are generally familiar with the requirement for using U.S. flag vessels for all such transportation.⁶ A new and fairly complex requirement involving these so-called "cargo preference" requirements was included in the authorization bill developed in the House and supported in the Conference Committee Report on H.R. 2508. This new provision would require that beginning in FY 1993, foreign countries which were recipients of U.S. economic assistance in the form of cash transfers would have to spend a specified percentage of their cash transfer assistance on the purchase of U.S. goods and services. (That percentage would be 15% in FY 1993, and rise to 35% in FY 1994, 55% in FY 1995, and 75% in FY 1996 and every year thereafter.) Most significantly, the proposed statute would provide a waiver from this requirement: most of the countries involved could be exempted if (1) they spent an amount equal to the amount of the cash transfer on the purchase of U.S. goods and services, and (2) they transported 50% of all bulk shipment purchases of U.S. grain on privately owned United States flag vessels.⁷ This provision was sponsored in the House by Representative Frank H. Murkowski (R-AK) with strong backing from U.S. maritime interests and their Congressional supporters who viewed the legislation as providing an incentive for the use of U.S. ships. However, the relatively higher cost of American shipping, and the limited number of such ships, particularly for transport to many Third World ports, led many lawmakers from the Midwest to oppose the provision, fearing that it could actually

⁶This requirement, of course, may be waived to permit shipment of up to 50 percent of such FMFP-financed cargo on vessels of the recipient country, and in certain instances on vessels of a third country; see Section 90208 F and Section 903 of the Security Assistance Management Manual, (SAMM), DOD 5105.38-M, and Section 901(b), Merchant Marine Act of 1936., as amended, 46 U.S.C. 1241.

⁷Section 124(2), *Conference Report on H.R. 2508*, 27 September 1991.

reduce foreign purchases of U.S. grain. The Bush Administration was similarly opposed, arguing that this provision would place unacceptable new restrictions on the furnishing of U.S. economic assistance. Thus, the incorporation in H.R. 2508 of an expanded cargo preference provision added to the threat of a Presidential veto of the bill.

As previously noted, the Conference Committee issued its report on the authorization bill (H.R. 2508) on 27 September, and the Senate voted its approval on 8 October by a vote of 61 to 38. However, support for the bill reportedly was weakening within the House, and over the next few weeks the bill was removed three times from the House calendar. Finally, on 29 October the House voted down the Conference Committee report by a sizable majority—159 to 262. Media reports suggest that this sound defeat reflected a fear that the Administration strongly opposed the bill and that a veto was guaranteed—a veto for which insufficient override votes could be mustered. This view, however, fails to take into account the fact that most of the members of the House were well aware of the Administration's opposition to the bill, and yet, in its original version, it passed the House by a comfortable vote of 274 to 138. It is clear that the President's opposition to the bill increased after the objectionable provisions cleared the Conference Committee, and so the veto threat had some effect on the outcome. Nevertheless, another factor—one of domestic economic uncertainty—came into play here. While it is clear that the U.S. economy was suffering setbacks in the Spring and Summer of 1991, the situation became far more serious as the economy further declined in the Fall. In the view of some Congressional observers, this economic issue was instrumental in the bill's failure. The fact is that the House was considering the authorization of substantial levels of *foreign assistance*—approximately \$12.5 billion for each of Fiscal Years 1992 and 1993. Many Congressmen apparently concluded that such spending simply would not sit right with the American people during a period of intensifying economic recession and increasing public demands for *domestic assistance*. Indeed, one writer characterized the negative House vote as “an America-first backlash against foreign aid that transcended partisan and ideological divisions.”⁸

Although it was originally thought that the House vote had effectively killed the chances for the passage of an authorization act for FY 1992, members of the HFAC made yet another effort to resurrect the bill. Many of the provisions which had been threatened by a Presidential veto were deleted, and a revised and renumbered bill was reintroduced into the House as H.R. 4070. However, although several attempts were made to call up the bill for consideration and a vote, none were successful and Congress adjourned on 27 November with no action taken.⁹ Although it is possible that the House might vote on this revised bill after Congress returns on 3 January, the changes which were made to the bill by the HFAC would probably also require the convening of a second Conference Committee, and of course another Senate vote would be required. In addition to these obstacles, the next session of Congress is apt to be preoccupied with preparing legislation for FY 1993 and FY 1994. Thus, it does not appear very likely that an FY 1992 authorization act will be enacted at this late date, and such a failure of the legislative process would thereby extend to five years (from FY 1988) the continuous conduct of U.S. foreign assistance without an authorization act.

THE FOREIGN OPERATIONS APPROPRIATIONS BILL

⁸Doherty, Caroll J., “House Defeats Foreign Aid Bill in Shadow of Domestic Woes,” *Congressional Quarterly*, November 2, 1991, p. 3215.

