
LEGISLATION AND POLICY

Fiscal Year 1994

Security Assistance Legislation

By

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INTRODUCTION

New security assistance legislation for FY 1994 reflects significant program funding reductions together with a major expansion of Peacekeeping Operations (PKO) and the introduction of a new Nonproliferation and Disarmament (NPD) Fund. In terms of the overall U.S. foreign assistance program, the single-most significant legislative development was the funding by Congress of the Administration's request for \$2.5 billion to assist the New Independent States of the Former Soviet Union. In terms of media attention, however, the most widely reported foreign aid issue was a new legislative requirement which would necessitate the withholding of U.S. foreign assistance funds from numerous countries whose diplomats owe parking fines and penalties to the District of Columbia .

A total of \$12,982,666,000 has been appropriated for U.S. foreign assistance programs for Fiscal Year 1994. This represents a reduction of \$13,274,712,000 (or 50.6%) from the \$26,257,378,000 appropriated for FY 1993. The reduction, however, is not as severe as it first appears, since FY 1993 appropriations included a major one-time \$12.3 billion contribution to the International Monetary Fund. Much of the FY 1994 reduction impacted directly on security assistance. Funding for U.S. military assistance and other security assistance programs for FY 1994 totals \$6,390,214,000; this represents a cut of \$504,456,000 (or 7.3%) from the comparable FY 1993 appropriations of \$6,894,670,000. The legislative source for this funding is Public Law 103-87, *Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994*, dated 30 September (also referred to as the FY 1994 *Foreign Operations Appropriations Act*). In the pages which follow, the discussion will focus on the program funding levels and associated new legislative provisions introduced for FY 1994 in P.L. 103-87. In this regard, certain other new security assistance-related provisions introduced by Public Law 103-160, *National Defense Authorization Act for Fiscal Year 1994*, will also be examined.

With a new Administration in office, the presentation to Congress of the proposed security assistance program for FY 1994, including budgetary requirements, was delayed until late April, 1993, when Congress was furnished the *Congressional Presentation for Security Programs for FY 1994* (commonly referred to as the *Congressional Presentation Document* or *CPD*). This annual publication, a joint product of the Departments of State and Defense, describes the Administration's general budget request for security assistance programs and activities, including justifications for each regional or country program. The arrangement of the *FY 1994 CPD* departed significantly from CPDs of recent years in that rather than organizing the security assistance budget under traditional geographical areas, the Administration chose to employ functional categories, arranging individual country programs under such categories. (A very similar approach was employed in using "program objective" categories in the *CPDs* for FY

1987 and FY 1988.) Moreover, Department of State communications of recent months regarding the FY 1994 Security Assistance Program have continued to use these same CPD functional categories. Accordingly, the program budget tables used herein employ the following eight functional categories per the *FY 1994 CPD*: Middle East Peace; Regional Security and Defense Cooperation; Nonproliferation and Disarmament; Economic Development; Counternarcotics; Democratic Development; Peacekeeping; and Promotion of Professional Military Relationships. These functional categories have also been used in an Administration proposed rewrite of the Foreign Assistance Act of 1961, as discussed below.

Congressional action on the Administration's proposed budget began fairly quickly. By 17 June 1993, the House had voted out H.R. 2295, its version of a FY 1994 *Foreign Operations Appropriations Bill*. Subsequent major foreign policy issues regarding developments in Somalia, Haiti, Bosnia-Herzegovina, and the Former Soviet Union, and the Congressional debate over the North American Free Trade Agreement impacted severely on the foreign affairs legislative process, and it was not until late September that the process was rejuvenated. On 23 September the Senate passed its version of H.R. 2295, and, a final bill was enacted just seven days later. Such expeditious legislative action in the final days of Fiscal Year 1993 was the result of a unique formula devised in the House to provide the promised funding for the President's \$2.5 billion request for assistance for the New Independent States of the Former Soviet Union. To accomplish this goal, Congress put together a special funding package involving both FY 1993 and FY 1994 funds. For FY 1994, a total of \$893,820,000 was appropriated for economic assistance and related programs for these countries.¹ To that was added supplemental appropriations for FY 1993 totaling \$1,609,000,000; the funds for these appropriations were drawn from unused DoD FY 1993 Operation and Maintenance funds (\$979,000,000) and unused FY 1993 foreign assistance funds (\$630,000,000).² Since these supplemental funds represented FY 1993 monies, the defense and foreign assistance funds were only available until the last day of the fiscal year, i.e., 30 September 1993. Consequently, in order to assure the availability of these funds, Congress was under unusual pressure to pass the bill before the end of the fiscal year. The Appropriations Conference Committee, faced with over 100 differences between the House and Senate versions of the bill, including considerable funding differences, met on 27-28 September through the night and into the morning to produce a final version of the bill.³ The House then approved the Conference Committee bill on 29 September (with a vote of 321-108); the Senate voted its support (88-11) on 30 September, and later that day the President signed it into law as P.L. 103-87, thereby assuring that a total of \$2,588,000,000 in both FY 1993 and FY 1994 funds would be available for the New Independent States. Also, by adding the supplemental funds to the overall FY 1994 foreign assistance appropriations of \$12,982,666,000, a total of \$14,591,666,000 was approved for foreign assistance in P.L. 103-87.

No similar legislative success was achieved with respect to a new Foreign Assistance Authorization Bill. The House approved such a bill (H.R. 2404) on 16 June. A far different unnumbered bill, was approved on 8 September by the Senate Foreign Relations Committee, but it never was placed before the Senate for a vote. Amid the major differences in the two proposals, the Congress was also awaiting receipt of the Clinton Administration's proposed rewrite of the Foreign Assistance Act of 1961. This major revision was not officially transmitted to the Congress until 22 November, just prior to the holiday recess, thereby precluding any further action in the first session of the 103rd Congress. Thus, in its second session, this Congress is expected to take up the many authorization issues proposed by the House-passed version and the Senate Foreign Relations Committee-passed version, together with the

¹ §560, P.L. 103-87.

² Title VI, Fiscal Year 1993 Supplemental Appropriations, included in P.L. 103-87.

³ Doherty, Carroll J., "Aid Bill Moves Smoothly Into Law Despite Crisis in Russia, *Congressional Quarterly Weekly Report*, October 2, 1993, p. 2658.

TABLE 1
SECURITY ASSISTANCE PROGRAM APPROPRIATIONS
FISCAL YEAR 1993 AND 1994 FUNDING LEVELS
(DOLLARS IN MILLIONS)

	<u>P.L. 102-391</u> <u>FY 1993</u> <u>LEVELS</u>	<u>FY 1994</u> <u>BUDGET</u> <u>REQUEST</u> <u>APR 1993</u>	<u>H.R. 2295</u> <u>HOUSE</u> <u>LEVELS</u> <u>17 JUN 1993</u>	<u>H.R. 2295</u> <u>SENATE</u> <u>LEVELS</u> <u>23 SEP 1993</u>	<u>P.L. 103-87</u> <u>FY 1993</u> <u>LEVELS</u>
FMFP	\$4,155.000 [1]	\$4,087.351[2]	\$3,944.500 [3]	\$3,893.058 [4]	\$3,918.779 [5]
IMET	42.500	42.500	\$21.250	21.250	21.250
ESF	2,670.000	2,582.000	2,364.562	2,280.500	2,364.562
PKO	27.170	77.166	75.623	62.500	75.623
NPD [6]	0.000	50.000	10.000	10.000	10.000
TOTALS	<u>\$6,894.670</u>	<u>\$6,839.017</u>	<u>\$6,415.935</u>	<u>\$6,267.308</u>	<u>\$6,390.214</u>

[1] The FY 1993 FMFP account, which totaled \$4,155.000M, was comprised of \$3,300.000M in grants and \$149M in loan subsidy funding to support a maximum of \$855.000M in concessional loans.

[2] The Administration's request for FY 1994 FMFP funds included \$3,232.157M in grants and \$855.194M in direct loans furnished at concessional interest rates, for a total program value of \$4,087.351M. However, the current methods 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 1994 carried a subsidy cost of \$120.457M which is included in the overall FMFP appropriation request above. In short, \$120.457M would buy a concessional interest rate loan program of \$855.194M, and when added to the grant request for \$3,232.157M, would produce a program valued at \$4,087.351M. Similarly, \$149M was provided in FY 1993 as subsidy funding for an \$855M concessional loan program.

[3] The House bill proposed \$3,175.000M in FMFP grants and an FMFP loan subsidy of \$46.530M to support a direct loan program not to exceed \$769.500M. in *conventional* loans furnished at *current average* market interest rates.

[4] The Senate bill proposed \$3,123.558M in FMFP grants and agreed with the House provision to provide subsidy funding of \$46.530M to support a maximum \$769.500M direct *conventional* loan program furnished at current average market interest rates.

[5] The FMFP total value of \$3,918.779M appropriated for FY 1994 includes \$3,149.279M in grants and \$46.530M in loan subsidy funding to support a maximum of \$769.500M in conventional loans to be issued at current average market interest rates.

[6] The Nonproliferation and Disarmament (NPD) Fund is a new security assistance program which received its first funding for FY 1994.

Administration's overall rewrite of the basic foreign assistance legislation. Meanwhile, for the ninth consecutive year (or since the 1985 enactment of a two-year act), Congress has not passed a new foreign assistance authorization act. The practical, if unintended, effect of conducting foreign assistance in the absence of an authorization act is to deny the Departments of State and Defense an effective legislative vehicle by which to obtain passage of desired legislative initiatives.

FY 1993 SECURITY ASSISTANCE PROGRAMS

Table 1 above provides a basic funding reference for the following discussion of the principal FY 1994 security assistance programs. The table illustrates the progress from initiation to enactment of H.R. 2295, the legislative designation for the FY 1994 foreign operations appropriations bill. Reflected on Table 1 are the various changes in funding levels which occurred at each step of the legislative process, from the Administration's initial budget request through Committee recommendations and passage by the House and Senate, and as the final product of an Appropriations Conference Committee prior to enactment as P.L. 103-87.

A. The Foreign Military Financing Program (FMFP)

As illustrated in Table 1, the Foreign Military Financing Program for FY 1994 was enacted at a total program value of \$3,918,779,000. The grant component of the FMFP consists of an appropriation totaling \$3,149,279,000. This FY 1994 grant funding level represents a cut of \$150,721,000 (or 4.57%) below the grant component in the FY 1993 FMFP appropriation of \$3,300,000,000.⁴

The remaining \$769,500,000 in the authorized FMF Program for FY 1994 is not an appropriation but rather represents authority for an FMFP *loan* program. This authority permits the issuing of FMFP **direct loans** in FY 1994 not to exceed \$769,500,000. These loans are intended only for the European base rights countries (Greece, Portugal and Turkey) and may only be issued at **market rates of interest**, i.e., rates of interest that shall not be "less than the current average market yield on outstanding marketable obligations of the United States of comparable maturities."⁵ The use of market rates of interest for FY 1994 FMFP loans is in distinct contrast to the FMFP loans of previous years which were issued at "concessional rates of interest," i.e. at rates below market rates, but which by law could not be less than 5% per annum. Although no appropriations are required to fund the actual FMFP loans, a separate FMFP appropriation of \$46,530,000 was approved to meet the requirement for subsidizing the gross obligations associated with the issuing of \$769,500,000 in direct loans.⁶ In contrast, a much larger subsidy funding level of \$149,000,000 was required to be appropriated for FY 1993 to support the \$850,000,000 concessional loan program for that year.

The decision to employ only market rate loans in FY 1994 reflects a further evolution of the Foreign Military Financing Program. From FY 1985 through FY 1992, the standard method of furnishing FMFP assistance to Greece and Turkey (the principal FMFP loan recipients) was through a combination of grants and concessional rate loans. In Congressional proceedings pursuant to the passage of the FY 1993 Foreign Operations Appropriations Act, considerable discussion was focused on how to assist all three European base rights countries (Greece, Portugal, and Turkey). The House recommended the termination of grant assistance for the three countries and the introduction of an all conventional (i.e., market interest rate) loan program. For

⁴Similarly, the FY 1994 grant funding of \$3,149,279,000 represents a reduction of \$82,878,000, or 2.56%, below the Administration's budget request for FY 1994 of \$3,232,157,000.

