

---

# LEGISLATION AND POLICY

---

## Fiscal Year 1996 Security Assistance Legislation

By

Dr. Louis J. Samelson  
Editor, *The DISAM Journal*

### INTRODUCTION

- This report provides an expanded summary and analysis of new legislation which applies to U.S. security assistance programs in FY1996 and beyond. As in prior year reports, this year's analysis again employs an outline format. This approach, together with the use of boldface print to identify key topics, is helpful for reference purposes in locating specific statutory provisions. The FY1996 appropriations and allocations reported herein are based on a State Department pamphlet, *Highlights of the FY 1997 International Affairs (Function 150) Budget Request*, released on March 18, 1996.

- *The Legislative Process*

- The prolonged legislative process through which new statutory direction and funding has been enacted for FY1996 U.S. security assistance programs was marred by extensive partisan political conflict. None of the thirteen required annual appropriations bills had been enacted by the start of the new fiscal year on 1 October 1995, and the FY1996 Foreign Assistance Appropriations Act discussed herein was not enacted until 12 February 1996—the latest such enactment of this legislation in U.S. history.

- Substantive political differences regarding budget deficits, government spending, and revenue assumptions colored the entire appropriations process. The Clinton Administration adamantly opposed Republican proposals for reduced social spending for welfare, Medicare, Medicaid, earned income credits, and education. For their part, the House Republicans, in pursuit of their self-proclaimed "Contract with America," ceaselessly called for cuts in corporate and personal income taxes, and for a "budget balanced in seven years, scored with honest figures" (i.e., a budget tallied and evaluated by the Congressional Budget Office as opposed to the Administration's Office of Management and Budget). The resultant legislative conflict was characterized by a series of twelve stopgap spending bills (i.e., continuing appropriations resolutions), an historic 21-day shutdown (15 December 1995 - 5 January 1996) of most federal government activities involving over 280,000 furloughed *non-essential* workers, and ample fodder for the widespread media criticism of the political excesses of the U.S. budget system.

- When the proposed FY1997 budget was introduced by the Administration on 19 March 1996, five separate appropriations bills for FY1996 had not yet been enacted: Commerce, Justice, State and Judiciary; District of Columbia; Interior; Labor, Health and Human Services, and Education; and Veterans Affairs, Housing and Urban Development, and Independent Agencies. Temporary funding for these agencies was approved by a twelfth continuing resolution enacted as P.L. 104-122 on 29 March 1996 which provided funding authority through 24 April 1996.

---

- *Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996* (P.L. 104-107, dated 12 February 1996)

- By 1 November 1996, the House and Senate had technically cleared the Appropriations Conference Committee Report on the FY1996 foreign operations appropriations bill, and it was ready for dispatch to the President, with one key exception—disagreement persisted on the issue of funding international family planning activities. The House Republican majority sought to prohibit funding for Administration-backed family planning assistance programs conducted by the United Nations Population Fund (UNFPA—originally, U.N. Family Planning Activities). They drew upon the Reagan Administration's insistent arguments of yore on this same subject, asserting that U.S. assistance funds would be given to the People's Republic of China to support its programs of forced abortion and coercive sterilization. Senate attempts to moderate the issue failed, and the controversy put the entire FY1996 foreign aid bill at risk; President Clinton threatened to veto the legislation unless the UNFPA funding was restored

- The bill remained in conference as various legislative remedies for the impasse were proposed, but it wasn't until January that a resolution was found. Congress agreed to finance the UNFPA, but retained all the previous restrictions on providing U.S. assistance funding for any agency which endorsed "the performance of abortions or involuntary sterilization as a method of family planning." [§518, P.L. 104-107.] Moreover, Congress established a complex formula for FY 1996 funding for UNFPA. Its funding was limited to not more than \$30M, and not more than \$15M could be spent before 1 March 1996; further, any UNFPA funding for the People's Republic of China in 1996 above \$7M would be deducted from the amount of funds provided to UNFPA after 1 March 1996 for all population planning assistance. Having finally reached agreement on this issue, the entire bill was "incorporated by reference" in the ninth Continuing Appropriations Resolution, P.L. 104-99, (the "Balanced Budget Downpayment Act, I," 26 January 1996), and was thought to have been enacted thereby. However, to resolve statutory issues that were raised by this unusual legislative process, the House and Senate each enrolled a full version of the revised bill (H.R. 1868) which was then transmitted in its entirety to the White House on 1 February 1996. This separate bill was subsequently enacted as P.L. 104-107, *Foreign Operations, Export Financing, and Related Programs Appropriations Act*, on 12 February 1996, 135 days into the new fiscal year. Analysis of this Act comprises the basic content of the report which follows.

- *Other FY1996 Legislation*

- As in every year since 1985, Congress once again failed to enact a *Foreign Assistance Authorization Act*. Although the House and Senate authorization committees agreed on the proposed disestablishment of three independent foreign affairs agencies—the Arms Control and Disarmament Agency, the Agency for International Development, and the United States Information Agency—and their merger into the State Department, internal congressional differences on this issue and on foreign assistance funding reductions, prevented the House and the Senate from reaching agreement on their respective bills. In the absence of an authorization act or separate program authorizations, Section 526 of P.L. 104-107, *Foreign Operations Appropriations Act*, provides legislative authorities for the various provisions of that act.

- The Conference Committee on the Foreign Operations Appropriations Bill reported that it recognized that "the Committees on International Relations [House] and Foreign Relations [Senate] have gone to great lengths. . . this year to end the decade-long stalemate over foreign aid authorizations," but to no avail. The Conferees also acknowledged the problems of the appropriations committees in "apportioning the spending allocations for programs under their jurisdiction" without having an accompanying authorization bill. The managers of the appropriations bill stated that they "have gone to some effort to conform

spending levels to authorization levels passed by the House or reported in the Senate, taking into consideration that the two authorization bills contain differing ceilings in many accounts.”

- Various features of two additional laws are examined in this report. These are the *National Defense Authorization Act for Fiscal Year 1996, P.L. 104-106, 10 February 1996*, and the *Department of Defense Appropriations Act, 1996, P.L. 104-61, 1 December 1995*, which include important new security assistance provisions, e.g., expanded authority for the waiver of non-recurring costs for FMS cases, and a new Defense Export Financing Program.