⁹Technically, the Congress did not adjourn on 27 November, but actually recessed until 3 January 1992, “subject to the call of the chair.” This recess would have permitted either the Congressional leadership or the President to recall the Congress to deal with important legislation (e.g., economic bills) or to attempt to override any Presidential vetoes. On 3 January the Congress held a *pro forma* session whereby they formally adjourned the 1st Session of the 102d Congress, and opened the 2d Session, only to recess for a district work period until 21 January.

Like the annual foreign assistance authorization bill, the counterpart FY 1992 Foreign Operations Appropriations bill also became unexpectedly stalled in Congress, and funding for FY 1992 foreign operations was relegated to a uniquely extended continuing resolution which permits funding until 31 March 1992. Early action on the bill was promising: on 19 June, by a very favorable vote of 301 to 102, the House approved H.R. 2621, the *Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1992*. This House bill provides a total of \$15.2 billion in appropriations for foreign operations, including security assistance. (Table 1 below identifies the security assistance funding levels in H.R. 2621.) Unfortunately, no comparable action was taken in the Senate, and as the new fiscal year was approaching, Congress passed and the President signed H.J. Res 332 into law on 30 September 1991 as P.L. 102-109. This was to be the first of two Joint House Continuing Appropriations Resolutions (CRs) affecting security assistance which were passed for FY 1992. The first CR provided funding from 1 October through 29 October for those government programs for which a regular appropriations bill had not been enacted. Under the provisions of this CR, ongoing security assistance and other government programs could be funded at the lower of either the FY 1991 appropriations levels (contained in P.L. 101-513, 5 November 1990) or the levels in the FY 1992 House-passed bill (H.R. 2621). Also, the funding in the CR was provided under the authorities and the conditions contained in the FY 1991 appropriations act.

As implied above, the passage of a CR normally reflects a temporary action to carry over funding until a regular appropriations bill can be enacted. In terms of the foreign operations appropriations act, much work remained to be accomplished: the Senate had to complete action on its version of the bill; then, a joint conference committee would have to reconcile differences between the House and Senate versions of the bill; finally, passage would have to occur in both Houses; and the President would have to sign the final bill. In mid-September it became clear that the bill might not clear the first hurdle—Senate action—for it had become stalled in the Senate with the emergence of a new and controversial issue: a request from Israel for a U. S. Government guarantee for \$10 billion in commercial loans to assist Israel in the absorption of an expected huge influx of Jewish emigrants from the Soviet Union. Since 1989, almost 350,000 Soviet Jews had emigrated to Israel, and the figure was expected to rise to one million by the end of 1995—a 25% increase in Israel's total population in just six years. A contentious public debate arose regarding the propriety of this request, and as the issue became highly politicized, the dialogue too often reflected a lack of understanding of what the Israelis were actually seeking. The requested loan guarantees represented a form of humanitarian assistance for which no direct U.S. loans or grants would be involved; rather, the U.S. Government was being asked to stand surety (i.e., serve as a "co-signer") for the commercial loans. Such guarantees would make it easier for Israel to obtain the loans and also aid in acquiring the funds at lower than prevailing general interest rates. The U.S. has historically provided similar loan guarantees to Israel, none of which have ever been defaulted; and the only U.S. budget funds that would be involved in the process were estimated as \$100 million in loan origination fees that would be paid by Israel from its U.S economic assistance account.

In response to the Israeli request, an "absorption guarantee" amendment to the Foreign Operations Appropriations bill was introduced in the Senate on 2 October under the sponsorship of 70 Senators; the amendment was designed to provide Israel with loan guarantees of \$2 billion for each of five fiscal years (i.e., FY 1992 through FY 1996) to assist in the settlement and absorption of Soviet and Ethiopian Jews. For its part, the Administration announced that it supported the Israeli request for humanitarian aid—indeed, that it had an "obligation to assist Israel with the absorption of Soviet Jews." In fact, the Administration reportedly had first been approached by the Government of Israel regarding this same loan guarantee request in March, 1991; the Administration then asked Israel to hold off on its request until September, and Israel complied, only to meet new resistance from the White House. The Administration had two related concerns: (1) furnishing the requested loans might be incorrectly linked to the West Bank settlements issue,