⁵Title III, Military Assistance, Foreign Military Financing Program, P.L. 103-87.

⁶This subsidy requirement is contained in §13201, Budget Enforcement Act of 1990.

TABLE 2

**FOREIGN MILITARY FINANCING PROGRAM (FMFP)
 FY 1993 AND FY 1994 FUNDING
 (Dollars in Millions) (E - Earmark; C - Ceiling)
 (All funding provided as grants except for loans furnished to
 Greece, Portugal, and Turkey.)**

<u>Country/Program by Security Assistance Function</u>	<u>FY 1993 FMFP Allocations</u>	<u>FY 1994 Budget Request</u>	<u>FY 1994 FMFP Allocations</u>
<u>MIDDLE EAST PEACE</u>			
Egypt	\$1,300.000 E	\$1,300.000	\$1,300.000 E
Israel	1,800.000 E	1,800.000	1,800.000 E
Jordan	9.000	9.000	9.000
Morocco	40.000E	20.000	0.000
Oman	1.000	0.000	0.000
Tunisia	2.000	2.000	0.000
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Function Subtotals	3,152.000	3,131.000	3,109.000
<u>REGIONAL SECURITY AND DEFENSE COOPERATION</u>			
Bahrain	0.500	0.500	0.000
El Salvador	11.000 C	2.700	0.000
Greece (Total)	315.000 C	315.000	283.500 C
[Concessional Loans]	[315.000]	[315.000]	[0.000]
[Conventional Loans]	[0.000]	[0.000]	[283.500]
Honduras	1.500	1.500	0.000
Hungary	0.250	0.000	0.000
Philippines	15.000	7.700	0.000
Portugal (Total)	90.000 C	90.000	81.000 C
[Concessional Loans]	[90.000]	[90.000]	[0.000]
[Conventional Loans]	[0.000]	[0.000]	[81.000]
Turkey (Total)	450.000 C	450.000	405.000 C
[Concessional Loans]	[450.000]	[450.000]	[0.000]
[Conventional Loans]	[0.000]	[0.000]	[405.000]
Loan Admin Costs	0.200	0.194	0.000
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Function Subtotals	883.450	867.594	769.500
<u>COUNTERNARCOTICS</u>			
Andean Narcotics Initiative	45.595	45.000	12.421
[Bolivia]	[18.595]	[15.000]	[4.721]
[Colombia]	[27.000]	[30.000]	[7.700]
[Peru]	[0.000]	[0.000]	[0.000]

(Continued on the following page)

TABLE 2 (CONTINUED)

<u>Country/Program by Security Assistance Function</u>	<u>FY 1993 FMFP Allocations</u>	<u>FY 1994 Budget Request</u>	<u>FY 1994 FMFP Allocations</u>
Potential Source and Transit Counternarcotics Initiative	4.500	4.700	0.800
[Belize]	[0.500]	[0.400]	[0.160]
[Dominican Republic]	[0.500]	[0.350]	[0.110]
[Eastern Caribbean]	[1.350]	[0.400]	[0.130]
[Ecuador]	[1.150]	[0.400]	[0.130]
[Guyana]	[0.000]	[0.200]	[0.060]
[Jamaica]	[0.450]	[0.350]	[0.110]
[Trinidad & Tobago]	[0.550]	[0.400]	[0.100]
[Reserve]	[0.000]	[2.200]	[0.000]
Function Subtotals	50.095	49.700	13.221
<u>MISCELLANEOUS</u>			
FMFP Operating Expenses	26.000 C	25.558	23.558 C
African Biodiversity	15.000 E	0.000	0.000
Africa Regional	0.000	10.000	0.000
Bangladesh	0.000	0.500	0.000
Landmine Clearing & Training	1.000 E	2.499	2.500
Prior Year Reobligations	0.000	0.500	0.000
Reserved	0.000	0.000	1.000
Miscellaneous Subtotals	42.000	39.057	27.058
<u>PROGRAM TOTALS</u>	<u>\$4,154.500</u>	<u>\$4,087.351</u>	<u>\$3,918.779</u>

[1] Other than Greece, Portugal, and Turkey, all other countries and programs listed above were funded, per the original budget request, with FMFP grants. For FY 1994, *concessional* loans were sought for Greece, Portugal, and Turkey as were previously furnished in FY 1993; however, as shown above, FY 1994 FMFP funding for these three countries consists entirely of *conventional, market rate loans*.

[2] The allocated FMFP reserve of \$1.0M is designed for transfer to the IMET account pursuant to §610, FAA. These transferred funds will be used to increase IMET allocation levels in the Former Soviet Union and in Central and Eastern Europe, to attain FY 1994 IMET budget request levels.

Sources: Budget request levels for FY 1994 may be found in the joint Department of State/Department of Defense annual *Congressional Presentation for Security Assistance Programs, FY 1994*. FMFP allocations for FY 1993 and 1994 were reported in SECSTATE message 231742Z Nov 93, Subject: FY 1994 Security Assistance Allocations, which declassifies SECSTATE message 131150Z Nov 1993, Subject: FY 1994 Security Assistance Allocations.

its part, the Senate wished to employ all grant funding for Portugal and Turkey, with a concessional loan program for Greece. These differences were ultimately resolved in the FY 1993 Appropriations Conference Committee, which opted to eliminate grant funding as the House proposed, but to retain, as the Senate wished, a concessional loan program for all three countries. Consequently, for FY 1993, concessional loan programs were authorized at the following ceiling (i.e., not to exceed) levels: Greece, \$315 million; Portugal, \$90 million; and Turkey, \$450 million.⁷ For FY 1994, the Administration sought concessional loan funding for the three countries at the same funding levels as in FY 1993. However, as discussed above, Congress restricted such funding for FY 1994 to market rate loans. Furthermore, Congress also reduced the loan funding for FY 1994 for each country by ten percent below their respective FY 1993 authorized levels. Thus, as indicated in Table 2 above, the FY 1994 loan funding was authorized at the following ceiling levels: Greece, \$283.5 million; Portugal, \$81 million; and Turkey, \$405 million. Further, the FY 1994 funding levels for Greece and Turkey sustain the 7-10 ratio of military assistance that Congress has maintained for the two countries since FY 1980.

FMFP grant funding for FY 1994 includes the familiar Middle East earmarks (i.e. mandatory minimum funding levels) for **Israel** (\$1,800 million) and **Egypt** (\$1,300 million).⁸ Together, these two countries will receive 79.1% (\$3,100 million) of the entire FY 1994 FMFP account of \$3,918.779 million (or 98.4% of all grant FMFP). As in past years, several unique legislative features pertaining to the funding for Israel have been carried over into FY 1994. For example, the new statute again called for the disbursement of the entire FMFP allocation earmarked for Israel, to be accomplished within 30 days of the date of enactment of P.L. 103-87 (i.e., by 29 October 1993) or by 31 October 1993, whichever is later.⁹ Also retained for FY 1994 is the special authority for Israel to use not less than \$475 million of its funds for "the procurement in Israel of defense articles and defense services," plus the use of up to \$150 million of its account "for research and development in the United States" related to advanced weapons systems.¹⁰

No special provisions are attached to the Egyptian FMFP earmark. However, in response to the nearly five year imprisonment in Egypt of an American accused of espionage, as well as other considerations, the Senate proposed adding the following provision: "That none of the funds herein shall be obligated for the Foreign Military Financing Program for Egypt until the Secretary of State certifies to Congress that all United States citizens being detained in Egypt are receiving or have received fair trials and due process."¹¹ The Appropriations Conference Committee deleted this provision without formal comment. The individual involved, Mr. Sammy Wassef, a U.S. medical school graduate, was charged with providing the Central Intelligence Agency with information that included reports about Muslim fundamentalist activities. He stated that he was working for an English-language Cairo magazine. He was freed on 31 October 1993 and returned to his home in Troy, Michigan.¹²

For FY 1994, Congress established a ceiling of \$23.588M on the level of FMFP funding that may be obligated for the **general costs of administering military assistance and sales programs**. These monies are used to finance certain security assistance operating expenses of

⁷Title III, Military Assistance, Foreign Military Financing Program, P.L. 102 -391. For a more detailed discussion of the issue of FMFP funding for FY 1993, see the author's "New Security Assistance Legislation for Fiscal Year 1993," *The DISAM Journal*, Winter, 1992-1993, pp. 4-5.

⁸Since FY 1987, the earmarked FMFP funding levels for Israel and Egypt have been furnished annually at the same levels.

⁹Title III, Military Assistance, Foreign Military Financing Program, P.L. 103-87.

¹⁰*Ibid.*

¹¹Senate mark-up of H.R.2295, 23 September 1993, p. 27.

¹²"Michigan Man's Egyptian Ordeal Ends," *USA Today*, p. 3A, 1 November 1993.

U.S. military departments, the Defense Security Assistance Agency (DSAA), and overseas security assistance organizations. Congress established a ceiling of \$26 million for this purpose for FY 1993, and the Administration requested \$25.558 million for FY 1994. The request was reduced by \$2 million by the House Appropriations Committee, which stated several reasons for its action. First, the FMFP and IMET program levels were reduced, thus indicating that the associated administrative costs could also be cut. Secondly, the House Appropriations Committee "is concerned that DSAA [Defense Security Assistance Agency] is maintaining employees in countries in Europe [e.g., Finland] that do not have current Foreign Military Financing Programs or IMET programs" for which the administrative funds are designed to support. Finally, the Committee pointed out that it had asked that "a full evaluation of the DSAA appropriated operating cost program be undertaken and provided to the Committee at the time of submission of the fiscal year 1994 request," but noted that "this was not done until June 1993."¹³ The Senate supported the House funding recommendation, and thus no more than \$23.558 million will be available to support these security assistance operating expenses during FY 1994.

Apart from the earmarks for Israel and Egypt, the FY 1994 FMFP account contains no other earmarked funding levels. This is in marked contrast to prior years. For example, the FY 1993 FMFP account included four such additional earmarks: El Salvador Demobilization and Transition Fund, \$11 million; Morocco, \$40 million; African Conservation and Biodiversity, \$15 million; and Landmine Clearing, \$1 million. The lack of similar funding earmarks in the FY 1994 FMFP account reflects the success of the House members of the Appropriations Conference Committee, especially Rep. David Obey (D-WI), in eliminating such earmarking, together with the relatively small level of funds which were available to permit any substantial additional earmarking. The Israeli and Egyptian earmarks plus the value of the loans for Greece, Portugal, and Turkey, and the administrative cost ceiling discussed above, together total \$3,893.058 million. Since the Administration was committed to the full funding of these programs at authorized levels, that left only \$25.721 million in FMFP funds for discretionary allocation to any other countries or programs. On 23 November 1993, the Department of State authorized the release of its FY 1994 security assistance funding allocations.¹⁴ Table 2 above identifies these FMFP allocations. A review of Table 2 indicates that the only funding allocations for FY 1994 (other than the earmarks and ceilings discussed above) were provided for the following: Jordan, \$9 million; Andean Narcotics Initiative, \$12.421 million; Potential Source and Transit Counternarcotics Initiative, \$0.8 million; Landmine Clearing and Training, \$2.5 million; and a \$1 million reserve. This latter reserve allocation is planned to be transferred to the IMET account under the authority of Section 610, FAA, and the funds are intended to be used to increase IMET allocation levels in Central and Eastern Europe as well as in the former Soviet Union, to meet the funding levels contained in the Administration's IMET budget request for FY 1994.

B. FMFP/FMS-Related Statutory Provisions

A variety of special statutory provisions involving FMFP/FMS programs are included in the FY 1994 Foreign Operations Appropriations Act. These range from prohibitions and restrictions on the use of FMFP funds, to unique funding provisions for counternarcotics programs and for landmine clearing and training activities. These distinctive provisions are summarized below.

¹³U.S. House of Representatives. *Report of the Committee on Appropriations to Accompany H.R. 2295, Foreign Operations, Export Financing, and Related Programs Appropriations Bill, 1993*. 103rd Congress, 1st Session, Report No., 103-125, June 10, 1993, p. 99. Hereinafter termed HAC Report.