**Table 1**

**SECURITY ASSISTANCE PROGRAM Appropriations  
FISCAL YEARS 1995 AND 1996 FUNDING LEVELS  
(Dollars In Millions)**

	<b>P.L. 103-306 23 AUG 1994 FY1995 <u>FUNDING</u></b>	<b>FY1996 BUDGET REQUEST <u>FEB 1995</u></b>	<b>H.R. 1868 HOUSE PROPOSAL <u>11 JUL 1995</u></b>	<b>H.R. 1868 SENATE PROPOSAL <u>25 SEP 1995</u></b>	<b>P.L. 104-107 12 FEB 96 FY1996 <u>FUNDING</u></b>
FMFP	\$3,770.929	\$4027.020	\$3,755.279	3,751.500	\$3,752.390
(GRANTS)	(3,151.279)	(3,262.020)	(3,211.279)	(3,207.500)	(3,208.390)
(LOANS)	(619.650)[1]	(765.000)[2]	(544.000)[3]	(544.000)[4]	(544.000)[5]
IMET	25.500	39.781	39.000	19.000	39.00
ESF	2,368.600	2,494.300	2,300.000	2,015.000	2,340.000
PKO	75.000	100.000	68.300	72.033	70.000
NDF	10.000	25.000	20.000	20.000	20.000
<b>TOTALS</b>	<b><u>\$6,250.029</u></b>	<b><u>\$6,686.101</u></b>	<b><u>\$6,182.579</u></b>	<b><u>\$5,877.533</u></b>	<b><u>\$6,221.390</u></b>

[1] The FY1995 FMFP account included an appropriation of \$47.91.M in loan subsidy funding to support a maximum of \$619.65M in direct loans.

[2] The Administration’s proposed FY1996 FMFP account included \$89.888M to support a direct loan program not to exceed \$765M, of which \$315M was planned for Greece, and \$450M for Turkey.

[3] The House bill proposed an FMFP direct loan program not to exceed \$544M, to be supported by a subsidy appropriation of \$64.4M.

[4] The Senate’s FMFP direct loan program provisions were identical to those of the House.

[5] The FMFP total value of \$3,752.390M appropriated for FY1996 includes \$3,208.320M in grants and \$66.4M in loan subsidy funding to support a maximum of \$544M in direct loans to be issued at current average market rates of interest. Congress established ceilings for these loans at no more than \$224M for Greece, and no more than \$320M for Turkey.

## THE FY 1996 FOREIGN OPERATIONS BUDGET

- The Administration requested \$14,773,905,000 in appropriations for the total FY1996 Foreign Operations budget. The Conference Committee approved \$12,103,537,000—a budget almost \$2.7B (or 18.07%) less than the Administration's request. The House proposal (\$11,901,375,000) was some \$200M less than the Conference budget, while the Senate version (\$12,413,914,000) exceeded the Conference agreement by about \$300M.

- Table 1 illustrates the relevant funding for FY1996 security assistance programs.

- The following section of this report examines the various provisions of the Foreign Operations Appropriations Act, FY1996 (P.L. 104-107) and related legislation as they impact on the management and execution of U.S. security assistance programs, beginning with a review of the Foreign Military Financing Program. The FY1996 funding allocations listed below and throughout this report are based on data from a Department of State report entitled *Highlights of the FY 1997 International Affairs (Function 150) Budget Request*, 18 March 1996.

<u>Table 2</u>			
Foreign Military Financing Program (FMFP)			
FY1994 and FY1995 Funding			
(Dollars in Millions) (E - Earmark; C - Ceiling)			
<u>Country/Program by Geographical Region</u>	<u>FY1995 FMFP Allocations</u>	<u>FY1996 Budget Request</u>	<u>FY1996 FMFP Allocations [1]</u>
<b><u>NEAR EAST</u></b>			
Egypt	\$1,300.000E	\$1,300.000	\$1,300.000E
Israel	1,800.000E	1,800.000	1,800.000E
Jordan	7.300	30.000	30.000
Subtotals	----- 3,107.300	----- 3,130.000	----- 3,130.000
<b><u>EAST ASIA &amp; PACIFIC</u></b>			
Cambodia	0.000	3.000	1.000
Subtotals	----- 0.000	----- 3.000	----- 1.000
<b><u>EUROPE &amp; THE NIS</u></b>			
Greece [Loan]	255.150C	315.000	224.000C
Turkey [Loan]	364.500C	450.000	320.000C
Poland [Grant]	1.000	0.000	0.000
Baltic Battalion	0.000	5.000	0.750
CE Defense Infrastructure	0.000	20.000	0.000
Partnership for Peace[2]	0.000	60.000	60.000
Subtotals	----- 620.650	----- 850.000	----- 604.750

**FMFP, Table 2 (Continued)**

<b><u>SECURITY ASSISTANCE PROGRAMS BY FUNCTION</u></b>	<b><u>FY1995 FMFP Allocations</u></b>	<b><u>FY1996 Budget Request</u></b>	<b><u>FY1996 FMFP Allocations</u></b>
<b><u>LATIN AMERICA</u></b>			
Bolivia	2.829	0.000	0.000
Caribbean Peacekeeping	0.000	3.000	2.000
Colombia	10.000	0.000	0.000
Haiti	3.000	7.000	0.000
Subtotals	15.829	10.000	2.000
(Continued on next page.)			
<b><u>MISCELLANEOUS</u></b>			
Landmine Clearing & Training	5.000	10.000	7.000
Defense Admin Expenses	22.150C	24.020C	23.250C
Subtotals	27.150	34.020	30.250
<b><u>PROGRAM TOTALS</u></b>	<b><u>\$3,770.929</u></b>	<b><u>\$4,027.020</u></b>	<b><u>\$3,768.000 [2]</u></b>

[1] Other than the direct loans approved for Greece and Turkey, all other FY1996 FMFP country and program funding is to be provided as grants.

[2] The FY1996 total includes \$15.610M which was transferred to the FMFP account from two economic assistance accounts, "Assistance for Eastern Europe and the Baltic States" [\$7.805M], and "Assistance for the New Independent States (NIS) of the Former Soviet Union" [\$7.805M].

Source: FY1995 and FY1996 FMFP allocations may be found in the Department of State report entitled *Highlights of the FY 1997 International Affairs (Function 150) Budget Request, 18 March 1996*.

• **Foreign Military Financing Program (FMFP) (Title III, Military Assistance, P.L. 104-107)**

• A compromise between the House FMFP proposal (\$3,755.279M) and that of the Senate (\$3,751.500M) produced a FY1996 total FMFP funding level of \$3,752.390M. That level is \$274.630M (or 6.8%) short of the President's funding request (\$4,027.020M). (See Table 2 which identifies FMFP appropriations and allocations for FY 1995 and FY 1996.)

• The FY1996 funding level also continues the annual decline in FMFP, falling a total of 42% (or \$2,675,61M) below the comparable FY1984 grant funding (FMFP and MAP) of \$6,428M. Further, these comparative funding figures represent annual rather than constant dollar values. If they were to be adjusted for inflation, the reduction in the true value of the Foreign Military Financing Program over the past twelve years would be considerably greater.