although less than two percent of the Soviet emigres have settled in the West Bank; and (2) such action might be viewed improperly as an act of U.S. favoritism toward Israel on the eve of a major Middle East Peace Conference that the U.S. Government had worked long and hard to arrange. In response to the Administration's request for what Secretary of State Baker described as "a delay of 120 days purely in order to give peace a chance," the Senate agreed to a compromise plan. The plan gave the Administration its requested delay, but the loan guarantee provisions remained tied to the passage of the FY 1992 foreign operations appropriations bill; in short, this meant that Senate action on the entire appropriations bill was deferred until February, 1992.¹⁰ Other options might have been selected. The Senate could have proceeded with the appropriations bill in October, and either (1) retained the loan guarantee amendment with an effective date of implementation designated in early CY 1992; or (2) the Senate might have deleted the amendment, passed the appropriations bill, and then in early 1992 reintroduced the subject of loan guarantees in separate legislation. Both options proved objectionable. The first option would have delayed implementation, but might have sent the same message of "favoritism" toward Israel as would have been the case with an immediate implementation; and the second option provided no assurance to the pro-Israel Senators that there would be an appropriate legislative vehicle available in early 1992 in which to include the loan guarantees. Also of concern was the possibility that the Administration, while supporting the concept of loan guarantees, might attempt to get the legislation amended, perhaps to add a provision prohibiting the loan funds from being used to support emigrant housing on the West Bank.

TABLE 1
A COMPARISON OF FISCAL YEAR 1992
SECURITY ASSISTANCE APPROPRIATIONS LEVELS
(DOLLARS IN THOUSANDS)

	FY 1991 APPROPRIATIONS (P.L. 101-513)	ADMINISTRATION'S FY 1992 REQUEST	HOUSE (H.R. 2621) LEVELS	CONTINUING RESOLUTION (P.L. 102-145)
FMFP	\$4,663,420.0	\$4,650,000.0 [1]	\$4,150,900.0 [2]	\$4,150,900.0
IMET	47,196.0	52,500.0	47,196.0	47,196.0
ESF	3,991,000.0 [3]	3,240,000.0	3,216,624.0	3,216,624.0
PKO	32,800.0	28,000.0	28,000.0	28,000.0
TOTALS:	<u>\$8,734,416.0</u>	<u>\$7,970,500.0</u>	<u>\$7,442,720.0</u>	<u>\$7,442,720.0</u>

[1] The Administration's request for FY 1992 FMFP funds included \$4,610.0M in grants and \$314.161M in direct loans furnished at concessional interest rates, for a total FMFP of \$4,924.161M. However, the current method for accounting for these concessional loans only requires an appropriation for the loan subsidy costs (i.e., the difference in costs between non-concessional loans and government-subsidized concessional loans, plus the inclusion of a relatively small administrative cost). The concessional loan request for FY 1992 carries a subsidy cost of \$40.0M which is included in the overall FMFP appropriation request above. In short, \$40.0 million buys a concessional interest rate loan program of \$314.161 million.

[2] The House proposed appropriation for FMFP included \$4,100.00M in grants and \$404.00M in concessional rate loans, for a total program of of \$4,504.00M. The subsidy cost for the proposed concessional loans amounts to \$50.9M, which is reflected in the table above.

[3] Includes original FY 1991 appropriation of \$3,141.00M plus Desert Storm-related FY 1991 supplemental ESF appropriation of \$850.00M (P.L. 102-187).

¹⁰The discussion above of the Israeli loan guarantee request was drawn largely from the Senate debate of this issue. Cf. *Congressional Record*, Vol. 137, No. 139, 2 October 1991, pp. S14105-S14120.

Thus, as the first CR for FY 1992 was about to expire (on 29 October), Congress passed and the President signed on 28 October a second CR (P.L. 102-145) which singled out foreign operations appropriations by granting continuing funding for an extraordinary period—from 30 October through 31 March 1992; all other government programs lacking a regular appropriations bill, were extended only through 14 November. The same funding levels, authorities, and conditions contained in the first CR were carried over into the second CR. Currently, it is generally thought that the crunch of legislation which Congress must face when it resumes its work in January, including the development of FY 1993 authorizations and appropriations for foreign assistance, may prompt the Congressional leadership to forego any further effort on the FY 1992 legislation. In this view, such a decision would mean extending the current CR to run through the remainder of fiscal year 1992, while developing an FY 1993 appropriations act; and, similarly, in terms of authorizations, to forego any additional effort on the FY 1992/1993 authorization bill, and focus on an FY 1993/1994 bill.

Table 1 above summarizes the relevant security assistance funding provisions which currently apply to FY 1992. The table reflects appropriations levels in: (1) FY 1991 (P.L. 101-513); (2) the Administration's FY 1992 request levels; (3) the funding levels in the House-passed FY 1992 bill (H.R. 2621) which was deferred in the Senate; and (4), the Continuing Resolution (P.L. 102-145) funding levels; the latter all coincide with the FY 1992 House levels which were the same or lower than the FY 1991 levels.

Although it failed to be enacted, the House-approved appropriations bill (H.R. 2621) contained several items of general interest to the security assistance community, and these are discussed below.