¹⁴SECSTATE message 231742Z, Nov 93, Subject: FY 1994 Security Assistance Allocations, as it declassifies SECSTATE message 131150Z Nov 1993, Subject: FY 1994 Security Assistance Allocations.

a. As in past years, Congress has identified several countries which are **prohibited from receiving any FMFP funding** in FY 1994, to include: Guatemala, Liberia, Malawi, Peru, Sudan, and Zaire.¹⁵ In comparison to the corresponding prohibitions in the FY 1993 Appropriations Act, no new countries have been added, and the prohibitions have been removed for Kenya and Somalia.¹⁶

b. A total of \$12,410,000 in FY 1994 FMFP funds has been allocated in support of **counternarcotics activities** in Bolivia and Colombia as part of the ongoing "Andean Narcotics Initiative." However, Congress placed an important condition on the release of FMFP funds and related ESF funds for this program. (A total of \$35,000,000 in the FY 1994 ESF account has been allocated for Bolivia, Colombia, and Peru; see Table 4 which follows.) A new provision covering FMFP and ESF expenditures is contained in Section 561, P.L. 103-87, which states that none of these funds "may be made available for the Andean Narcotics Initiative until the Secretary of State consults with, and provides a new Andean counternarcotics strategy (including budget estimates), to the [House and Senate] Committees on Appropriations."

Congressional concern regarding the funding of the Andean Narcotics Initiative was expressed in the House Appropriations Committee Report 103-125 on the FY 1994 Foreign Operations Appropriations Bill (H.R. 2295). The Committee observed that it and Congress had previously "provided for expanded programs both here in the U.S. and overseas to fight the drug war," and that "the most talked-about component of the war is the so-called Andean Strategy which called for spending \$2.2 billion over five years to help Peru, Bolivia, and Colombia reduce illicit drug activities." Nevertheless, the Committee concluded that:

Despite claims that coca cultivation has leveled off in the Andean region, there are no signs that actual levels of cocaine reaching U.S. shores has changed. Based on the limited results so far and the numerous unintended effects of the concentration on the Andean region, the Committee feels strongly that a complete review of our worldwide strategy to combat narcotics trafficking and consumption is in order.¹⁷

The HAC Report stated further that the drop from \$147,783,000 to \$100,000,000 in its separate FY 1994 funding recommendation for International Narcotics Control was made in the context of the Committee's concerns over the Andean Narcotics Initiative.¹⁸ The Senate Appropriations Committee supported the House view,¹⁹ and the FY 1994 appropriation for International Narcotics Control was held at \$100,000,000.²⁰

c. The Senate Appropriations Committee proposed the addition of a new legislative clause related to the **FMFP loan subsidy cost**. This new provision, which proposed an alternative use of the subsidy cost appropriation, appears to have been added in the expectation that one or more of the European base rights countries (Greece, Portugal, and/or Turkey) might prove unwilling to accept the new market rate loans which are being introduced in FY 1994. The amendment provides that:

¹⁵Title III, Military Assistance, Foreign Military Financing Program, P.L. 103-87.

¹⁶Title III, Military Assistance, Foreign Military Financing Program, P.L. 102-391 and §577, P.L. 102-391.

¹⁷HAC Report, op. cit., p. 91.

¹⁸Ibid.

¹⁹U.S. Senate. Report of the Committee on Appropriations to Accompany H.R. 2295, *Foreign Operations, Export Financing, and Related Programs Appropriations Bill, 1993*. 103d Congress, 1st Session, Report No. 103-142, pp. 24-25. Hereinafter referred to as *SAC Report*.

²⁰Title II, Bilateral Economic Assistance, International Narcotics Control, P.L. 103-87.

subject to the regular notification procedures of the Committees on Appropriations, funds made available under this heading [i.e., FMFP] for the [subsidy] cost of direct loans may also be used to supplement the funds available under this heading for necessary expenses for grants if countries specified under this heading as eligible for such direct loans decline to utilize such loans.

This amendment was approved by the Appropriations Conference Committee and was subsequently enacted.²¹ Thus, any amount of the subsidy funds that would become available because of a rejection of loans by either Greece, Portugal, and/or Turkey, could be allocated in FY 1994 as supplementary grant assistance for *any* eligible country.

d. For the second consecutive year, FMFP funding has been allocated in support of **land mine clearing and related training** activities. For FY 1993, Congress earmarked \$1M in FMFP funds for this program, and for FY 1994, although not earmarked, a total of \$2.5M has been allocated for this effort. (This is in addition to a \$10 million appropriation for DoD for this same purpose.)²² In a related legislative action, the 23 October 1992 to 22 October 1993 **moratorium on the sale, transfer, or export of anti-personnel mines** that was established in 1992,²³ has been extended for an additional three years, or until 22 October 1996.²⁴ This extension is included in the *National Defense Authorization Act for Fiscal Year 1994* (P.L. 103-160), which also includes several findings regarding the use of such weapons. The statute recognizes that the U.S. is not a major exporter of landmines: during the ten years from 1983 to 1992, the U.S. approved for commercial export only ten licenses with a total value of \$980,000 plus the sale of 108,852 landmines through FMS.²⁵ Nevertheless, over 44 countries manufacture at least 300 types of such weapons, and the devastation resulting from anti-personnel landmines has been worldwide. The statute reports that 10,000,000 such landmines were used in Afghanistan, 9,000,000 in Angola, 4,000,000 in Cambodia, 3,000,000 in Iraqi Kurdistan, and 2,000,000 each in Somalia, Mozambique, and the former Yugoslavia.²⁶ Such widespread use has been facilitated by "advanced technologies" that permit the manufacture of "sophisticated mines which can be scattered remotely at a rate of 1,000 per hour."²⁷ It is these considerations which have led Congress to call for worldwide prohibitions on the sale and indiscriminate use of landmines. The unilateral U.S. moratorium, therefore, is seen to serve as a model for adoption by other countries and for the achievement of "a verifiable international agreement prohibiting the sale, transfer or export, and further limiting the manufacture, possession, and use of anti-personnel landmines."²⁸ To this end, the statute reports that "the European Parliament has issued a resolution calling for a five year moratorium on sales, transfer, and export of anti-personnel landmines, and the Government of France has announced it has ceased all sales, transfers, and exports of anti-personnel landmines."²⁹

e. On 6 June 1993, the Defense Security Assistance Agency (DSAA) announced that the practice of permitting certain countries to use their **FMFP Funding for Direct Commercial**

²¹Title III, Military Assistance, Foreign Military Financing Program.

²²Title II, Operation and Maintenance, Defense-Wide, *Department of Defense Appropriations Act, 1994*, P.L. 103-139, 11 November 1993.

²³§1365(c), P.L. 102-484, *National Defense Authorization Act for Fiscal Year 1993*, 23 October 1992.

²⁴§1423 (c), P.L. 103-160, *National Defense Authorization Act for Fiscal Year 1994* as amends §1365(c), P.L. 102-484.

²⁵§1423(a)(4), P.L. 103-160.

²⁶§1423(a)(2), P.L. 103-160.

²⁷§1423(a)(3), P.L. 103-160.

²⁸§1423(b)(1), P.L. 103-160.

²⁹§1423(a)(9), P.L. 103-160.

Contracts would be terminated on 1 January 1994.³⁰ This decision had been approved by Deputy Secretary of Defense, Dr. William J. Perry, and it was stimulated by various critical government audits and several major criminal investigations of a number of countries which had financed various commercial purchases of U.S. defense articles through the FMFP Program.³¹ In view of DSAA's limited ability to control the fraud, waste, and abuse which has burdened such FMFP financing of commercial sales since the early 1980s, the decision was made to terminate the program. In a DSAA question and answer paper covering this policy change, DSAA reported that the impact on U.S. industry would not be great:

Although Foreign Military Financing will not be able to be spent on DCC [Direct Commercial Contracts] after January 1, 1994, it will still have to be spent in the United States through FMS. Thus, we expect that the overall effect on U.S. industry will be neutral as far as volume of sales is concerned. Of course, industry will be subject to greater controls inherent in government contracts under the new arrangement.³²

Congressional response to this policy change proved unfavorable. The Senate introduced an amendment to H.R. 2295 which would have prohibited the change from being implemented unless and until the following occurred: the Secretary of Defense submits a detailed report on this issue on or before 31 December 1994, to the appropriate Congressional committees (Appropriations, Foreign Affairs, Foreign Relations, and Armed Services); and the "Secretary of Defense *consults with and secures the approval of the Congress* regarding any proposed changes in [the] Foreign Military Financing [of] direct commercial sales policy.³³ The Administration took exception to the requirement to secure Congressional approval prior to initiating the policy change in FMFP funding for commercial sales; subsequently, this feature of the Senate proposal was dropped by the Appropriations Conference Committee. The final version of the statute, which was adopted by the Conference Committee and subsequently enacted as Section 572, P.L. 103-87, continues to prohibit any such policy changes affecting the use of FMFP for direct commercial sales, "unless and until all parties affected by any such changes have been *fully consulted and given opportunity for input* into any such policy changes."³⁴ The statute also requires the Secretary of Defense to consult on this matter with the relevant Congressional Committees (Appropriations, Foreign Affairs, Foreign Relations, and Armed Services), plus the relevant agencies or departments of the Executive Branch.³⁵

In response to this new legislation, Deputy Secretary Perry issued a memo on 27 October 1993 which amended the original DoD implementation date for terminating FMFP funding of direct commercial sales from 1 January 1994 to 1 July 1994. In the interim, the statutory authority permitting such financing was again renewed in the FY 1994 Foreign Operations Appropriations Act. The relevant statute has been extended annually since it was first introduced for FY 1990. Under the FY 1994 provision, not more than \$100M in FMFP funds may be made available for direct commercial procurements of defense articles, defense services, or design and construction services for any country (other than Israel or Egypt) for which FMFP assistance was

³⁰DSAA/OPS-MGT message, 062230Z June 1993, Subject: Foreign Military Financing of Direct Commercial Contracts.

³¹Ibid.

³²"Termination of Foreign Military Financing Commercial Contracts Program," *The DISAM Journal*, Summer, 1993, p. 130.

³³§578(a), Senate mark-up of H.R. 2295, 23 September 1993, emphasis added.

³⁴§572, P.L. 103-87, emphasis added.

³⁵Ibid.

justified in the FY 1989 Congressional Presentation for Security Assistance Programs.³⁶ This provision applies to the following ten countries: Egypt, Greece, Israel, Jordan, Morocco, Pakistan, Portugal, Tunisia, Turkey, and Yemen.

f. For the second consecutive year, Congress has placed a ceiling on the level of DoD obligations that can be incurred in FY 1994 using funds derived from the administrative surcharges which are applied to FMS cases. These funds are used for the payment of U.S. **administrative operating costs** (including civilian salaries) associated with the management of security assistance programs. In FY 1993 when such a ceiling was first established on the use of these FMS-derived administrative funds, the ceiling was set at \$300 million; for FY 1994, Congress chose to lower the ceiling to \$290 million. In its comments regarding this limitation on security assistance operating costs, the House Appropriations Committee reported that "more than 4,500 people are paid through the overhead cost generated by foreign military sales overhead costs," and "the Committee believes that more review of the use of these funds is needed."³⁷ Noting that the FY 1994 budget submission failed to provide estimates of the proposed use of these funds, as the Committee had previously recommended, the Committee stated that the \$10 million reduction in the FY 1994 ceiling was tied to the lack of estimates in the FY 1994 submission. Further, the Committee stated that "further reductions will be made unless the annual estimate is included in the annual budget submission."³⁸ [Note. The *FY 1994 Congressional Presentation Document*, which was provided to Congress in April 1993, provides FMS Administrative Cost estimates for FY 1994 (on page 61), reflecting a total estimated requirement of \$305.2 million for an estimated 5,354 workyears.] Despite the rhetoric, Congress provided a means by which the ceiling of \$290 million could be surpassed, i.e., by allowing this limitation to "be exceeded. . . through [the process of submitting a report through] the regular notification procedures of the Committees on Appropriations."³⁹

g. As in FY 1993, Congress made available a total of \$52,000 for **entertainment and representation expenses** (\$2,000 and \$50,000 respectively) for use during FY 1994 by the Defense Security Assistance Agency and for U.S. Security Assistance Organizations overseas.⁴⁰

h. Finally, Congress reestablished "**deob-reob**" authority for the FMF Program for FY 1994. This is the authority to deobligate unused country/program-allocated funds from prior years in order to reobligate them for a different country/program in the current year. Such deob-reob authority has long been authorized for the ESF program, but only first became available for the FMF Program in FY 1991; Congress then withheld it from the FMFP for FY1992 and FY 1993, but has now reauthorized it for FY 1994.⁴¹

C. The International Military Education and Training (IMET) Program

Several factors came into play during the process of appropriating funds for the FY 1994 IMET Program, all of which contributed to a major reduction in program funding. In recent years (FY 1988-FY 1992) the annual appropriations for IMET have exceeded \$47 million. For FY 1993, Congress cut the IMET appropriation to \$42.500 million. Though the Administration asked Congress to maintain the FY 1993 level for FY 1994, the House Appropriations

³⁶Title III, Military Assistance, Foreign Military Financing Program, P.L. 103-87. The \$100 million ceiling does not apply to Israel or Egypt; also, for FY 1990-FY 1993, the ceiling was set at \$300 million.