- 
- ***FMFP Grant Funding (nonrepayable credits)***
    - The grant FMFP funding level of \$3,208.950M for FY1996 reflects a similar compromise between a House proposal of \$3,211.279M and a Senate figure of \$3,205.500M.
  - ***FMFP Grant Earmarks:***
    - FMFP grant funding for Israel, \$1.8 billion, and Egypt, \$1.3 billion, continues at the same levels which have been appropriated annually since FY 1987.
      - With FMFP grants for Egypt and Israel amounting to \$3,100M of the total FMFP grant program of \$3,208.390M, the two countries account for over 96 percent of grant FMFP funding.
  - ***Special FMFP Provisions for Israel***
    - As in past years, the following special conditions were attached to the FMFP appropriation for Israel.
      - Early disbursement of Israel's entire FMFP account shall occur within 30 days of the enactment of the annual Appropriations Act, or by 31 October 1996, whichever is later. Incremental disbursement of the Israeli FMFP funding occurred until the passage on 26 January 1996 of the Balanced Budget Downpayment Act, I (P.L. 104-99) permitted completion of the entire disbursement.
      - To the extent that Israel requests the use of its FMFP grants for advanced fighter aircraft programs or for other advanced weapons, as agreed by Israel and the United States, not less than \$475M of Israel's FMFP funds may be used in FY1996 for procurement in Israel of defense articles and services, including research and development.
      - Congress did not, however, include a provision which in prior years permitted Israel to use up to \$150M of its FMFP appropriation for research and development in the United States. This particular authority was first enacted for FY 1985 and was authorized in every subsequent annual foreign operations appropriations act through FY1995.
    - There are no special legislative provisions attached to Egypt's grant FMFP appropriation for FY1996.
  - ***General Costs of Administering Military Assistance: \$23.250M***
    - These funds are appropriated through the FMFP account, and are used to finance certain security assistance operating expenses of the Military Departments, the Defense Security Assistance Agency, and overseas security assistance organizations (SAOs).
      - At \$23.250M, this budget authority is \$0.770M under the Administration's funding request of \$24.020M. The House originally proposed \$24.000M, while the Senate sought a reduction to \$22.500M. The Conference Committee split the difference in the two proposals ( $\$1.500M \div 2 = \$0.750M$ ) in arriving at the final \$23.250M figure.
  - ***Discretionary FMFP Grant Funds: \$85.14M***
    - \$85.14M is available in the regular FMFP grant account for allocation for non-earmarked country/program accounts.

---

- Further, P.L.104-107 authorizes the transfer to the FMFP account of up to \$20M from funds made available for two economic accounts: "Assistance for Eastern Europe and the Baltic States" and "Assistance for the New Independent States (NIS) of the Former Soviet Union." These additional funds are designated to support the Warsaw Initiative (WI) Program for defense infrastructure improvements and defense cooperation activities in Central Europe.

- The Administration limited the funds transfer to \$15.61M rather than the full \$20M. The transferred funds increased the total of available discretionary funding from \$85.14M to \$100.75M which was allocated for the following countries/programs: Jordan, \$30M; Cambodia, \$1M; Baltic Battalion, \$0.750M; Partnership for Peace, \$60M; Caribbean Peacekeeping, \$2M; and Landmine Clearing and Demining, \$7M.

- P.L. 104-107, Title III, "Military Assistance," provides continued authority for FMFP funding for demining activities, including activities implemented through non-governmental and international organizations.

- Besides the \$7M FY1996 FMFP allocation planned for demining, the FY1996 DoD Operations and Maintenance budget [Title III, P.L.104-61] provides an additional \$20M for demining operations. Anticipated recipients in FY1996 of this demining funding include: Cambodia, Laos, Eritrea, Ethiopia, Liberia, Mozambique, Namibia, Rwanda, and the Organization of American States. See further discussion below for related legislative provisions (§§ 558 and 580, P.L. 104-107) regarding the following: disposal of demining equipment on a grant basis; extension of the U.S. moratorium on the *transfer* of antipersonnel landmines; and the scheduled future implementation of a statutory U.S. moratorium on the *use* of such weapons.

- ***FMFP Loans*** (repayable credits)

- In addition to grant funding, the FMFP Program also has a direct loan component. These are loans which require repayment at prevailing commercial rates of interest (i.e, rates "not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturities."

- For FY1996, Congress appropriated \$66.400M to subsidize a direct loan program totaling \$544.000M for assistance to Greece and Turkey, the only current recipients of these loans. The Administration had requested \$315M for Greece and \$450M for Turkey; Congress, however, substantially cut their loan programs, approving no more than \$224M and no more than \$320M for Greece and Turkey, respectively.

- ***Special Congressional Interest in Turkey***

- With respect to military assistance for Turkey, the Foreign Operations Appropriations Conference Committee reported its concern over the trial in Turkey of Aliza Marcus, a U.S. citizen and a Reuters journalist. The Conferees stated that she "is being tried on charges of 'provoking racial hatred' for reporting on the Turkish military's forced evacuation and destruction of villages in southeastern Turkey. The conferees recognize Turkey's legitimate right to combat terrorism, and expect that the government of Turkey will protect freedom of expression and information by interceding with the military-sponsored State Security Courts on behalf of Aliza Marcus." Subsequently, Ms Marcus was acquitted of all charges.

---

- *FMS Administrative Budget*

- Congress capped the FY1996 FMS Administrative Budget with a spending ceiling of \$355M.

- The FMS Administrative Budget supports the administrative expenses of security assistance organizations, agencies, military departments, etc., related to the implementation of foreign military sales.

- The budget is funded by surcharges which are added to all FMS cases to recover USG expenses for the following: sales negotiation, case implementation, program control, computer programming, accounting and budgeting, and administration of the FMS Program at command headquarters and higher levels. The funds derived from these charges provide the basic financial resources used in the administration of the Foreign Military Sales Program.

- This is the fourth consecutive year that Congress has imposed a ceiling on obligations for this budget. Prior to FY 1993, the appropriations committees did not address the Administrative Budget, as it was considered to be off-line and required no direct appropriations. The first such budget ceiling was established in the FY 1993 budget, with a cap of \$300M.

- For FY1994, the budget had an initial ceiling of \$290M; however, a 16 November 1993 request by the Administration to increase the budget by \$42.1M to \$332.1M was approved by Congress.

- Similarly, on 24 Feb 1995, the Administration sought and received Congressional approval to increase the authorized FY1995 ceiling of \$335M by \$16M, to \$351M.

- As in prior years, any increase in the \$355M ceiling on the FY1996 Administrative Budget may be effected only through the regular 15-day prior notification procedures of the House and Senate Appropriations Committees.