Funding Earmarks and Ceilings. The House-passed FY 1992 appropriations bill is notable for its restrictive use of earmarks, i. e., the mandating of specific levels of funding for particular countries or programs. For the Foreign Military Financing Program, only two countries, Israel and Egypt, were so earmarked, at \$1.8 billion and \$1.3 billion, respectively; these are the same funding levels the two countries have enjoyed annually since FY 1987. Nevertheless, these two earmarks together represent 74 percent of the total FMFP funding level of \$4,150,900,000, and it is likely that the Senate will further earmark the FMFP account for other countries. In addition to these earmarks, or perhaps one might say in place of some traditional earmarks, the House bill establishes ceilings on the FMFP funding for particular countries. Unlike earmarks, which establish mandatory minimal funding levels, ceilings establish discretionary maximum funding levels; in fact, a ceiling designation does not actually require that any funding be provided to a so-specified country. or program. The countries for which ceilings were established include the following: Greece, \$350M, Turkey, \$500M, and Portugal, \$100M; all three countries have generally been earmarked in prior year appropriations acts. The funding for Greece was at the level requested by the Administration, but the funding for Turkey and Portugal, respectively, was \$125M and \$25M below the requested funding levels. Additionally, a ceiling of \$118M was established for FMFP funds which could be used in support of the counter-narcotics program. The Administration had requested a total of \$137M in FMFP funds for that program, with the funds being divided among the Andean countries: Bolivia, \$40M, Colombia, \$58M, and Peru, \$39M; however, the House bill only specifies an aggregate amount (\$118M) for the three countries. Finally, the House bill provides a \$28.98M funding ceiling for the administrative expenses associated with the conduct of the FMS program.

The Special Defense Acquisition Fund (SDAF). The Administration requested an obligation authority (OA) for the SDAF for FY 1992 of \$275M . (The SDAF OA in FY 1991 was \$350M, which included a special \$100M procurement program proposed for Israel; this special

program failed to be enacted, but the extra \$100M was retained in the FY 1991 OA.) The House bill provides an OA of \$275M for FY 1992, identical to the level requested by the Administration.

Amendments to the House Appropriations Bill (H.R. 2621) The following provides a summary of selected amendments to the House appropriations bill which were passed on the floor of the House of Representatives on 19 June 1991.¹¹

An amendment sponsored by Representative James A. Traficant, Jr. (D-OH) reduced by 1% all of the funding provided in the House bill, except for those amounts provided for "International Narcotics Control" and for "Gifts to the U.S. for Reduction of the Public Debt." Representative David Obey (D-WI), Chairman of the Subcommittee on Foreign Operations which managed this legislation in the House, noted that the wording of the Traficant Amendment also excluded it from applying to "earmarked funds," i.e., funds designated for mandatory expenditure for specific countries, agencies, programs, etc.

An amendment involving military assistance to Jordan was sponsored by Representative Harold L. Volkmer (D-MO), and was further amended by an Obey substitute amendment. The final amendment would permit military assistance to Jordan in FY 1992 only if the President certifies that: (1) Jordan is taking steps to advance the peace process; (2) Jordan is complying with United Nations sanctions against Iraq; and (3) it is in the U.S. interest to provide such aid. Obey is cited as having said that his amendment was offered at the request of the Administration, and that the Administration would "provide no aid to Jordan unless the President certified that the Government of Jordan has taken steps to advance the peace process."¹² The Administration had requested \$25 million in grant FMFP assistance, plus \$2 million in IMET and \$30 million in ESF for Jordan for FY 1992.

OTHER SOURCES OF SECURITY ASSISTANCE LEGISLATION

The remainder of this articles will examine a variety of legislative bills which, unlike those discussed above, were actually enacted and which contain security assistance related provisions which are currently in effect.

THE FOREIGN RELATIONS AUTHORIZATION ACT FOR FY 1992 AND 1993.

This authorization act provides the general statutory authorities which permit the Department of State to carry out the functions, duties, and responsibilities involved in the administration of foreign affairs and other related activities. As such, the act does not generally address security assistance issues. However, the FY 1992-1993 act [P.L. 102-138, 28 October 1991] includes several provisions of interest to security assistance managers.

Middle East Arms Sales Policy. The first of these relevant provisions is found in Section 322 of the Act which sets forth a policy which Congress proposes be employed by the President with respect to future arms sales in the Middle East. This provision states that the President *should* (not *shall*) "transfer defense articles and services only to those nations that have given reliable assurances that such articles will be used only" in accordance with the standard use clauses expressed in Section 4, AECA, and elsewhere, i.e., internal security, legitimate self-defense, etc.¹³ New policy proposals follow: the President *should* "transfer defense articles and services to nations in the region only after it has been determined that such transfers will not con-

¹¹See *Congressional Record*, Vol. 137, No. 95, 19 June 91, pp. H4733-H4760.