³⁷House Report, op. cit., p. 99.

³⁸Ibid.

³⁹Title III, Military Assistance, Foreign Military Financing Program, P.L. 103-87.

⁴⁰§505, P.L. 103-87.

⁴¹§510, P.L. 103-87. §510 also provides deob-reob authority for the Economic Support Fund for FY 1994.

Committee proposed a 50% cut, to \$21.250 million. The Committee reported this severe reduction as the product “of budget constraints” plus “uncertainties” over a related budget request for a proposed new DoD “Democracy Fund” (also termed “Promotion of Democracy Program”) which appeared to duplicate the objectives of the ongoing Expanded IMET Initiative (see discussion below). The Committee encouraged DoD to explain how the IMET and the Democracy Fund programs could be “effectively coordinated and overseen,” and the Committee reported that it would “consider adjusting the [IMET] funding if these problems [including the budget constraints] are cleared up.”⁴² When the Senate Appropriations Committee marked up the bill, it also recommended a \$21.250 million funding level, an action which it reported having to make “because of the present difficult budgetary climate.” The Committee further reported that it had “carefully reviewed” the proposed “Democracy Fund” and that it found “no significant overlap with the type of longer term training provided by the IMET program.”⁴³ Subsequently, Congress failed to provide any funding whatsoever for the Democratization Fund, and only \$21.250 million was made available for the worldwide IMET program for FY 1994. This represents the lowest level of annual funding since the program was established in FY 1976.⁴⁴ Table 3 below identifies the countries for which IMET funds have been allocated.

A variety of additional provisions in the FY 1994 Foreign Operations Appropriations Act will impact on the IMET Program and merit attention. First, Congress approved the use of up to \$50,000 in FY 1994 IMET funding for **student entertainment expenses**. This is identical to the level authorized in FY 1993. Secondly, the **high income countries** provision has been extended into FY 1994.⁴⁵ This provision, which was first applied in FY 1989, prohibits countries which have an annual per capita gross national product (GNP) exceeding \$2,349 from using IMET funds for student travel and living allowances.⁴⁶ Carried along with this provision is an additional requirement which originated in FY 1993 and which limits to not more than \$300,000 the amount of annual IMET funding that may be provided for tuition assistance to any such high income country. Eliminated from the FY 1994 statute is the provision that was attached to the FY 1993 legislation which permitted the Executive Branch to propose exceptions to the \$300,000 limitation through the regular notification procedures of the two appropriations committees.⁴⁷ The following seventeen FY 1994 IMET recipient countries fall into the high income category: Algeria, Antigua-Barbuda, Argentina, Austria, Bahamas, Bahrain, Barbados, Finland, Gabon, Greece, Korea, Malta, Oman, Singapore, Spain, Trinidad/Tobago, and Venezuela.⁴⁸

Congress departed from its prior year practice and did not establish a funding earmark in the IMET account for the support of **Expanded IMET (E-IMET)** programs. However, the *SAC Report* stated that it was “the Committee’s intent that not less than \$4,000,000” of the IMET appropriation be used for Expanded IMET.⁴⁹ The Executive Branch followed the SAC guidance in its identification of FY 1994 IMET funds to be programmed for E-IMET training. This is shown in Table 3 below which identifies 63 countries for which \$3,669,000 of their aggregate FY 1994 IMET funds will be used for E-IMET programs, with another \$331,000 made available for general administrative costs. E-IMET was initiated in FY 1991 to provide professional level management training to foreign military officers as well as to civilian managers and administrators of defense establishments. Such training emphasizes military justice systems, codes of

⁴²HAC Report, op., cit., p. 95.

⁴³SAC Report, op. cit., p. 115.

⁴⁴FY 1994 CPD, op. cit., p. 86.

⁴⁵Title III, Military Assistance, International Military Education and Training, P.L. 103-87.

⁴⁶The 1988 *World Development Report* produced by the International Bank for Reconstruction and Development (i.e., the World Bank) provides the annual per capita GNP source data used in identifying “high income countries.”

⁴⁷Title III, Military Assistance, International Military Education and Training, P.L. 102-391.

⁴⁸SECSTATE message 131150Z Nov 93, Subject: FY 1994 Security Assistance Allocations.

⁴⁹SAC Report, opl. cit., p. 115.

TABLE 3

**INTERNATIONAL MILITARY EDUCATION AND TRAINING (IMET) PROGRAM
FY 1993 AND FY 1994 FUNDING
(Dollars in Thousands)**

<u>Country/Program by Security Assistance Function</u>	<u>Actual FY 1993 IMET Funding</u>	<u>FY 1994 IMET Budget Request</u>	<u>Allocated FY 1994 IMET Funding</u>	<u>(E-IMET Level) [1]</u>
<u>MIDDLE EAST PEACE</u>				
Egypt	\$1,800	\$1,800	\$800	(\$150)
Jordan	500	1,800	800	(150)
Lebanon	592	400	300	(40)
	-----	-----	-----	-----
Function Subtotals	2,892	4,000	1,900	(340)
<u>REGIONAL SECURITY AND DEFENSE COOPERATION</u>				
Algeria	144	150	50	(10)
Austria	0	15	10	
Bahrain	106	75	50	(10)
Belize	148	125	50	(12)
Botswana	469	400	350	(50)
Cameroon	330	350	100	
Chad	376	380	225	(30)
Costa Rica	234	230	100	
Djibouti	217	150	100	(25)
Dominican Republic	754	600	300	(50)
Eastern Caribbean	343	462	265	
[Antigua-Barbuda]	[17]	[25]	[20]	
[Barbados]	[40]	[45]	[25]	
[Dominica]	[42]	[68]	[40]	
[Grenada]	[51]	[78]	[40]	
[St. Kitts-Nevis]	[59]	[60]	[40]	
[St. Lucia]	[54]	[101]	[50]	
[St. Vincent & Grenadines]	[80]	[85]	[50]	
Finland	0	15	10	
Gabon	114	135	0	
Greece	265	200	100	
Guinea	199	150	125	(25)
Honduras	1,367	1,000	500	(50)

[1] Where indicated, an E-IMET funding level represents that portion of a country's IMET allocation which has been designated to support the Expanded IMET Program.

(Continued on following page)

TABLE 3 (CONTINUED)

<u>Country/Program by Security Assistance Function</u>	<u>Actual FY 1993 IMET Funding</u>	<u>FY 1994 IMET Budget Request</u>	<u>Allocated FY 1994 IMET Funding</u>	<u>(E-IMET Level)</u>
Jamaica	450	450	200	(25)
Kenya	660	600	280	(35)
Korea	273	200	10	
Malawi	163	200	125	(25)
Malaysia	0	800	300	(50)
Malta	78	65	0	
Morocco	1,150	1,000	500	(75)
Namibia	297	250	200	(40)
Niger	360	300	200	(40)
Oman	110	110	50	(8)
Philippines	2,548	2,000	875	(200)
Portugal	1,000	1,000	500	(75)
Senegal	750	600	450	(75)
Seychelles	125	90	0	
Singapore	20	20	10	
Spain	265	200	50	
Thailand	2,269	1,800	875	(150)
Tunisia	1,216	1,000	500	(75)
Turkey	3,100	2,800	1,000	(150)
Zimbabwe	403	300	250	(40)
Function Subtotals	20,303	18,222	8,710	(1,325)
<u>PROMOTION OF DEMOCRACY AND HUMAN RIGHTS</u>				
Albania	198	150	140	
Angola	0	100	0	
Belarus	101	100	75	
Bulgaria	295	300	240	(100)
Cambodia	0	0	90	
Czech Republic	475	500	400	(100)
Czechoslovakia	60	0	0	
El Salvador	300	1,100	400	(300)
Eritrea	0	75	75	
Estonia	88	150	110	(25)
Ethiopia	167	150	100	(25)
Georgia	0	50	50	
Guatemala	300	350	125	(100)
Haiti	0	400	0	
Hungary	697	700	550	(100)
Kazakhstan	166	100	100	
Kyrgyzstan	0	50	50	

(Continued on next page)

TABLE 3 (CONTINUED)

<u>Country/Program by Security Assistance Function</u>	<u>Actual FY 1993 IMET Funding</u>	<u>FY 1994 IMET Budget Request</u>	<u>Allocated FY 1994 IMET Funding</u>	<u>(E-IMET Level)</u>
Latvia	123	150	110	(25)
Lithuania	175	150	110	(25)
Macedonia [2]	0	0	75	
Moldova	0	50	50	
Mongolia	108	75	50	
Mozambique	205	150	0	
Nicaragua	0	100	0	
Poland	689	700	550	(100)
Romania	310	100	240	(100)
Russia	419	1,000	750	(150)
Slovakia	144	350	200	(75)
Slovenia	95	0	100	
Turkmenistan	0	50	50	
Ukraine	413	600	500	(100)
Function Subtotals	----- 5,528	----- 7,750	----- 5,290	----- (1,325)
<u>COUNTERNARCOTICS</u>				
Bolivia	1,015	900	400	(50)
Colombia	2,117	2,000	900	(100)
Ecuador	800	780	375	(25)
Peru	0	500	0	
Function Subtotals	----- 3,932	----- 4,180	----- 1,675	----- (175)
<u>PROMOTE PROFESSIONAL MILITARY RELATIONSHIPS</u>				
Argentina	300	200	100	(25)
Bahamas	75	100	0	
Bangladesh	461	350	175	(50)
Benin	111	120	10054	
Brazil	250	150	100	
Burundi	348	250	0	
Cape Verde	182	150	0	
Central African Republic	219	150	0	
Chile	288	200	100	(25)
Comoros	137	90	0	
Congo	150	150	100	(25)

[2] IMET funds for Macedonia may not be obligated pending consultations with Congress.

(Continued on following page)

TABLE 3 (CONTINUED)

<u>Country/Program by Security Assistance Function</u>	<u>Actual FY 1993 IMET Funding</u>	<u>FY 1994 IMET Budget Request</u>	<u>Allocated FY 1994 IMET Funding</u>	<u>(E-IMET Level) [1]</u>
Cote d'Ivoire	221	200	150	(25)
Gambia	107	110	100	
Ghana	305	250	200	(30)
Guinea-Bissau	202	125	100	(25)
Guyana	106	50	0	
India	368	345	150	(25)
Lesotho	131	100	0	
Madagascar	258	150	0	
Maldives	104	70	0	
Mali	199	180	130	(25)
Mexico	722	500	200	(25)
Mauritius	69	75	0	
Nepal	143	200	100	
Nigeria	152	400	0	
Panama Canal Area Military School (SCIATTS)	730	600	425	
Papua New Guinea	98	125	50	(7)
Paraguay	349	175	75	(12)
Rwanda	167	120	75	(25)
Sao Tome & Principe	198	125	0	
Sierra Leone	300	200	0	
Solomon Islands	20	50	10	
Sri Lanka	387	225	100	(25)
Suriname	50	50	0	
Swaziland	149	120	0	
Tanzania	219	150	120	(25)
Togo	0	125	0	
Tonga	64	50	15	
Trinidad & Tobago	50	75	40	
Uganda	200	150	120	(25)
Uruguay	339	300	150	(25)
Vanuatu	33	50	15	
Venezuela	232	475	200	(30)
Western Samoa	50	50	15	
Zambia	152	100	75	(50)
Function Subtotals	9,395	7,980	3,290	(504)
<u>MISCELLANEOUS</u>				
General IMET Costs	450	368	385	(331)
<u>PROGRAM TOTALS</u>	<u>\$42,500</u>	<u>\$42,500</u>	<u>\$21,250</u>	<u>(\$4,000)</u>

conduct, civilian control of the military, and the protection of human rights. Further, in a FY 1992 amendment to the FAA, Congress expanded the program by permitting participation in E-IMET programs by “members of national legislatures” who are responsible for the oversight and management of the military in their respective countries.⁵⁰

Finally, Congress has decided to extend through FY 1994 the FY 1993 prohibitions regarding the provision of IMET assistance to Zaire and Indonesia.⁵¹ The two countries have been involved in substantial human rights violations, and the withholding of IMET Training serves as an official U.S. Government sanction.