- *FMFP funding for Direct Commercial Contracts*

- The use of FMFP funding for direct commercial contracts has been limited, as in prior years, to no more than \$100M for FY1996. However, this ceiling does not apply to such contracts for Egypt or Israel, and with their preponderance of the FMFP account, this provision has only marginal effect.

- *Countries Prohibited/Restricted from Receiving FMFP Funding*

- For FY1996, no FMFP funding may be provided to Zaire, Sudan, Peru, and Liberia.

- FMFP funding and IMET funding may only be made available to Guatemala if the President certifies that the Guatemalan military is cooperating with efforts to resolve human rights abuses. (See Country-Specific Provisions, §578 below.)

- No FMFP funding may be made available for Colombia or Bolivia in FY1996 until the Secretary of State certifies that such funds will be used by such country primarily for counternarcotics activities.

---

- *FMFP Funding for PFP Countries*

- No FMFP funds may be made available for any non-NATO country participating in the Partnership for Peace (PFP) Program except through the regular 15-day prior notification procedures of the Committees on Appropriations.

- *Special Congressional Considerations*

- In an unusual Congressional statement promoting U.S. defense sales, the Foreign Operations Appropriations Conference Committee reported in its discussion of FMFP the Committee's awareness that: "Poland, the Czech Republic, Hungary, and the Slovak Republic are all considering the replacement of their Air Forces' high performance aircraft. The managers [of the Conference Committee] urge the Administration to take steps to ensure that U.S.-produced aircraft can compete effectively for these sales. For this reason, the conferees urge the Administration to support any possible sale of high performance U.S. fighter aircraft to these nations."

- *Limitations on Entertainment and Representational Allowances (§50, P.L. 104-107)*

- The following ceilings apply on FY1996 allowances and are identical to those authorized for FY1995 and prior years:

- FMFP: Not to exceed \$2,000 is available for entertainment expenses, and not to exceed \$50,000 shall be available for representational allowances.

- IMET: Not to exceed \$50,000 shall be available for entertainment.

- *International Military Education and Training (IMET) (Title III, P.L. 104-107)*

- The Administration originally requested \$39.781M for IMET for FY1996. The House Appropriations Committee Foreign Operations Subcommittee (HACFO) responded with a proposal to reduce the IMET request to \$39M. At this point, the IMET funding situation took a curious turn. Asserting legislative jurisdiction over the IMET Program, the Senate Armed Services Committee (SASC) authorized a \$20M drawdown in allocated DoD funds for IMET in the proposed National Defense Authorization Act for FY1996. An ensuing jurisdictional disagreement between SASC and the customary Senate jurisdictional committee, the Senate Appropriations Subcommittee on Foreign Operations (SACFO), led the SACFO to propose cutting the regular IMET proposal in the Foreign Operations budget by \$20M, from \$39M to \$19M. The issue was resolved by the Foreign Operations Conference Committee which approved the original House funding level of \$39M for FY1996. Rather than a cut of 51%, the \$39M appropriation represents a substantial increase of 53% (or \$13.5M) above the FY1995 IMET appropriation of \$25.5 (See Table 3 for IMET country and program allocations.)

- In the *Conference Report for the National Defense Authorization Act for FY1996*, (pp. 860-61) the Conferees (select members of the House and Senate Armed Services Committees) reported that they "strongly support Department of Defense funding for the management of the IMET program" which the Conferees assert "has suffered in recent years from being part of the State Department's budget which has become increasingly unpopular with the American public and their elected representatives." Further, the Conferees stated their intention "to address this matter next year with a view towards transferring budgetary and execution responsibility for IMET to the Department of Defense." In this connection, the Conferees, "encourage the Secretary of Defense and the Secretary of State to work out a process for such a transfer to ensure smooth and effective functioning with robust future funding." This issue is under review by the Executive Branch.

**Table 3****International Military Education And Training (IMET)****FY 1995 and FY 1996 Funding  
(Dollars in Thousands)**

<b><u>Country/Program by Geographical Region</u></b>	<b><u>FY1995 IMET Allocations</u></b>	<b><u>FY1996 Funding Request</u></b>	<b><u>FY1996 Allocated Funding</u></b>
<b><u>AFRICA</u></b>			
Angola	000	000	125
Benin	161	150	300
Botswana	440[1]	475	450
Burundi	44	125	100
Cameroon	000	100	90
Cape Verde	75	100	90
Central African Republic	186	125	110
Chad	62	100	000
Comoros	000	75	75
Congo	150	165	150
Cote d'Ivoire	120	160	150
Djibouti	125	150	100
Eritrea	200	250	250
Ethiopia	248	300	300
Ghana	222	250	225
Guinea	155	175	150
Guinea-Bissau	75	100	100
Kenya	283	350	300
Lesotho	32	75	75
Madagascar	000	100	100
Malawi	125	250	190
Mali	163	150	125
Mozambique	138	125	125
Namibia	126	250	190
Niger	189	300	200
Rwanda	50	000	275
Sao Tome & Principe	29	75	75
Senegal	598[1]	600	600
Seychelles	10	60	60
Sierra Leone	52	120	100
South Africa	297	500	500
Swaziland	57	80	75
Tanzania	81	175	170
Uganda	138	200	200
Zambia	92	150	125
Zimbabwe	232	250	250
<b>Regional Totals</b>	<b>4,955</b>	<b>6,610</b>	<b>6,500</b>

(Continued on next page.)

**IMET. Table 3, Continued**

<b><u>Country/Program by Geographical Region</u></b>	<b><u>FY1995 IMET Allocations</u></b>	<b><u>FY1996 Funding Request</u></b>	<b><u>FY1996 Allocated Funding</u></b>
<b><u>EAST ASIA AND PACIFIC</u></b>			
Cambodia	273	300	350
Indonesia	000	600	600
Malaysia	504	600	600
Mongolia	98	100	100
Papua New Guinea	125	175	170
Philippines	1,193	1,400	1,200
Singapore	20	20	20
Solomon Islands	101	125	100
South Korea	10	10	10
Thailand	999	1,600	1,400
Tonga	50	200	100
Vanuatu	50	95	100
Western Samoa	48	50	100
Regional Totals	3,471	5,275	4,850
<b><u>EUROPE &amp; THE NIS</u></b>			
Albania	226	400	400
Austria	15	15	15
Belarus	94	275	275
Bosnian Federation	0	200	200
Bulgaria	400	700	700
Croatia	105	200	200
Czech Republic	500	700	750
Estonia	180	385	410
Finland	15	15	15
Georgia	82	250	250
Greece	48	50	50
Hungary	796	950	1,000
Kazakhstan	97	375	375
Kyrgyzstan	60	225	225
Latvia	197	385	410
Lithuania	196	385	410
Malta	58	75	75
Moldova	106	225	225
Poland	747	950	1,000
Portugal	500	800	800
Romania	460	700	700
Russia	413	1,075	750
Slovakia	253	525	530
Slovenia	150	300	300

(Continued on next page.)