¹²Ibid, p. H4749.

¹³Section 322, P.L. 102-138.

tribute to an arms race, will not increase the possibility of outbreak or escalation of conflict and will not prejudice the development of bilateral or multilateral arms control arrangements.”¹⁴ And finally, the President *should* “take steps to ensure that each nation of the Middle East that is a recipient of United States defense articles and services—(A) affirms the right of all nations in the region to exist within safe and secure borders; and (B) supports or is engaged in direct regional peace negotiations.”¹⁵ These latter provisions go right to the heart of the existing state of relations in the Middle East among the Arab states and Israel. Of course, these provisions only represent Congressional recommendations and they are not directive in nature. Nevertheless, as noted below, the Administration viewed these and related recommendations as an imposition on the President’s foreign policy authority.

Arms Transfer Restraint Policy for the Middle East and Persian Gulf Region. Sections 401-405 (which comprise Title IV) of P.L. 102-138, establish the rules for an arms transfer restraint policy, and is identical to the arms control provisions which were included in the Conference Report on the proposed FY 1992/1993 Foreign Assistance Authorization Act discussed above. In general terms, Section 401 describes the instability, the proliferation of weapons, and the threats to security which characterize the Middle East and Persian Gulf Region, and it concludes that, “future security and stability . . . would be enhanced through the development of a multilateral arms transfer and control regime similar to those of the Nuclear Supplier’s Group, the Missile Technology Control Regime, and the Australia Chemical Weapons Suppliers Group.” To effect such a regime, Section 402 states that the President “shall continue negotiations among the 5 permanent members of the United Nations Security Council and commit the United States to a multilateral arms transfer and control regime.” Section 402 also describes the purposes of such a regime (i.e., to prevent destabilizing arms transfers, to halt the proliferation of unconventional weapons and their ballistic missile delivery systems, and to promote regional arms control), and it prescribes methods for achieving the regime’s purposes (i.e., greater information-sharing among supplier nations, applying established procedures for controlling arms transfers, and promoting regional arms control achievements).

Direct action by the President is *required* in Section 403 which establishes a prohibition on the sale (either FMS or DCS) “of any defense article or defense service . . . to any nation in the Middle East and Persian Gulf region.” As prescribed in Section 403, this prohibition became effective 60 days after the enactment of The Foreign Relations Authorization Act, i.e., on 27 December. Like many such prohibitory provisions in security assistance legislation, these new requirements are accompanied by a waiver authority. Sections 403(1) and 403(2) permit the prohibition to be waived if the President:

- (1) certifies in writing to the relevant congressional committees that the President has undertaken good faith efforts to convene a conference for the establishment of an arms suppliers regime having elements described in section 402; and
- (2) submits to the relevant congressional committees a report setting forth a United States plan for leading the world community in establishing such a multilateral regime to restrict transfers of advanced conventional and unconventional arms to the Middle East and Persian Gulf region.

It should be noted that in an apparent anticipation of Presidential opposition to this section of the Act as it mandates an arms sales prohibition, the Conference Committee members included the following comments in the joint explanatory statement which accompanied their report:

¹⁴Section 322(2), P.L. 102-138.

¹⁵Section 322(3), P.L. 102-138.

The conferees believe that the President has met requirements to undertake good faith efforts to convene multilateral negotiations among the five permanent members of the U.N. Security Council. The conferees also believe that the President can easily meet the certification requirements of this section [Section 403]. The submission of such a report is consistent with the practice of preconsultation, consultation, and advance notification requirements that are currently associated with U.S. arms sales policy worldwide. The conferees do not believe this provision to be an onerous burden or an impingement on the authority of the President to conduct and conclude arms sales.¹⁶

Finally, Section 404 establishes reporting requirements associated with this new arms limitation program. These requirements include:

(1) An Initial Report which must: (a) document all transfers by any nation of conventional and unconventional arms to the region "over the previous calendar year and the previous 5 calendar years, including sources, types, and recipient nations of weapons;" (b) analyze the current military balance in the region; (c) describe the progress in implementing the purposes of the multilateral arms transfer and control regime; (d) describe any agreements establishing such a regime; and (e) identify "supplier nations that have refused to participate in such a regime or that have engaged in conduct that violates or undermines such a regime."¹⁷

(2) Quarterly Reports: these must describe the progress in implementing the purposes of the multilateral arms transfer and control regime and the efforts by the U.S. to induce other countries to curtail their arms transfers to the region.¹⁸

(3) An Annual Report which must provide information comparable to that required in the Initial Report.¹⁹