D. The Economic Support Fund (ESF)

The Economic Support Fund is the economic component of the U.S. Security Assistance Program, and with an overall FY 1994 appropriation of \$2,364,562,000, ESF has retained its traditional position as the second largest funded program component—second only to the FMFP.⁵² ESF funding in FY 1993 totaled \$2,670,000,000, and the Administration’s request for FY 1994, at \$2,582,000,000, was slightly below the FY 1993 funding level. The FY 1994 appropriation, at \$2,364,562,000, is therefore \$305,438,000 (or 11.44%) below the FY 1993 level, and \$217,438,000 (or 8.42%) below the FY 1994 budget request.

ESF has been an entirely grant aid program since FY 1987, with the majority of its annual appropriation earmarked for two countries: Israel, \$1.2 billion; and Egypt, \$815 million. The fact that the ESF funding levels for these two countries have remained unchanged since FY 1987, while the overall ESF appropriation level has declined every year between FY 1987 and FY 1994, means that Israel and Egypt have enjoyed a growing percentage of a declining fund. Thus, for FY 1994, funding for these two countries totals \$2.015 billion or 85.21% of the total ESF appropriation. For FY 1987, with a significantly higher ESF appropriation of \$3.350 billion, the funding for Israel and Egypt, while sizeable, represented a relatively smaller 60.15% of the total appropriation. The most important consequence of the declining ESF funding and the fixed annual earmarks for Israel and Egypt is that less and less funding is available for other countries—a phenomenon that similarly characterizes the annual FMFP appropriation.

In addition to the ESF earmarks for Congress for Israel and Egypt, Congress also included an earmark for Cyprus which since FY 1987 has been designated annually to receive \$15 million. These three earmarks, together with other funding commitments of \$47 million left a total of \$287,562,000 of the FY 1994 ESF appropriation available for discretionary allocation by the Administration.⁵³ The full set of ESF country/program allocations for FY 1994, as announced by Department of State message 131150Z November 1993, are identified in Table 4 which follows. Table 4 also provides comparative FY 1993 ESF allocation data, plus the country and program funding levels contained in the Administration’s budget request for FY 1994.

E. Special ESF Provisions

As in past years, special conditions were attached to the FY 1994 ESF funding for Israel and Egypt. For example, Israel’s entire ESF allocation, like her FMFP funding, was required to be disbursed by cash transfer within 30 days of the enactment of the FY 1994 Foreign Operations

⁵⁰§541, FAA as amended by §10(1) of the International Narcotics Control Act of 1992 (P.L. 102-583; 106 Stat. 4934).

⁵¹Ibid.

⁵²Title II, Bilateral Economic Assistance, Economic Support Fund, P.L. 103-87.

⁵³The total of \$47M in “other commitments” includes the following: Middle East Regional, \$7M; Multilateral Peace Process, \$1M; WestBank/Gaza, \$25M; and S.Pacific Tuna Treaty, \$14M.

TABLE 4**FY 1994 ECONOMIC SUPPORT FUND (ESF)
(Dollars in Millions) (E=Earmark)**

<u>Country/Program by Security Assistance Function</u>	<u>Actual FY 1993 ESF Funding</u>	<u>FY 1994 ESF Budget Request</u>	<u>Allocated FY 1994 ESF Funding</u>
<u>MIDDLE EAST PEACE</u>			
Egypt	\$815.000 E	\$815.000	\$815.000 E
Israel	1,200.000 E	1,200.000	1,200.000 E
Jordan	15.000	10.000	9.000
Lebanon	2.800 E	4.000	4.000
Middle East Regional	7.000 E	7.000	7.000
Morocco	20.000 E	8.000	3.000
Multilateral Peace Process	0.000	2.500	1.000
Tunisia	3.000	3.000	1.000
West Bank/Gaza	25.000 E	25.000	25.000
	-----	-----	-----
Function Subtotals	2,087.800	2,074.500	2,065.000
<u>REGIONAL SECURITY AND DEFENSE COOPERATION</u>			
Oman	5.000	2.000	0.000
Turkey	125.000 E	143.000	120.000
	-----	-----	-----
Function Subtotals	130.000	145.000	120.000
<u>ECONOMIC DEVELOPMENT</u>			
Afghanistan Humanitarian	10.000	5.000	2.000
Africa Regional	0.500	0.000	0.000
Burundi	1.000	0.000	0.000
Cambodian Economic Develop.	10.000 E	10.000	8.000
Eastern Caribbean	0.000	2.000	1.000
El Salvador	104.500	90.000	45.000
Guyana	2.000	0.000	0.000
Guatemala	11.500	0.000	0.000
Honduras	7.000	7.500	0.000
Jamaica	2.000	4.000	0.000
Macedonia	0.000	0.000	5.000
Mongolia	8.000	3.000	0.000
Nicaragua	53.300	29.000	10.000
Philippines	25.000	10.000	0.000
	-----	-----	-----
Functional Subtotals	234.800	160.500	71.000

(Continued on following page)

TABLE 4 (CONTINUED)

<u>Country/Program by Security Assistance Function</u>	<u>Actual FY 1993 ESF Funding</u>	<u>FY 1994 ESF Budget Request</u>	<u>Allocated FY 1994 ESF Funding</u>
<u>COUNTERNARCOTICS</u>			
Andean Narcotics	138.692	100.000	35.000
[Bolivia]	[41.500]	[50.000]	[25.000]
[Colombia]	[11.161]	[20.000]	[1.000]
[Peru]	[86.031]	[30.000]	[9.000]
	-----	-----	-----
Function Subtotals	138.692	100.000	35.000
<u>DEMOCRATIC DEVELOPMENT</u>			
Africa Democracy Support	3.000	20.000	15.000
Haiti	5.000	15.000	12.000
Latin America and Caribbean Regional	6.008	12.000	6.562
Panama	6.000	6.000	4.000
Liberia	0.500	0.000	0.000
Mozambique	2.000	0.000	0.000
Southeast Asia Regional	25.000	20.000	7.000
	-----	-----	-----
Function Subtotals	47.508	73.000	44.562
<u>MISCELLANEOUS</u>			
Cyprus	\$15.000 E	\$15.000	\$15.000 E
Displaced Burmese Students	1.000 E	0.000	0.000
Food & Humanitarian Assistance/Office of Foreign Disaster Assistance (FHA/OFDA)	1.200	0.000	0.000
Prior Year Reobligations	0.000	0.000	0.000
South Pacific Tuna Treaty	14.000 E	14.000	14.000
	-----	-----	-----
Miscellaneous Subtotals	31.200	29.000	29.000
<u>PROGRAM TOTALS</u>	<u>\$2,670.000</u>	<u>\$2,582.000</u>	<u>\$2,364.562</u>

Appropriations Act (i.e., 29 October 1993) or by October 31, whichever was later. Similarly, cash transfer assistance may be provided for Egypt's FY 1994 ESF funding, although no specific level of cash transfer assistance is stated in the relevant statute.⁵⁴ As in previous years, Congress stipulated that Egypt's ESF funding is provided, "with the understanding that Egypt will undertake significant economic reforms [during FY 1994] which are additional to those which were undertaken in previous fiscal years."⁵⁵ Congress further stipulated that "not less than \$200,000,000 [of Egypt's ESF funding] shall be provided as Commodity Import Program assistance."⁵⁶ Two additional ESF provisions of previous years have again been applied by Congress to the ESF funding of both Israel and Egypt. First, in providing cash transfer assistance to the two countries, the President is charged with ensuring, "that the level of such assistance does not cause an adverse impact on the total level of nonmilitary exports from the United States to each such country." Second, the statute carries a "sense of the Congress" provision, whereby Congress states that its "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."⁵⁷ In addition to these comments, Congress also included its annual restatement of U.S. policy toward Israel in the following separate section covering ESF assistance for Israel:

The Congress finds that progress on the peace process in the Middle East is vitally important to United States security interests in the region. The Congress recognizes that, in fulfilling its obligations under the Treaty of Peace Between the Arab Republic of Egypt and the State of Israel, done at Washington on March 26, 1979, Israel incurred severe economic burdens. Furthermore, the Congress recognizes that an economically and militarily secure Israel serves the security interests of the United States, for a secure Israel is an Israel which has the incentive and confidence to continue pursuing the peace process. Therefore, the Congress declares that it is the policy and the intention of the United States that the funds provided in annual appropriations for the Economic Support Fund which are allocated to Israel 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.⁵⁸

The ESF provision for Cyprus also carries a policy stipulation that has been attached to its annual ESF funding, i.e., the requirement that its funds may "be used only for scholarships, bicomunal projects, and measures aimed at the reunification of the island and designed to reduce tensions, and promote peace and cooperation between the two communities on Cyprus."⁵⁹

A further specific use of ESF is contained in Section 551 of P.L. 103-87 which authorizes the use of ESF "to strengthen the **administration of justice** in countries in Latin America and the Caribbean in accordance with the provisions of Section 534 of the Foreign Assistance Act," to include "programs to enhance [the] protection of participants in judicial cases," notwithstanding the following: the police training prohibitions in Section 660, FAA; the \$20,000,000 ceiling on administration of justice assistance in any fiscal year in Section 534(c), FAA; and the September 30, 1991 expiration date for administration of justice programs in Section 534(e), FAA. This new legislation authorizes up to \$6,000,000 for "technical assistance, training, and commodities with the objective of creating a **professional civilian police force for Panama**,

⁵⁴Ibid.

⁵⁵Ibid.

⁵⁶Ibid.

⁵⁷Ibid.

⁵⁸§517, P.L. 103-87.

⁵⁹Title II, Bilateral Economic Assistance, Economic Support Fund, P.L. 103-87.

and for programs to improve penal institutions and the rehabilitation of offenders in Panama . . . except that such technical assistance shall not include more than \$3,000,000 for the procurement of equipment for law enforcement purposes, and shall not include lethal equipment.”⁶⁰

As part of the **Andean Narcotics Initiative**, a total of \$35,000,000 in ESF assistance has been allocated for Bolivia (\$25,000,000), Colombia (\$1,000,000), and Peru (\$9,000,000). However, as discussed earlier in conjunction with the FMFP account, these funds cannot be made available for expenditure, “until the Secretary of State consults with, and provides a new Andean counternarcotics strategy (including budget estimates) to the [House and Senate] Committees on Appropriations.”⁶¹

Qualifications were also placed on the release of FY 1994 **ESF funding for Nicaragua**. In an amendment sponsored by Senator Jesse Helms (R-NC) and subsequently accepted by the Appropriations Conference Committee, no ESF funding may be made available to Nicaragua until issues relating to international terrorism, expropriation of U.S. property, human rights reforms, guarantees of civilian control over the armed forces and the police, and reform of the Nicaraguan judicial system are satisfactorily addressed by the government of Nicaragua. The first issue—international terrorism—requires the Secretary of State to determine and report to the two Appropriations Committees and the Committees on Foreign Affairs/Foreign Relations that:

(1) there has been a full and independent investigation conducted relating to issues raised by the discovery, after the May 23 [1993] explosion in Managua, of weapons caches, false passports, identity papers, and other documents, suggesting the existence of a terrorist/kidnapping ring [in Nicaragua]; and

(2) any individuals identified by the investigation cited in paragraph (1) as being part of such [a] ring, including all government officials (including any members of the armed forces or security forces) are being prosecuted.⁶²

A similar determination and report by the Secretary of State must be made to the same committees with respect to the other issues. That is, before any ESF funds may be made available to Nicaragua, the Secretary must also determine that “significant and tangible progress” is being made by the Government of Nicaragua toward: (1) the resolution of expropriation claims, with effective compensation of legitimate claims; (2) the timely implementation of recommendations made by the Tripartite Commission and its “review and identification of those responsible for gross human rights violations, including the expeditious prosecution of individuals identified by the commission in connection with such violations;” (3) the enactment of legislation designed to reform the military and security forces of Nicaragua, “in order to guarantee civilian control over the armed forces; (4) the establishment of civilian control over Nicaragua’s police, and the independence of the police from the military of Nicaragua; and (5) the “effective reform” of the judicial system of Nicaragua.⁶³ The legislation also calls for “a detailed listing of the tangible evidence that forms the basis for such determination by the Secretary of State.”⁶⁴

In addition to providing ESF funding for FY 1994, P.L. 103-87 also requires the **rescission (i.e., canceling) of prior year ESF budget authority**. A total of \$203 million of unspent FY 1993 and prior year appropriated ESF funds (including earmarked funds) must be canceled.⁶⁵

⁶⁰§551, P.L. 103-87.