IMET, Table 3, Continued

<u>Country/Program by Geographical Region</u>	<u>FY1995 IMET Allocations</u>	<u>FY1996 Funding Request</u>	<u>FY1996 Allocated Funding</u>
<u>EUROPE, Cont'd</u>			
Spain	52	50	50
The FYRO Macedonia	125	250	250
Turkey	1,102	1,000	1,100
Turkmenistan	118	225	225
Ukraine	707	950	950
Uzbekistan	95	225	225
Regional Totals	7,897	12,860	12,865
<u>LATIN AMERICA &amp; CARIBBEAN</u>			
Argentina	109	300	500
Bahamas	13	100	100
Belize	54	250	250
Bolivia	368	500	500
Brazil	100	200	200
Chile	120	300	300
Colombia	588	900	900
Costa Rica	68	150	150
Dominican Republic	213	500	500
Eastern Caribbean	217	300	400
Ecuador	293	400	400
El Salvador	404	450	450
Guatemala	000	250	000
Guyana	97	150	150
Haiti	35	400	250
Honduras	325	400	400
Jamaica	174	450	450
Mexico	400	1,000	1,000
Nicaragua	000	200	200
Paraguay	134	150	150
Peru	325	500	400
Suriname	28	50	75
Trinidad & Tobago	000	50	50
Uruguay	143	250	250
Venezuela	250	300	300
Panama Canal Area Military School (PACAMS)	425	600	500
Regional Totals	4,883	9,100	8,825

(Continued on next page)

IMET, Table 3, Continued

<u>Country/Program by Geographical Region</u>	<u>FY1995 IMET Allocations</u>	<u>FY1996 Funding Request</u>	<u>FY1996 Allocated Funding</u>
<b><u>NEAR EAST</u></b>			
Algeria	74	75	75
Bahrain	75	100	100
Bangladesh	209	258	250
Egypt	1,000	1,000	1,000
India	209	364	350
Jordan	1,003	1,200	1,200
Lebanon	394	475	475
Maldives, Republic of	50	80	80
Morocco	724	800	800
Nepal	95	138	125
Oman	131	110	125
Pakistan	000	000	150
Sri Lanka	96	175	175
Tunisia	800	800	725
Regional Totals	4,860	5,575	5,630
<b><u>SOUTH ASIA</u></b>			
<b><u>NON-REGIONAL</u></b>			
Defense Administrative Costs	284	361	330
Non-Regional Totals	284	361	330
<b>TOTAL BUDGET REQUEST AND FY 1996 BUDGET AUTHORITY</b>	<b><u>\$26,350</u> [1]</b>	<b><u>\$39,781</u></b>	<b><u>\$39,000</u></b>

[1] Reflects \$850,000 transferred from the PKO account to the IMET account pursuant to P.L. 103-306.

- *IMET Funding for High Income Countries*

- Departing from the practice of the previous three years, the FY1996 Foreign Operations Appropriations Act authorizes up to only \$100,000 in IMET funds for any high income country. (Previously, the ceiling on such funding was \$300,000.)

- The availability of such funding is conditioned on the requirement that a recipient high income country agrees to fund from its own resources the transportation costs and living allowances of its students.

---

- Missing from this year's legislation is the standard annual statutory definition of a high income country as one whose per capita [annual] gross national product exceeds \$2,349. While the current statute does not provide a definition, the House Appropriations Committee Report on H.R. 1868, contains a non-statutory definition which describes high income countries as "those nations listed as high income earning countries in the [United Nations] *World Development Report, 1994.*" Applying this definition, the only countries affected among those for which FY1996 IMET funding was requested in FY1996 are Austria, Finland, Korea, Singapore, and Spain.

- *Restrictions and Prohibitions on IMET*

- For the first time since FY 1993, Congress has authorized **Indonesia** to receive IMET funding in FY1996, although such funding is permitted only for the Expanded IMET (E-IMET) Program. The prior three-year IMET funding prohibition was imposed following severe human rights violations associated with the widely reported 1991 massacre by Indonesian military forces of over 100 civilians on the Indonesian island of East Timor.

- The FY1996 Foreign Operations Conference Committee Report states that the managers agreed to permit E-IMET-only assistance for Indonesia because they believe that E-IMET can address some of the human rights concerns associated with the Indonesia military. "The conferees expect the E-IMET courses to focus on human rights, military justice, and civilian management and control of the armed forces, and the courses should include members of the Indonesian legislature and representatives from nongovernmental organizations."

- Like Indonesia, **Guatemala** is also limited to receive E-IMET only, but this assistance may only be provided if the President certifies that the Guatemalan military is cooperating with efforts to resolve human rights abuses. (The same restriction also applies to the provision of FMFP funds to Guatemala.)

- A total prohibition on any IMET funding for **Zaire** continues for FY1996. First established in FY 1992, this prohibition is a result of a wide variety of serious human rights violations which have persisted over the past several years.

- Finally, the FY1995 restrictions on IMET funding which then applied to **Rwanda, Thailand, and Algeria**, have been dropped for FY1996.

- *IMET for Civilians*

- P.L. 104-107 continues to authorize the provision of IMET to civilian personnel who are members of national legislatures and are responsible for the oversight and management of the military.

- Also continued for FY1996 is an authority introduced the preceding year which permits IMET funds to be used to train "individuals who are not members of a government."

- *Economic Support Fund (ESF) (Title II, P.L. 104-107)*

- In response to the Administration's FY1996 ESF appropriations request of \$2,494.3M, the House proposed a reduced \$2,300M funding level, with the Senate reducing the request even further to \$2,015M. In an unusual action in Conference (and as enacted), the funding level was raised above the levels of both Houses to \$2,340M. (See Table 4 which identifies ESF funding and country/program allocations for FY1995 and FY1996.)