The Bush Administration took exception to a wide variety of provisions in the new Foreign Relations Authorization Act. In a statement released by the White House Office of the Press Secretary on 28 October, when the President signed the Act, several Presidential reservations regarding the legislation were identified, including the following: :

Section 322 and Title IV also raise constitutional concerns. These sections deal with Middle East arms control policy and purport to direct the President specifically how to proceed in negotiations with the United Nations and with foreign governments. This Administration is strongly committed to ongoing negotiations regarding restraints on the transfer of conventional arms and weapons of mass destruction to the Middle East. However, I must construe these sections consistent with my responsibility for conducting negotiations with foreign governments.²⁰

Chemical and Biological Weapons Control and Warfare Elimination Act of 1991. This legislation is contained within P.L. 102-138 as Title V, Sections 501 through 508. Its purposes are to mandate U.S. sanctions and to encourage international sanctions against (1)

¹⁶U.S. House of Representatives. *Conference Report on H.R. 1415, Foreign Relations Authorization Act, Fiscal Years 1992 and 1993*, 3 October 1991, 102d Congress, 2d Session, Report 102-238. p. 151.

¹⁷Section 404(b), P.L. 102-138.

¹⁸Section 404(a), P.L. 102-138.

¹⁹Section 404(c), P.L. 102-138.

²⁰President George Bush, "FY 1992-93 Foreign Relations Act Signed," *U.S. Department of State Dispatch*, 4 November 1991, p. 811.

countries which illegally use chemical and biological (C/B) weapons and (2) companies aiding in the proliferation of C/B weapons. Related purposes include (3) the support of multilateral efforts to control the proliferation of such weapons, (4) the increase of U.S. cooperation with supplier nations to devise more effective controls for such weapons, and (5) requiring Presidential reports on C/B weapons production efforts by Iran, Iraq, Syria, Libya, et. al., that threaten U.S. interests or regional stability.²¹ The legislation also requires the Secretary of Commerce, in consultation with the Secretaries of State and Defense and the heads of other appropriate government departments and agencies, to establish and maintain a list and an export licensing system "of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver" C/B weapons; and the President is directed to use the authorities of the AECA and the EAA (Export Administration Act) to control the exports of such goods and technologies.²²

Section 505 establishes sanctions which must be taken against "certain foreign individuals" (to include foreign companies) who "knowingly and materially" contribute to the proscribed C/B weapons activities through the export from the U.S. or any other country, of any goods or technology subject to U.S. jurisdiction under these new statutes. In response to such violations, the U.S. Government may not procure nor enter into any contract for the procurement of any goods or services from any such foreign person/company for at least 12 months. A Presidential certification that the proscribed action has ceased will enable the sanction to be lifted after 12 months. Also, a Presidential waiver is permitted after 12 months based on a determination that such a waiver is important to U.S. national security interests.

Sections 506 and 507 deal with far more serious violations involving the use of chemical or biological weapons. For such violations, a "two-tier sanctions regime" has been established. When it has been determined that a government has used (or has made substantial preparation to use) C/B weapons in violation of international law, or against its own citizens, the President must "forthwith impose the following sanctions" (i.e., Tier 1 sanctions): (1) termination of all foreign assistance, "except for urgent humanitarian assistance and food or other agricultural commodities or products;" (2) termination of all arms sales to that country (both FMS and DCS); (3) termination of all foreign military financing under the AECA (i.e., FMF) for that country; (4) denial to that country of "any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, including the Export-Import Bank of the United States;" and (5) prohibition of the export to that country of any national security sensitive goods or technology.

The above sanctions will apply for three months following the original determination that the violation had occurred. At the end of three months, one of two things must occur. The sanctions may be lifted if the President has determined and certified to Congress that the violations have ended, that the violating country has given assurances that the violations will not recur, and that the violating country is willing to allow on-site inspections. However, should the President be unable to certify to the above, then the Tier 2 sanctions come into play. In this latter case, the President, after consulting with Congress, is required by Section 507(b)(2) to impose at least three additional sanctions out of the following list of five possible sanctions: (1) U.S. Government opposition to any multilateral development bank assistance (e.g., loan extensions or technical assistance); (2) U.S. Government prohibition of any U.S. bank loans or credits, except for the purchase of food/agricultural commodities/products; (3) a prohibition on the export of all U.S. goods and technologies to the violating country, other than food/agricultural commodities/products; (4) a downgrading or suspension of diplomatic relations between the U.S. and the government of the violat-

²¹Section 502, P.L. 102-138.

²²Section 504, P.L. 102-138

ing country; and (5) a suspension of the authority of foreign air carriers owned or controlled by the government of the violating country to engage in foreign air transportation to or from the United States; this would be accomplished through the suspension of landing rights within the U.S. for such aircraft.