⁶¹§561, P.L. 103-87.

⁶²§562(a), P.L. 103-87.

⁶³§562(b), P.L. 103-87.

⁶⁴§562(c), P.L. 103-87.

⁶⁵§545(a), P.L. 103-87.

The House had recommended a rescission of \$185 million, and the Senate called for \$250 million. The Appropriations Conference Committee settled upon the \$203 million level. As in previous rescission actions, Congress did not specify any particular country/program from which these funds were to be rescinded, thereby leaving such decisions to the Administration.

Finally, the FY 1993 **prohibition on ESF assistance to Zaire** has been continued for FY 1994. Thus, as previously mentioned, Zaire is prohibited from receiving any FMFP, IMET, or ESF assistance in FY 1994. However, Kenya, which was also prohibited from ESF assistance in FY 1993, has no such restriction for FY 1994.

F. International Peacekeeping Operations (PKO)

The expansion in 1993 of international peacekeeping operations in Europe, Africa, and the Caribbean, has had a dramatic effect on the PKO programs funded through the U.S. Security Assistance Program.⁶⁶ For many years, such funding has generally focused on support for two programs—the Multinational Force and Observers in the Sinai (MFO) and the United Nations Forces in Cyprus (UNFICYP). Occasionally, other programs have received PKO funding, such as a Peacekeeping Operation in Chad in FY 1982, a Caribbean Peacekeeping Force in Grenada in FY 1984-FY 1985, and PKO funding support of U.N.-sponsored mine clearing operations in Afghanistan in FY 1989. More recently, with the spreading of regional conflicts, PKO funding has been expanded to provide for additional peacekeeping programs. For example, the original FY 1993 PKO appropriation of \$27,166,000 was allocated in support of the two principal programs, i. e., the MFO (\$18,166,000) and the UNFICYP (\$9,000,000). However, during the year, two additional PKO programs were initiated, as illustrated in Table 5. The first, the Serbian Sanctions Enforcement Program, was funded at \$5,950,000 by reprogramming \$950,000 from within the PKO account plus transferring \$5,000,000 from the FMFP loan subsidies account to the PKO account. An additional \$6,830,000 was transferred from the FY 1993 FMFP loan subsidies account to fund a United Nations peacekeeping operation in Liberia.⁶⁷

For FY 1994, the Administration sought \$77,166,000 in PKO funding. This was \$50,000,000 above its FY 1993 request of \$27,177,00—an almost threefold increase resulting from a major expansion of the program. The House recommended a two percent reduction of \$1,543,000 from the request, for a funding level of \$75,623,000. For its part, the Senate further reduced the proposed funding to \$62,500,000; the difference in the two recommendations were resolved by the Appropriations Conference Committee which adopted the House level of \$75,623,000. This represents the highest funding level in the history of the PKO program dating back to its origin in FY 1979. In addition to funding the ongoing MFO and UNFICYP programs, plus the Serbian and Liberian operations which were initiated in FY 1993, an additional five programs have been added for FY 1994, as shown in Table 5. These include:

1. Peacekeeping operations of the Conference on Security and Cooperation in Europe (CSCE) in the former Soviet Union (Nagorno-Karabakh, Kosovo, Macedonia, Estonia, Georgia, and Moldova);

⁶⁶The PKO funding for the U.N. activities described herein is limited to *voluntary* U.S. contributions for United Nations peacekeeping operations. Funding for *assessed* contributions for United Nations peacekeeping programs (e.g., Lebanon, Iraq/Kuwait, Western Sahara, Mozambique, etc.) totaling over \$600 million is provided through the annual Commerce, Justice, and State Appropriations acts. Also, the PKO funding shown herein does not include a separate DoD Peacekeeping account of \$300 million.

⁶⁷The funds transferred from the FMFP loan subsidies account to the PKO account were transferred pursuant to the authority of §610, FAA.

TABLE 5**PEACEKEEPING OPERATIONS (PKO) PROGRAM
FY 1993 AND FY 1994 FUNDING
(Dollars in Millions)**

<u>PKO Program</u>	<u>FY 1993 Actual Funding</u>	<u>FY 1994 Budget Request</u>	<u>FY 1994 Allocated Funding</u>
Conference on Security and Cooperation in Europe (CSCE)	\$0.000	\$7.000	\$7.000
Economic Community of West African States (ECOWAS)	0.000	12.000	11.000
Multinational Force and Observers (MFO) - Sinai	17.216	18.000	18.000
Organization of African Unity (OAU) - Rwanda	0.000	3.166	2.000
Serbian Sanctions Enforcement (Frontline States)	5.950 [1]	0.000	3.623
Somalia (International Criminal Investigative and Training Assistance Program [ICITAP])	0.000	0.000	12.000
United Nations Forces in Cyprus (UNFICYP)	9.000	9.000	9.000
United Nations - Liberia	6.830 [2]	0.000	0.000
United Nations/Organization of American States (UN/OAS) - Haiti	0.000	28.000	13.000
<u>Program Totals</u>	----- \$38.996	----- \$77.166	----- \$75.623

[1] To finance the Serbian program in FY 1993, \$950,000 was reprogrammed from within the PKO account; also, an FAA §610 funds transfer of \$5,000,000 was made from the FMFP loan subsidies account to the PKO account.

[2] To finance the Liberia program in FY 1993, an FAA §610 funds transfer of \$6,830,000 was made from the FMFP loan subsidies account to the PKO account.

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2. An Organization of African Unity (OAU) sponsored military observer force in Rwanda;
 3. An International Criminal Investigative and Training Assistance Program (ICITAP) in Somalia;
 4. Peacekeeping efforts in Liberia by the Economic Community of West African States (ECOWAS), previously managed by the United Nations; and,
 5. A civilian observer mission to Haiti under the authority of the United Nations and the Organization of American States.(UN/OAS).

G. Nonproliferation and Disarmament (NPD) Fund

A new security assistance program—the Nonproliferation and Disarmament Fund—was enacted for FY 1994 in P.L. 103-87.⁶⁸ This new program is designed to fund efforts to control the spread of weapons of mass destruction in the former Soviet Union and elsewhere. In his confirmation hearings, Secretary of State Warren Christopher identified nonproliferation as one of the foremost challenges confronting the United States.⁶⁹

The Administration sought \$50 million to initiate the NPD Fund; however, both the House and the Senate substantially reduced the request by 80%, agreeing on a limited appropriation of \$10 million.⁷⁰ Congress stipulated that this funding may be expended to promote both bilateral and multilateral, activities and may be used pursuant to the authorities contained in section 504 of the 1992 FREEDOM Support Act.⁷¹ Section 504 provides authorities for:

- 1) the dismantlement and destruction of nuclear, biological, and chemical weapons, their delivery systems, and conventional weapons;
- 2) the support of bilateral and multilateral efforts to halt such proliferation, including such activities as: (A) the storage, transportation, and safeguarding of such weapons, and (B) the purchase, barter, or other acquisition of such weapons or materials derived from such weapons;
- 3) the establishment of programs for safeguarding against the proliferation of such weapons of the independent states of the former Soviet Union;
- 4) the establishment of programs for preventing the diversion of weapons-related scientific and technical expertise of the independent states to terrorist groups or to third countries;
- 5) the establishment of science and technology centers in the independent states to engage weapons scientists and engineers of the independent states (particularly those who were previously involved in the design and production of nuclear, biological, and chemical weapons) in productive nonmilitary undertakings; and
- 6) the establishment of programs for facilitating the conversion of military technologies and capabilities and defense industries of the former Soviet Union into civilian activities.

The new NPD legislation provides that the funds appropriated for this program may also be used for “countries other than the New Independent States of the Former Soviet Union and international organizations when it is in the national security interest of the United States to do

⁶⁸Title III, Military Assistance, Nonproliferation and Disarmament Fund, P.L. 103-87.

⁶⁹Christopher, Secretary-Designate Warren, Statement at Senate Confirmation Hearing, *U.S. Department of State Dispatch*, 25 January 1993, pp. 45-46.

⁷⁰*Ibid.*

⁷¹P.L. 192-511, Freedom For Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act), 24 October 1992).

so.”⁷² The Department of State’s role in this program is “to serve as the initial diplomatic contact, conduct negotiations, and provide legal assistance, translation services, program start-up, and initial training costs,” as well as “to facilitate the technical implementation of these programs, which may be carried out by other agencies,” which include: the Departments of Defense, Energy, and Commerce, as well as the Arms Control and Disarmament Agency, the Customs Service, and other Western countries.⁷³

H. Special Defense Acquisition Fund (SDAF)

The SDAF was first authorized in FY 1981 to serve as a means whereby DoD could procure defense articles and services in anticipation of future foreign government military requirements.⁷⁴ As such, the SDAF provided a means of: reducing procurement leadtimes; permitting improved U.S.G. responses to emergency foreign requirements; and reducing the need for drawdowns or diversions of defense equipment from U.S. stocks or new production.⁷⁵

Though widely viewed as an important security assistance program, a major DoD budget tightening effort in 1991 guided by the OSD Comptroller began to threaten the SDAF. The Defense Security Assistance Agency, the Joint Staff, and the military departments were initially successful in resisting pressures to abolish the SDAF; however, by March 1993 the Administration agreed to close down the program. On 30 March 1993, DSAA notified the security assistance community that the FY 1994 budget proposal would not include a request for new SDAF obligational authority, thereby eliminating the funding of any new procurements after the FY 1993 funds (and residual FY 1991/1992 funds) were obligated. DSAA reported that this action would “benefit the President’s budget in the outyears as disbursements [for new acquisitions] decline at a faster rate than receipts as material already purchased by the SDAF is sold.”⁷⁶

The ensuing SDAF provisions in the FY 1994 Foreign Operations Appropriations Act reflect these changes. First, no FY 1994 obligational authority is provided. Secondly, the FY 1993 obligational authority contained in last year’s appropriations act⁷⁷ has been reduced to \$160 million from \$225 million, thereby effectively rescinding \$65 million in FY 1993 obligational authority. Finally, collections in FY 1994 from SDAF sales in excess of the obligational authority provided in prior year appropriations acts must be deposited in the miscellaneous receipts account of the U.S. Treasury.⁷⁸ Since prior year funds remain available in the SDAF account for obligation, and since numerous items currently remain on order, the SDAF account should be operational for several more years before all contracts are closed.

I. Stockpiling Defense Articles for Foreign Countries

Section 514(b) of the Foreign Assistance Act of 1961 establishes the annual value of defense articles located abroad that may be set aside, reserved, or otherwise earmarked from U.S. military inventories for use as war reserve stocks by allies (WRSA) or for other countries (other than NATO). The title to these stocks and their control remains with the U.S. government, and any

⁷²Title III, Military Assistance, Nonproliferation and Disarmament Fund, P.L. 103-87.

⁷³FY 1994 CPD, op. cit., pp. 48-49.