**Table 4**

**Economic Support Fund (ESF)  
FY 1995 and FY 1996 Funding  
(Dollars in Thousands) (E=Earmark) (C = Ceiling)**

<u>Country/Program by Geographical Region</u>	<u>Actual FY1995 Funding</u>	<u>FY 1996 Budget Request</u>	<u>FY1996 Allocated Funding</u>
<b><u>SUB-SAHARAN AFRICA</u></b>			
Africa Regional Fund	\$7,400	\$14,350	\$8,000
Angola	000	10,000	5,000
Regional Totals	7,400	24,350	13,000
<b><u>EAST ASIA AND PACIFIC</u></b>			
Asia Regional Fund	000	8,810	10,000
Cambodia	19,500	39,520	25,000
Mongolia	000	10,000	000
So. Pacific Fisheries Treaty	14,000	14,000	14,000
Regional Totals	33,500	72,330	49,000
<b><u>EUROPE and the NIS</u></b>			
Cyprus	15,000E	15,000	15,000E
Ireland Fund	19,600	29,600	19,600
Turkey	45,750	100,000	33,500C
Regional Total	80,350	144,600	68,100
<b><u>LATIN AMERICA &amp; CARIBBEAN</u></b>			
Bolivia	13,990	000	000
Haiti	86,700	90,270	75,300
LAC Regional Fund	20,960	27,550	13,000
Nicaragua	000	000	000
Peru	5,800	000	000
Regional Totals	113,460	117,820	88,300
<b><u>MIDDLE EAST</u></b>			
Egypt	815,000E	815,000	815,000E
Israel	1,200,000 E	1,200,000	1,200,000E

(Continued on next page.)

**ESF, Table 4, Continued**

<b><u>Country/Program by Geographical Region</u></b>	<b><u>Actual FY1995 Funding</u></b>	<b><u>FY 1996 Budget Request</u></b>	<b><u>FY1996 Allocated Funding</u></b>
Jordan	7,200	7,200	7,200
Lebanon	2,000	4,000	2,000
Middle East Multilateral Working Group	5,000	5,000	3,000
Middle East Regional Cooperation	7,000	7,000	7,000
West Bank-Gaza	75,000	75,000	75,000
Regional Totals	2,111,200	2,113,200	2,109,200
<b><u>NON-REGIONAL</u></b>			
AOJ/ICITAP	6,500	10,000	7,000
Crime	5,000	12,000	25,000
Non-Regional Totals	11,500	22,000	32,000
<b><u>PROGRAM TOTALS</u></b>	<b><u>\$2,371,400</u></b>	<b><u>\$2,494,300</u></b>	<b><u>\$2,359,600</u></b>

• As in every year since FY1987, the bulk of the ESF program consists of grants of \$1,200M and \$815M for Israel and Egypt, respectively.

• The funds for Israel are to be available as a cash transfer and are stipulated to be disbursed within 30 days of enactment of the Foreign Operations Appropriations, or by 31 Oct 1995, whichever is later. Incremental disbursement of this funding occurred until passage of the Balanced Budget Downpayment Act, I, P.L. 104-99 on 26 January 1996 permitted completion of the entire disbursement.

• With respect to Egypt, cash transfer assistance of its grant ESF appropriation may again be provided in FY1996, "with the understanding that Egypt will undertake significant economic reforms which are additional to those which were undertaken in previous fiscal years." Further, as in past years, not less than \$200M of Egypt's FY1996 ESF account, "shall be provided as Commodity Import Program assistance."

• A new ESF provision for Egypt for FY1996 provides that "the Egyptian pound equivalent of \$85,000,000 generated from funds made available by this paragraph or generated from funds appropriated under this heading in prior appropriations acts, may be made available to the United States pursuant to the United States-Egypt Economic, Technical, and Related Assistance Agreements of 1978, for the following activities under such Agreements: the Egyptian pound equivalent of \$50M may be made available to replenish the existing endowment for the American University in Cairo, and the Egyptian pound equivalent of \$35M may be made available for projects and programs, including establishment of an endowment which promotes the preservation and restoration of Egyptian antiquities."

---

- The Conference Report on the Foreign Operations Appropriations Bill states that this new assistance, “utilizes only local [Egyptian] currency generated by our foreign assistance program, [and] is a ‘no-cost’ way of fostering U.S. values in a region of the world that is vital to our national interests.” Further, the managers of the Conference, “expect the Administration to utilize this authority by providing at least the amounts detailed in the legislation.”

- In a departure from prior years, the annual \$15M ESF earmark provided for *Cyprus* for FY1996, is to be drawn from the Economic Support Fund and the Development Assistance accounts. In the past, the funding earmark was stipulated to be wholly drawn from the ESF account. These funds are “to be used for scholarships, administrative support of the scholarship program, bicomunal projects, and measures aimed at reunification of the island and designed to reduce tension and promote peace and cooperation between the two communities on Cyprus,” i.e., the Greek Cypriot majority and the Turkish Cypriot minority.

- An additional ESF earmark of not less than \$2,380,000 has been provided for FY1996 for Burma.

- Like the Cyprus earmark, the Burmese funds are to be drawn from monies appropriated for both the “Economic Support Fund” and the “Development Assistance” accounts. These funds are to be used

to support activities in Burma, along the Burma-Thailand border, and for activities of Burmese student groups and other organizations located outside Burma, for the purpose of fostering democracy in Burma, supporting the provision of medical supplies and other humanitarian assistance to Burmese located in Burma or displaced Burmese along the borders, and for other [non-specified] purposes.

- With respect to this assistance for Burma, the Conference Report notes that, “Although the Administration agreed in writing to obligate no less than \$1,000,000 in such support for FY1995, the commitment to the Congress was not fulfilled.” Accordingly, the Conferees, “direct the Agency for International Development and the Department of State, in consultation with the Congress, to prepare a report sixty days after enactment of this Act on a plan for the expenditure” of these FY1996 resources for Burma. No FY1996 monies had yet been allocated for Burma for ESF by mid-April when this article went to press.

- *Limitation on ESF Assistance to Turkey*

- Congressional concern over reports of human rights violations led to opposition to the Administration’s request for \$100M in FY1996 ESF funding for Turkey. The House proposed an ESF ceiling for Turkey of \$21M; but a Senate amendment, which was adopted in Conference and subsequently enacted, set a somewhat higher ceiling of \$33.5M.

- This funding level reflects a continuing reduction in ESF assistance for Turkey. For example, Turkey received \$119.978M in ESF funding for FY1994, and \$45.750M for FY1995. Further, rather than specify the FY1996 funding within the ESF section in Title II of the Appropriations Act, Congress took the unusual step of establishing the current funding ceiling of \$33.5M as a general provision (i.e., §566) of the FY1996 Foreign Operations Appropriations Act, thereby drawing greater attention to its action.

- **Prohibition on ESF funding**

- Zaire is the only specified country for which ESF assistance may not be made available in FY1996.

- **Peacekeeping Operations (PKO) (Voluntary) (Title III, Military Assistance, P.L. 104-107)**

- Congress appropriated \$70M for assistance to friendly countries and international organizations for voluntary peacekeeping activities. (See Table 5 which identifies ESF appropriations and country/program allocations for FY1995 and FY1996.)

- The \$70M represented yet another funding compromise: the Administration sought \$100M, but the House pared that request to \$68.300, while the Senate proposed \$72.033M.