Finally, Section 508 establishes the requirements for a very detailed initial report to Congress, due no later than 90 days after the enactment of P.L. 102-138 (i.e., by 26 January 1992) with similar reports required every 12 months thereafter. These reports must provide:

- (1) a description of actions taken to carry out the requirements of Title V of P.L. 102-138 [as described above];
- (2) a description of the current efforts of foreign countries and subnational groups to acquire equipment, materials, or technology to develop, produce, or use chemical or biological weapons, together with an assessment of the current and likely future capabilities of such countries and groups to develop, produce, stockpile, deliver, transfer, or use such weapons;
- (3) a description of: (a) the use of chemical weapons by foreign countries/ subnational groups in violation of international law; (b) a description of substantial preparations by foreign countries and subnational groups to do so; and a description of (c) the development, production, stockpiling, or use of biological weapons by foreign countries and subnational groups; and
- (4) a description of the extent to which foreign persons or governments have knowingly and materially assisted third countries or subnational groups to acquire equipment, material, or technology intended to develop, produce, or use chemical or biological weapons.

THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1992 and 1993

This Act, P.L. 102-190, was enacted by the President on 5 December 1991. Commonly referred to as the DOD Authorization Act, this Act contains several security assistance associated provisions.

Extension of The Southern Region Amendment Authority. Section 516 of the FAA of 1961, formally entitled, "Modernization of Defense Capabilities of Countries of NATO's Southern Flank," provides a means of furnishing, on a grant basis, "such excess defense articles as the President determines necessary to help modernize the defense capabilities" of "NATO countries on the southern flank of NATO." There are three groups of eligible countries: Greece, Portugal, and Turkey; Egypt and Israel, as "major non-NATO allies on the southern and south-eastern flank of NATO;" and Morocco, Pakistan, and Senegal as countries which received FMFP assistance in FY 1990 and which also, "as of October 1, 1990, contributed armed forces to deter Iraqi aggression in the Arabian Gulf."²³ Authority to conduct this program over a given period is specified by amending the FAA through a provision in the Annual DOD Authorization Act. Thus, the Authorization Act for Fiscal Years 1990 and 1991 extended the authority through FY 1991.²⁴ The current Act further extends that authority through FY 1996.²⁵

²³Section 516(a), FAA. It should be noted that all U.S.-financed military assistance to Pakistan has remained on suspension due to that nation's development of a nuclear program.

²⁴Section 934, P.L. 101-189.

²⁵Section 1049, P. L. 102-190.

Annual Report on the Proliferation of Missiles and Essential Components of Nuclear, Biological, and Chemical Weapons. Section 1097 of P.L. 102-190, entitled as above, calls for yet another new annual Presidential report to Congress covering the following:

[T]he transfer by any country of weapons, technology, or materials that can be used to deliver, manufacture, or weaponize nuclear, biological, or chemical weapons [hereinafter, "NBC weapons"] . . . to any country . . . that is seeking to acquire such weapons, technology, or materials, or other system that the Secretary of Defense has reason to believe could be used to deliver NBC weapons.²⁶

This new report must include a discussion of the following: (1) the status of missile, aircraft, and other weapons delivery and weaponization programs in any such country; (2) the status of NBC weapons development, manufacture, and deployment programs in any such country; (3) a description of assistance provided by any person or government to any country involved in the development of missile systems, aircraft systems, and other NBC weapons delivery systems, and NBC weapons; (4) a listing of persons and countries which continue to provide such equipment or technology; (5) a description of the diplomatic measures that the U.S. and other countries "have made with respect to activities and private persons and governments suspected of violating the MTCR [Missile Technology Control Regime]," and other agreements affecting the acquisition and delivery of NBC weapons; (6) an analysis of the effectiveness of the regulatory and enforcement regimes of the United States and other countries; and other technical requirements.²⁷

The first of these reports is due not later than 90 days after the the enactment of this law (i.e., no later than 4 March 1992), and annually thereafter. Copies are to be provided to the Committees on Armed Services and Foreign Affairs of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate.

THE FY 1992 SUPPLEMENTAL APPROPRIATIONS ACT

On 12 December, the President signed a \$6.9 billion Fiscal Year 1992 supplemental appropriations bill (P.L. 102-229) which contains two important provisions related to security assistance.²⁸ The first, a Senate-originated amendment, goes into effect 120 days after the enactment of P.L. 102-229 (or on 10 April). At that time, the use of U.S. funds to conduct, support, or administer any U.S. sale of defense articles or defense services to Saudi Arabia or Kuwait would be barred until the two countries have each fully paid (either in cash or in mutually agreed in-kind contributions) their financial commitments to the United States to support Operations Desert Shield and Desert Storm. The total of those commitments amount to \$16,839,000,000 and \$16,006,000,000, for Saudi Arabia and Kuwait, respectively; together, the countries are reported

²⁶Reports are not required for such transfers by the following 19 countries: Australia, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Israel, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

²⁷For further of the MTCR, see Sections 71 through 74 AECA [22 U.S.C. 2797-2797c].