⁷⁴A new Chapter 5, including Sections 51- 53, establishing the SDAF was added to the Arms Export Control Act by Section 108(A) of the International Security and Development Cooperation Act of 1981 (P.L. 97-113).

⁷⁵§51, AECA.

⁷⁶DSAA/Plans/PGM message I-001908/93 (DTG 301605Z Mar 93).

⁷⁷Title III, Military Assistance, Special Defense Acquisition Fund, P.L. 103-391,

⁷⁸Title III, Military Assistance, Special Defense Acquisition Fund, P.L. 103-87.

future transfer of any of these items must be in accordance with the provisions of the security assistance legislation prevailing at the time of such transfer.

For FY 1994, the Executive Branch sought a total increase of \$92 million in the value of such war reserve stocks, with no more than \$72 million to be set aside as additions for the Republic of Korea, and no more than \$20 million for Thailand.⁷⁹ Congress approved the requested levels of additions for those two countries, but on its own initiative, Congress further approved the addition of \$200 million in such stocks to be set aside for Israel.⁸⁰ Thus, a total of \$292 million in war reserve stockpile additions have been authorized for FY 1994.

J. Excess Defense Articles (EDA)

Two legislative changes have been enacted which affect the rules governing the transfer of Excess Defense Articles (EDA). The first deals with country eligibility to receive non-lethal EDA as a grant transfer under the provisions of **Section 519, FAA, "Additional Authorities Relating to Modernization of Military Capabilities."** Prior to FY 1994, in order for a country to be eligible to receive such grant, non-lethal EDA, the Administration would have had to justify to Congress *foreign military financing program* (FMFP) assistance for that country for the year in which the EDA transfer would be authorized. In other words, EDA transfers in FY 1993 under Section 519 could only be furnished to a country which was justified for FMFP assistance in the FY 1993 CPD. In a change that for now applies only to FY 1994 transfers, country eligibility requirements have been significantly broadened to extend Section 519 eligibility to any country "for which United States *foreign assistance* has been requested and for which receipt of such articles was separately justified for the fiscal year. . . ."⁸¹ Thus, in addition to an FMFP justification, an IMET or ESF justification in the FY 1994 CPD could also qualify a country to receive grant, non-lethal EDA under the authority of Section 519 in FY 1994.

A second change in EDA legislation involves country eligibility for EDA transfers under the authority of **Section 516, FAA, "Modernization of Defense Capabilities of NATO's Southern Flank."** Since FY 1987, when Section 516 was added to the FAA, the eligibility to receive EDA under this Section was gradually expanded so that by FY 1993 eligible countries included the following: Greece, Portugal, Turkey, Egypt, Israel, Morocco, Senegal, and Oman. Eligibility was extended to Oman (and reestablished for Morocco and Senegal) on the basis of a provision in the *FY 1993 National Defense Authorization Act for Fiscal Year 1993* which amended Section 516 of the FAA to allow:

those countries which, as of October 1, 1990, contributed armed forces to deter Iraqi aggression in the Arabian Gulf, and which either received Foreign Military Financing [FMF] assistance in fiscal year 1990 or are in the Near East Region and received Foreign Military Financing (FMF) assistance in fiscal year 1991."⁸²

For FY 1994 and thereafter, Congress has now further amended the Section 516, FAA eligibility criteria by altering the last phrase of the FY 1993 amendment cited above to read, ". . . or are in the Near East Region and received Foreign Military Financing (FMF) assistance in fiscal year 1991 or fiscal year 1992."⁸³ The practical effect of allowing eligibility for such transfers for a

⁷⁹Congressional Presentation for Security Assistance Programs for FY 1994, p. 76

⁸⁰§535, P.L. 103-87, as amends §514(b), FAA of 1961.

⁸¹§555, P.L. 103-87, emphasis added.

⁸²§1313, P.L. 102-484 (106 Stat. 2548) *National Defense Authorization Act for FY 1993*, as amends §516(a)(3), FAA.

⁸³§1421, P.L. 103-160, *National Defense Authorization Act for FY 1994*, as amends §516(a)(3) of the FAA, emphasis added.

Near East Region country which received FMF assistance in FY 1992, is to enable Bahrain (which meets these criteria) to receive EDA under the authority of Section 516, FAA.

K. Defense Export Loan Guarantees

Despite Executive Branch efforts over the past several years to establish a program by which the U.S.G. would guarantee commercial loans for selected countries to allow their purchase of U.S. defense articles and defense services, the necessary legislation to implement such a new program has yet to be fully approved. However, considerable progress in that direction has at last been made with the enactment of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103-160). Section 1186(a) of that Act, authorizes a loan guarantee program for FY 1994 not to exceed \$1 billion. This new export stimulus legislation, known as the Kempthorne amendment (so-named for its sponsor, Senator Dirk Kempthorne, R-Idaho), would be used "to issue guarantees against the risk of nonpayment arising out of loan financing" for sales to any member nation of NATO (other than the U.S.), Israel, Australia, Japan, or the Republic of Korea.⁸⁴

Implementation of this new program is "subject to the availability of appropriations"—namely, the \$25 million required and authorized in P.L. 103-160 for the subsidy cost of the loan guarantees; however, no such funding was provided in either the Foreign Operations or National Defense Appropriations Acts for FY 1994.⁸⁵ Thus, no funds are currently available to implement this program. Moreover, none of the funds authorized to be appropriated in the National Defense Authorization Act and "made available for defense conversion, reinvestment, and transition assistance programs. . . may be used to finance the subsidy costs of loan guarantees issued under this program."⁸⁶ Nevertheless, since the Administration is likely to seek such appropriations for FY 1995, it is useful to review the numerous provisions that are attached to the present authorizing legislation.

1. The Department of Defense is named in P.L. 103-160 as the executive agency for the administration of this program; however, the President, in consultation with Congress, may designate another department or agency to implement the program.⁸⁷

2. No loan guarantees may be issued unless the President certifies to Congress, within 180 days of the enactment of P.L. 103-160, that: (a) he intends to issue such loan guarantees; b) the exercise of the authority provided under this program is consistent with the objectives of the AECA; and c) the exercise of such authority is also consistent with the policy of the U.S. regarding conventional arms sales and nonproliferation goals.⁸⁸ To this end, the new legislation also requires the National Security Council to review any sale for which a guarantee is proposed to be issued under this program in order to determine: a) whether the sale is in accord with U.S. security interests; b) that it contributes to collective defense burden sharing; and c) that it is consistent with United States nonproliferation goals.⁸⁹

3. A fee must be charged for each guarantee issued, and such fees must be made available to offset the cost of the guarantee obligations incurred under the program. These fees must be held in a financing account maintained in the Treasury of the U.S., with all the funds in the account available for investment in obligations of the U.S. Further, any interest or other receipts

⁸⁴§1186(a), P.L. 103-160, *National Defense Authorization Act for Fiscal Year 1994*, 30 November 1994.

⁸⁵§§1186(a) and 1186(e), P.L. 103-160.

⁸⁶§1186(c), P.L. 103-160.

⁸⁷§1186(f), P.L. 103-160.

⁸⁸§1186(b), P.L. 103-160.

⁸⁹§1186(h), P.L. 103-160.

derived from such investments must be credited to the Treasury account and may be used for the purposes of the guarantee loan program.⁹⁰

L. Aviation Leadership Program

An "Aviation Leadership Program" designed to train pilots from the air forces of friendly, less developed foreign nations is the second new security assistance-related program to be established in the FY 1994 National Defense Authorization Act.⁹¹ Representing a legislative initiative of the United States Air Force dating back to 1986, this new program is authorized to be funded from Air Force appropriations rather than from any security assistance account. The program is intended to establish military to military ties with the future leaders of foreign air forces from less-developed countries.

Congress views this program as furthering the interests of the United States as well as promoting closer relations with friendly foreign nations and advancing U.S. national security.⁹² The program is to function under "regulations prescribed by the Secretary of Defense [and the] Secretary of the Air Force." It is to be maintained as an "Aviation Leadership Program," and it should provide all "necessary related training," to include "language training and programs to promote better awareness and understanding of the democratic institutions and social framework of the United States."⁹³ The Secretary of the Air Force is authorized to provide for student transportation related to the training, as well as supplies and equipment, flight clothing (and any other special clothing), billeting, food, and health services.⁹⁴ Additionally, the Secretary of the Air Force is authorized to provide students in this program with a living allowance.⁹⁵ The program will feature a T-37 "wings awarding" syllabus. Currently, the Air Force is in the process of establishing the various regulations and procedures which are essential to the implementation of this new Aviation Leadership Program.

MISCELLANEOUS PROVISIONS

A. Assistance to Bosnia-Hercegovina

During the Spring of 1993, as the FY 1994 Foreign Operations Appropriations Act began to take shape, Congressional debate reflected a growing concern over the escalating conflict in Bosnia-Hercegovina, in the former Yugoslavia. The debate was particularly severe in condemning "Serb nationalist aggression which . . . included ethnic cleansing, the use of concentration camps, mass rape, the destruction of religious and cultural institutions, and the relentless bombardment of unarmed urban populations"—actions which the House Appropriations Committee reported as "nothing less than a deliberate policy of genocide."⁹⁶ The ensuing Congressional debate focused on what actions, if any, the Congress might authorize in response to the strife. At one point, Senate Minority Leader Bob Dole (R-KA) offered an amendment which would have called upon the President to seek congressional approval prior to sending any U.S. peacekeeping forces into Bosnia. The Administration was not ready to expand

⁹⁰§1186(g), P.L. 103-878.

⁹¹§1178, P.L. 103-160 as adds a new Chapter 905 (§§9381-9583) to Part II of Subtitle D of Title 10, United States Code.

⁹²§1178(a)

⁹³10 U.S.C. 9891.

⁹⁴10 U.S.C. 9382.

⁹⁵The living allowance is "to be at a rate prescribed by the Secretary [of the Air Force], taking into account the amount of living allowances authorized for a member of the armed forces under similar circumstances." 10 U.S.C. 9383.

⁹⁶HAC Report, op. cit., p. 31.

the public debate on this controversial issue, and Senator Dole subsequently withdrew his amendment, reportedly in return for a promise by Senator Claiborne Pell (D-RI), Chairman of the Foreign Relations Committee, to hold future hearings on the Bosnian crisis.⁹⁷

The ultimate legislative result of the debate was a three-pronged approach which appears in Section 548 of P.L. 103-87. The first element is political and economic, involving a call upon the United Nations to exempt the government of Bosnia-Herzegovina from the U.N. arms embargo of the region, which in the view of Congress, "is serving to sustain the military advantage of the aggressor."⁹⁸ The second component of the approach is a military one: pursuant to the lifting of the U.N. embargo, authority has been provided for the grant transfer to the government of Bosnia-Herzegovina in FY 1994 of U.S. defense articles from DoD stocks of an aggregate value of not more than \$50,000,000. Such action is dependent on a timely Presidential certification to Congress that:

- (1) the transfer of such articles would assist that nation [Bosnia-Herzegovina] in self-defense and thereby promote the security and stability of the region; and
- (2) United States allies are prepared to join in such a military assistance effort.⁹⁹

The third element of this legislation is judicial in nature. It authorizes the provision of up to \$25,000,000 of commodities and services to the United Nations War Crimes Tribunal. Such action would be accomplished pursuant to the FAA, Section 552(c), "Authorization of [Emergency] Appropriations," and is dependent upon a Presidential determination that doing so, "will contribute to a just resolution of charges regarding genocide or other violations of international law in the former Yugoslavia."¹⁰⁰

It should also be noted that Senate Bill 1467, the unenacted *Foreign Assistance Act of 1993*, which was reported out by the Senate Foreign Relations Committee on 16 September 1993, included an authorization for the DoD drawdown in FY 1994 of up to \$200,000,000 in defense equipment and training for Bosnia-Herzegovina military forces.¹⁰¹

B. Prohibitions on Direct and Indirect Funding of Certain Countries

As in previous years, the FY 1994 Foreign Operations Appropriations Act identifies countries for which no *direct or indirect* U.S. assistance may be furnished in FY 1994. Section 507 prohibits the use of any funds appropriated or otherwise made available pursuant to P.L. 103-87 from being obligated or expended to finance *directly* any assistance or reparations to Cuba, Iran, Iraq, Libya, Serbia, Sudan, or Vietnam. Similarly, Section 523 bans the obligation of any such funds to finance *indirectly* [e.g., through U.S. funding of an international organization] any assistance or reparations to China, Cuba, Iran, Iraq, Laos, Libya, North Korea, Syria, or Vietnam. In comparison to the corresponding FY 1993 provisions, Serbia and Sudan were added to the FY 1994 "direct aid" prohibition list, while Jordan and Yemen were removed from the FY 1994 "indirect aid" prohibition list.