**Table 5**

**Peacekeeping Operations (PKO)  
FY 1995 and FY 1996 Funding  
(Dollars in Thousands) (E=Earmark)**

<u>Program</u>	<u>Actual FY1995 Funding</u>	<u>FY 1996 Budget Request</u>	<u>FY1996 Allocated Funding</u>
Africa Regional	\$2,700	\$18,000	\$9,000
Bosnia Police Monitors	000	000	5,000
Central Europe Joint PKO	8,660	000	000
ECOWAS [1]	3,000	000	000
Europe Regional	000	000	4,000
Haiti MNF[2]	25,300	4,000	000
Haiti (Post-MNF)	000	000	4,000
MFO - Sinai [3]	16,090	17,000	15,500
OAU [4]	650	5,000	3,000
OSCE [4]	750	7,000	10,000
Sanctions Assistance	17,000	23,000	19,500
<b>PKO Total</b>	<b>\$74,150 [6]</b>	<b>\$100,000</b>	<b>\$70,000</b>

[1] ECOWAS - Economic Community of West African States - Liberia

[2] Haiti MNF - Multinational Force

[3] MFO -Sinai - Multinational Force and Observers

[4] OAU - Organization of African Unity

[5] OSCE - Organization for Security and Cooperation in Europe

[6] Reflects \$850,000 transferred from the PKO account to the IMET account pursuant to P.L. 103-306.

- This Voluntary PKO funding is apart from the bulk of peacekeeping assistance which is contributed by the U.S. and other countries in fulfillment of their United Nations assessments, and which in U.S. budget documentation is termed, "Contributions for International

---

Peacekeeping Operations” (CIPA). Voluntary PKO, on the other hand, reflect U.S. interest in supporting, on a voluntary basis, various peacekeeping activities that are not U.N. mandated and/or are not funded by U.N. assessments. The PKO account promotes conflict resolution, multilateral peace operations, sanctions enforcement, and similar efforts outside the context of assessed U.N. peacekeeping operations.

- In a related matter, Section 1301 of P.L. 104-106, the *National Defense Authorization Act for Fiscal Year 1996*, adds a new §405 to Title 10, U.S.C., which prohibits the use of Department of Defense funds for voluntary or assessed financial contributions to the United Nations for the U.S. share of peacekeeping costs. This provision also prohibits DoD funds from being used as a contribution for any U.S. arrearage to the United Nations.

- In yet another related provision, Section 8117, “Limitation on Transfer of Defense Articles and Services,” of the *Department of Defense Appropriations Act, 1996* (P.L. 104-61, dated 1 December 1995) requires that Congress be notified at least 15 days in advance before the transfer of defense articles or services is made in support of any international peacekeeping, police-enforcement, or humanitarian assistance operation. If the proposed transfer is to include equipment or supplies, the notification to Congress must include the following:

- (A) a statement of whether the inventory requirements of all elements of the Armed Forces (including the reserve components) for the type of equipment or supplies to be transferred have been met; and

- (B) a statement of whether the items proposed to be transferred will have to be replaced, and, if so, how the President proposes to provide funds for such replacement.

- **Nonproliferation and Disarmament Fund (NDF) (*Title II, Bilateral Economic Assistance, P.L. 104-107*)**

- This assistance program was first introduced in FY1994. For that year, the Administration sought an appropriation of \$50M, but Congress limited the FY1994 appropriation to \$10M.

- For FY1995, the Administration again requested \$50M; but Congress maintained NPD funding for FY1995 at the \$10M level. For FY1996, the Administration reduced its request to \$25M, and the House and Senate approved a \$20M appropriation.

- The NPD Fund provides resources to support the objectives of the Freedom Support Act of 1992 (P.L. 102-511) through selected bilateral and multilateral programs for halting the proliferation of weapons of mass destruction (WMD). The NDF has funded projects for dismantling and destroying existing WMD and their delivery systems, strengthening international safeguards, strengthening export controls, and combating nuclear smuggling efforts.

- In terms of the Foreign Operations budget, a refocus of the DoD Nunn-Lugar programs has transferred certain activities formerly funded by the Department of Defense budget (Function 050) to the International Affairs budget (Function 150). Thus, for FY 1996, the NDF will support export control activities previously funded by Nunn-Lugar, and will continue to support the developing of systems in the former Soviet Union to control the export of weapons and weapons related technology.

---

- **SIGNIFICANT NEW STATUTORY PROVISIONS IN P.L. 104-107, FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1996.**

- *Competitive Pricing for Sales of Defense Articles (§531A)*

- The Senate Foreign Relations Committee introduced this new provision which was subsequently adopted in Conference. It amends §22 of the AECA by requiring that FMS purchases of defense articles which are wholly funded with FMFP grant funds (i.e., non-repayable credits) must be priced on the same costing basis as is applicable to procurements of like items by DoD for its own use.

- This new statute specifically calls for employing the same costing elements with respect "to profit, overhead, independent research and development, bid and proposal, and other costing elements" for such FMFP grant funded FMS cases as for DoD's own purchases. The Defense Security Assistance Agency reports that, "Direct costs associated with meeting additional or unique requirements of foreign customers are allowable, but loadings [i.e., indirect costs] applicable to such direct costs will be at the same rates as those applicable to the DoD." While this provision has no effect on FMS administrative charges, it should have an impact on the allowability for contractor selling expenses and product support and post delivery services.

- These requirements will go into effect on the 60th day following the date of enactment of the FY1996 Foreign Operations Appropriations Act (i.e., 12 April 96), and the statute shall be implemented by revised procurement regulations which shall be issued prior to such effective date.

- *Special Authorities (Cambodia) [§541(a)]*

- This section attaches several restrictions to U.S. assistance to Cambodia in FY1996.

- First, economic assistance furnished to Cambodia may not be used for military or paramilitary purposes per §531(e), FAA.

- Second, no appropriated funds may be obligated or expended for the purpose or with the effect of promoting, sustaining, or augmenting, directly or indirectly, the capacity of the Khmer Rouge or any of its members to conduct military or paramilitary operations in Cambodia or elsewhere in Indochina per §906, of P.L. 99-83, the *International Security and Development Cooperation Act of 1985*, 8 Aug 1985.

- Third, §541(a), P.L. 104-107 includes a provision which requires the President to terminate assistance to any country or organization that he determines is cooperating, tactically or strategically, with the Khmer Rouge in their military operations. The statute further specifies that such assistance to the military of any country should be terminated if the President determines it is not taking steps to prevent a pattern or practice of commercial relations between its members and Khmer Rouge.

- The stimulus for this latter provision is revealed in the Foreign Operations Appropriations Conference Report in which the conferees stated that they "are concerned by reports that Thai military personnel are engaging in cooperative commercial relations with the Khmer Rouge in the export of timber and gems. The conferees believe that meaningful efforts should be made by the government of Thailand and the Thai military to halt this source of income for the Khmer Rouge."