²⁸The official title of P.L. 102-229 is the "Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effect of Natural Disaster, for Other Urgent Needs, and for Incremental Cost of 'Operation Desert Shield/Desert Storm' Act of 1992."

to owe \$3.3 billion.²⁹ In effect, this places a ban on any U.S. arms sales to these countries until their respective financial commitments are met.³⁰

The second provision of interest involves limitations on U.S. assistance to Kenya. No funds provided by P.L. 102-229 nor any money made available for Kenya through the Economic Support Fund or Foreign Military Financing Program accounts may be furnished to Kenya in FY 1992. This prohibition may be waived if the President certifies and reports to Congress that the Kenyan government has improved its human rights behavior, including having taken significant steps toward allowing its citizens the freedom to advocate the establishment of political parties and organizations. Notwithstanding these provisions, certain new projects may be funded by U.S. assistance, but only if they meet certain tests, such as promoting basic human needs or improving the performance of democratic institutions. A comparable prohibition on U.S. assistance for Kenya was contained in the Foreign Operations Appropriations Act for FY 1991, and assistance to Kenya in FY 1991 was limited to IMET.³¹ Also, the aborted Foreign Assistance Authorization Act for FY 1992 and FY 1993 included a similar prohibition; among the reasons cited for such action were: "the arrest and detention of Kenyan citizens for the peaceful expression of their political views;" and the "intimidation and harassment of those who are critical of government policies and those working for democracy in Kenya, particularly individuals within the church, the press, and the legal and academic communities."³² The Administration originally requested \$4.0M in FMFP and \$1.1M in IMET funding for Kenya for FY 1992.

HOUSE/SENATE CONCURRENT RESOLUTION 77

The above resolution, which was passed by the House on 21 November and the Senate on 23 November, condemns the 12 November massacre of East Timorese civilians by the Indonesian military.³³ One provision of this resolution expresses the views of Congress that IMET funding for Indonesia, "should be contingent on the Government of Indonesia conducting a thorough and impartial investigation of these killings and prosecuting those responsible for them." Since this was a concurrent resolution, as opposed to a joint resolution, it does not require the President's signature, and does not carry the force of law. Thus, the determination of U.S. policy toward Indonesia, and the status of IMET for that country, will rest with the Administration.

CONCLUSION

For most security assistance personnel, the legislative activity described herein had no direct impact on their daily work; throughout the period in which Congress attempted unsuccessfully to pass FY 1992 authorization and appropriations bills, the typical security assistance manager remained heavily involved in conducting varying aspects of FMS cases and was generally unaware of the processes at work on Capitol Hill. Moreover, the absence of such laws for FY 1992 have

²⁹Hager, George. "Trimmed 'Dire Emergency' Bill Cleared After Negotiations," *Congressional Quarterly*, 30 November 1991, p. 3516.

³⁰In a non-related provision, reporting that diplomats of Saudi Arabia and Kuwait have outstanding parking tickets from New York City and Washington D.C. totaling \$162,401.00 and \$2,465.00 respectively, the bill provides a warning that, "continued failure to pay parking fines by foreign diplomats will result in legislative consideration of measures both to restrict benefits granted to such countries and to restrict diplomatic privileges enjoyed by such countries."

³¹Section 593, P.L. 101-513.

³²Section 1043, *Conference Report on H.R. 2508*, 27 September 1991.

³³The Indonesian government reportedly acknowledged that 19 civilians were killed in what was an apparent demonstration of their anti-government views; other reports put the death toll as high as 150. "Impact of East Timor Killings," *The Wall Street Journal*, 22 November 1991, p. A6.

probably not had much effect on the overall work effort of such personnel, since, in general, they have been able to conduct their current work in much the same manner as they had during FY 1991.

The situation would have been far different if Congress had been successful in its efforts, particularly with respect to the major policy and procedural changes that would have been required if the proposed authorization act had been passed. Had that occurred, most such managers would have been quite busy this past Fall in implementing a wide variety of new and altered requirements, the majority of which for them would represent welcome change. At this point, it is not possible to forecast what the legislative process will bring forth after Congress returns to begin its consideration of FY 1993 legislation, with FY 1992 bills still pending. By the time this article is published and distributed (anticipated to be in late January, 1992), we should have a somewhat better idea of the direction that Congress will be taking. One would hope that the optimism which characterized their efforts last Spring will be renewed and that the legislative changes that the Administration and most in Congress believe are necessary, finally will be enacted.

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