⁹⁷Doherty, Carroll J., "Senate Approves Russian Aid, Signals Support for Yeltsin," *Congressional Weekly Quarterly Report*, 25 September 1993, p. 2566.

⁹⁸§548(a)(3), P.L. 103-87. The U.N. embargo applies to any country which is on the territory of the former Yugoslavia.

⁹⁹§548(b), P.L. 103-87.

¹⁰⁰§548(e), P.L. 103-87.

¹⁰¹§604, Senate Foreign Relations Committee Report 103-144 on S. 1467, Foreign Assistance Act of 1993.

The "indirect aid" provision [§523] also contains a waiver authority which permits the furnishing of assistance to a proscribed country if the President "certifies that the withholding of these funds is contrary to the national interest of the United States."¹⁰² No such waiver authority is included in the "direct aid" provision [§507]. Finally, the Senate-proposed version of the "indirect aid" provision originally included a special requirement regarding any waiver which would allow indirect assistance to be furnished to Syria; the relevant proviso would have required the President to make an additional certification to Congress, "that Syria does not deny its citizens or any segment of its citizens the right or opportunity to emigrate."¹⁰³ This provision was subsequently dropped by the Conference Committee and was not enacted. Of related interest is a December 27, 1993 news report from Damascus which stated that, "Hundreds of Jews have been given exit visas [during the past few days] to leave Syria in a gesture by [Syrian] President Hafez Assad before his summit meeting with President Clinton," scheduled for mid-January 1994 in Geneva, Switzerland.¹⁰⁴

C. POW/MIA Drawdown Authority

For the second consecutive year, a special drawdown authority has been furnished to the President to support efforts to locate and repatriate members of the U.S. Armed Forces as well as civilians employed by the U.S. government who remain unaccounted for since the Vietnam War. Such personnel have been generally classified either as prisoners of war (POWs) or as missing in action (MIAs) in Southeast Asia. The POW/MIA authority permits the drawdown, without reimbursement by the recipient, of defense articles from DoD stocks, defense services, and military education and training of an aggregate value not to exceed \$15,000,000 in FY 1994. These items may be provided to Cambodia and Laos insofar as the President determines the items are necessary to support the POW/MIA effort, as well as to ensure the safety of U.S.G. personnel engaged in such cooperative efforts, and also to support DoD-sponsored humanitarian projects related to the POW/MIA program.¹⁰⁵

Also, as in FY 1993, U.S. aircraft may be provided in support of these efforts, but may be furnished only to Laos, and only on a lease or loan basis. Further, Congress has again authorized the lease of such aircraft at no cost, notwithstanding the provisions of Section 61 of the Arms Export Control Act which requires payment for such leases. Further, defense articles, services, and training furnished under the POW/MIA authority may be used to maintain these aircraft.¹⁰⁶ Finally, funds are authorized to be appropriated to the President to reimburse the applicable appropriation, fund, or account for the costs associated with the provision of any defense articles, defense services, and military education and training furnished in support of this program.¹⁰⁷

D. Israel Special Drawdown Authority (SDA)

Congress also has again extended the special authority provided to the President for the drawdown of defense articles from DoD stocks, defense services, and military education and training of an aggregate value of \$700,000,000 for transfer to Israel on a grant basis. This special drawdown authority was originally enacted for FY 1991;¹⁰⁸ it was then extended for FY 1992¹⁰⁹

¹⁰²§523, P.L. 103-87.

¹⁰³§523, H.R.2295, 23 September 1983.

¹⁰⁴"Syria Lets Scores of Jews Leave," *Dayton Daily News*, December 29, 1993, p. 2.

¹⁰⁵§§540(a) and 540(b), P.L. 103-87.

¹⁰⁶§540(b), P.L. 103-87.

¹⁰⁷§540(d), P.L. 103-87.

¹⁰⁸§599B(a), P.L. 101-513.

¹⁰⁹P.L. 102-145.

and FY 1993,¹¹⁰ and now has been further extended for FY 1994.¹¹¹ Under this statute, authority was previously granted to furnish Israel with F-15 A/B fighter aircraft, AH-64 Apache helicopters, UH-60 Blackhawk helicopters, and Harpoon missiles.

E. Special Notification Procedures

As a means for maintaining Congressional oversight of foreign assistance funding for certain countries for which the Congress has particular concerns, the annual Foreign Operations Appropriations Act includes a provision which establishes special Congressional reporting requirements for such countries. For FY 1994, none of the funds appropriated in P.L. 103-87 may be provided directly by the Administration for any of the following countries, but rather must first be notified to both the House and Senate Committees on Appropriations. These countries include: Afghanistan, Cambodia, Colombia, El Salvador, Guatemala, Haiti, Indonesia, Jordan, Liberia, Malawi, Nicaragua, Peru, Sudan, Togo, or Zaire.¹¹²

F. Limitations on Assistance for Haiti

The ongoing crisis in Haiti concerning the future political leadership of that country is evident in the FY 1994 Foreign Operations Appropriations Act where a variety of restrictions have been placed on the provision of U.S. assistance. First of all, there is a prohibition on the obligation or expenditure of any U.S. appropriated funds for Haiti for military-related civic action programs, police training, or military training; at any time prior to 30 October 1993, this restriction could have been lifted if such programs or training would have constituted "an integral part of a United Nations-sponsored, multilateral initiative in furtherance of the implementation of the Governor's Island Accords, signed on July 3, 1993."¹¹³ Since no such initiative occurred, the sanctions are required to continue after 30 October 1993, with no such programs to be funded "in order to strengthen civilian control over the military and to establish an independent civilian police force, *without the concurrence of the duly-elected President of Haiti.*"¹¹⁴

Additionally, the statute precludes any U.S. appropriated funds to be used to furnish military assistance or military training, to

any member of the Haitian Armed Forces who the Secretary of State knows or has reason to believe, based on all credible information available to him—

(1) is or has been an illicit trafficker in any narcotic or psychotropic drug, other controlled substance, or is or has been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such substance; or

(2) is or has participated in gross violations of internationally recognized human rights.¹¹⁵

¹¹⁰§580, P.L. 102-391

¹¹¹§543, P.L. 103-87.

¹¹²§520, P.L. 103-87. A limited exemption from these special reporting requirements has been provided for El Salvador and Nicaragua regarding the funding of development assistance activities for these two countries carried out under the authority of Chapter 1 of Part I of the FAA.

¹¹³§d563(A)(1), P.L. 103-87

¹¹⁴§563(a)(2), P.L. 103-87, emphasis added

¹¹⁵§563(b), P.L. 103-87.

G. Prohibition on Assistance to Countries Which Assist Terrorist Governments

A new legislative provision has been introduced for FY 1994 which prohibits the provision of United States assistance to any foreign government which provides lethal military equipment to any country whose government has been determined by the Secretary of State to be a terrorist government.¹¹⁶ The new statute, which had its origin as a Senate amendment sponsored by Senator Jesse Helms, stipulates that such a prohibition will apply to lethal military equipment which is provided under a contract entered into after 30 September 1993, the date of enactment of P.L. 103-87. Also stipulated is the fact that such a prohibition placed on a foreign government "shall terminate 12 months after that government ceases to provide such military equipment."¹¹⁷

As in many statutes which establish prohibitions on U.S. assistance for a wide variety of reasons, this provision carries with it a Presidential "national interest" waiver authority, i.e., the statute authorizes a waiver of the prohibition if the President determines that U.S. aid should be furnished to a country which is supporting a terrorist country when "the furnishing of such assistance is important to the national interests of the United States."¹¹⁸ If such a waiver is to be exercised by the President, he must submit a detailed report to the appropriate Congressional Committees explaining "the assistance to be provided, including the estimated dollar amount of such assistance, and an explanation of how the assistance furthers United States national interests."¹¹⁹

H. Withholding Assistance for Parking Fees

Perhaps the most widely reported provision of the FY 1993 Foreign Operations Appropriations Act involves an amendment sponsored by Senator Jesse Helms (R-NC) and Rep. David Obey (D-WI) which has been variously referred to as "meter maid diplomacy" and "U.S. deadbeat foreign parking policy." These terms refer to Section 574, P.L. 103-87, entitled, "Withholding of Assistance for Parking Fines owed by Foreign Countries." This new provision requires withholding from obligation U.S. assistance funds made available under Part I (economic development) of the FAA which have been designated for countries which owe parking fines and penalties to the District of Columbia. Under the provision, such assistance funds equivalent to "110 percent of the total fully adjudicated parking fees and penalties owed to the District of Columbia" would be withheld until the Secretary of State certified and reported in writing to the two Appropriations Committees and the Foreign Affairs/Foreign Relations Committees, that such parking fines and penalties had been "fully paid to the government of the District of Columbia."¹²⁰ Foreign diplomats have for years claimed that their diplomatic immunity makes them exempt from paying parking fines. It has been reported that substantial sums are involved. For example, the former Soviet Union is said to owe \$3.8 million in parking tickets, with Nigeria owing \$146,030, Egypt with \$77,830, and Israel with \$69,340 (which Israel reportedly paid in full in mid-October 1993).¹²¹ Even larger sums are involved in parking fines owed in New York City by diplomats attached to the United Nations and other foreign offices; however, the current statute applies only to fines and penalties incurred in the District of Columbia.

¹¹⁶§573(a), P.L. 103-87. The term *terrorist government* as used in this section is related to §40(d), AECA, which defines it as a country which the Secretary of State has determined has "repeatedly provided support for acts of international terrorism."

¹¹⁷*Ibid.*

¹¹⁸§573(b), P.L. 103-87.

¹¹⁹§573(c), P.L. 103-87.

¹²⁰§574(a), P.L. 103-87.

¹²¹"Meter Maid Diplomacy," *Defense News*, October 4-10, 1993, p. 24.

CONCLUSION

As has been the case each year during the past decade, the most significant feature of the new security assistance legislation for FY 1994 is the continued reductions in program funding. This is especially true in the case of the IMET account where the 50% cut in its appropriations for FY 1994 to \$21.250 million brings this program to the lowest funding level in its history. Cuts in the FY 1994 appropriations of other programs, i.e., FMFP and ESF, have not been nearly as drastic, but coupled with the sizable cumulative funding reductions of past years, these programs are now at about bare-bones levels. At these levels, the Administration faces considerable challenges to its ability to conduct and manage reasonably effective assistance programs. On the other hand, a major change in funding has occurred in the three-fold increase in appropriations for Peacekeeping Operations—an explicit recognition of the changing functions and the key roles of armed forces in meeting the diverse peacekeeping requirements of the post-Cold War period. The \$2.5 billion in FY 1994 funding for the New Independent States of the Former Soviet Union, and the authority for assistance to Bosnia-Herzegovina are equally significant illustrations of changes in contemporary U.S. foreign policy orientations.

As the substantial legislative changes described herein are implemented in Fiscal Year 1994, it will be interesting to see what additional new legislation will be brought forth for FY 1995. The thorough revision of the Foreign Assistance Act of 1961, which the Clinton Administration has developed, will face competition from a wide variety of proposals which the cognizant committees in Congress are seeking to enact. Indeed, from a legislative perspective, 1994 promises to be even more interesting than 1993, and might prove to be a watershed year in producing a major overhaul of the fundamental legislation covering foreign assistance. Such efforts were initiated for FY 1989 and again for FY 1991 in the important work of the Hamilton-Gilman Task Force of the House Foreign Affairs Committee. Although their efforts ultimately foundered at the hands of a hobbled Senate Foreign Relations Committee, the legislative picture has changed substantially, and future prospects are brighter. Thus, it is with some degree of optimism that we may view the legislative efforts of the new year.

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