---

- The Senate had proposed a “sense of Congress” statement that would have specifically identified the Royal Thailand Government and members of the Royal Thailand Armed Forces in this provision. This proposal, however, was deleted in the Senate and failed to be restored in the Conference.

- *Excess Defense Articles (EDA) [§546(b)]*

- Pursuant to §516, FAA, this provision permits excess defense articles (to be furnished to **Jordan, Latvia, Lithuania, and Estonia** during FY1996. Although this is the first year that authority for the transfer of *lethal* EDA has been provided for the three Baltic states, they have been authorized to receive *nonlethal* EDA under §519, FAA, since FY 1993, pursuant to §906(a)(2) of the Freedom Support Act (P.L. 102-511, 24 Oct 1992). Under §516, the following countries are also authorized to obtain lethal EDA: Greece, Turkey, Egypt, Israel, Senegal, Morocco, Oman, and Bahrain.

- In a related EDA matter, the Conference Committee deleted a provision dating back to FY1991, which, per §516, FAA, required priority delivery of EDA to NATO allies and major non-NATO allies on the southern flank of NATO. [Major non-NATO allies are statutorily identified as Australia, Egypt, Israel, Japan, and South Korea (ROK) per §2350a(i) (3) of Title 10, United States Code.] The exclusion of this transportation provision has the effect of eliminating any statutory priority delivery designation for any type of EDA transfer (i.e., transfers under §§516, 517, 518, 519, or 520, FAA).

- *Nonlethal Excess Defense Articles (§557)*

- This new provision authorizes the expenditure during FY1996 of DoD funds for the packing, crating, handling, and transportation (PCH&T) of nonlethal EDA transferred under the authority of §519, FAA, to countries eligible to participate in the Partnership for Peace (PFP) program and to receive assistance under P.L. 101-179, i.e., *Support for Eastern European Democracy [SEED] Act of 1989, as amended*. The PFP was initiated at the January 1994 NATO Summit meeting. The program seeks improved interoperability with the military forces of the emerging Eastern European democracies and their closer relations with U.S. and NATO forces.

- *Landmines (§558)*

- This is one of two new statutory sections dealing with landmines. This section authorizes the provision of U.S. “demining equipment available to any department or agency and used in support of the clearing of land-mines for humanitarian purposes, to be disposed of on a grant basis in foreign countries, subject to such terms and conditions as the President may prescribe.”

- Further, §558 also amends §1365, *National Defense Authorization Act for FY1993* (P.L. 102-484), to extend by one year (to 22 October 1997) the existing U.S. moratorium on the transfer of anti-personnel landmines. (For additional information, see the DSAA message on this moratorium issue in the SA Community section of this issue.)

- *Moratorium on Use of Antipersonnel Landmines (§580)*

- Sen. Patrick Leahy (D-VT) introduced this new additional landmine provision which establishes a future U.S. moratorium on the *use* of antipersonnel landmines.

- This moratorium is to be initiated for a period of one year beginning three years after the date of enactment of this Act (i.e., 12 Feb 1999 to 11 Feb 2000). Exceptions to the

---

moratorium are authorized, to include use of such landmines along internationally recognized borders or in demilitarized zones within a perimeter marked area that is monitored by military personnel and protected by adequate means to ensure the exclusion of civilians.

- The Foreign Operations Conference Committee Report cites the State Department's 1994 report, *Hidden Killers: The Global Landmine Crisis*, that there are an estimated 80M to 110M landmines deployed in 62 countries, and, the Conferees urged the President to actively encourage other governments to join the U.S. in solving the global landmine problem. They also recommended that the U.S. not sell, license for export, or otherwise transfer defense articles and services to any foreign government which, as determined by the President, sells, exports, or otherwise transfers antipersonnel landmines.

- In a related action, §1402 of P.L. 104-106, requires the Chairman of the Joint Chiefs of Staff to provide a report to the congressional defense committees no later than 30 April of each of 1996, 1997, and 1998, covering "the projected effects of a moratorium on the defensive use of antipersonnel mines and antitank mines by the Armed forces." Section 1402 contains an extensive and detailed list of specific issues which must be addressed in these reports.

- Finally, §1401, P.L. 104-106, amends the definition of "anti-personnel landmine" contained in the *FY1994 Defense Authorization Act* [§1423(d), P.L. 103-160] by deleting "command detonated anti-personnel landmines (such as the M18A1 'Claymore' mine)." Similarly, §580(b)(2), of the *FY1996 Foreign Operations Appropriations Act* also deletes such Claymore mines, and §580(b)(1) of that Act provides the following definition of anti-personnel landmines for the purposes of that Act:

The term 'antipersonnel landmine' means any munition [excluding Claymore mines] placed under, on, or near the ground or other surface area, delivered by artillery, rocket, mortar, or similar means, or dropped from an aircraft and which is designed, constructed, or adapted to be detonated or exploded by the presence, proximity, or contact of a person.

- This very same definition is used as the first element in a separate definition of anti-personnel landmines that appears in P.L. 103-160. However, this latter definition adds the following two additional elements to its definition: "(2) Any device or material which is designed, constructed, or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act. (3) Any manually-employed munition or device designed to kill, injure, or damage and which is actuated by remote control or automatically after a lapse of time."

- ***Clarification of Restrictions—Pakistan (§559)***

- A 1985 amendment to §620E, FAA (commonly termed the "Pressler Amendment for its sponsor, Sen. Larry Pressler, R-SD), which prohibits assistance to Pakistan because of its nuclear weapons development program, has been significantly altered by a wide-ranging FY1996 amendment to §620E which was introduced by Sen. Hank Brown (D-CO).

- The effect of the Brown Amendment has been to eliminate restrictions on non-military assistance to Pakistan and to restore certain U.S. military assistance to Pakistan which had been embargoed since 1990 under the Pressler provisions. The Brown Amendment now permits military assistance to be furnished to Pakistan for the following purposes:

- International narcotics control; facilitating military-to-military contact; training (including IMET); humanitarian and civic assistance projects; antiterrorism; and

---

peacekeeping (except that lethal military equipment for Pakistan for peacekeeping purposes may only be provided on a lease or loan basis). Restrictions on future FMS, DCS, FMFP, and certain other forms of military assistance still apply.

- The transfer of new military equipment to Pakistan is authorized for such equipment (other than F-16 fighter aircraft) which Pakistan originally contracted for prior to 1 Oct 1990, but which has been retained in the U.S. pursuant to the Pressler Amendment. Reportedly, this equipment is valued at approximately \$368M, and is said to include P-3C anti-submarine patrol aircraft, Harpoon (AGM-84) and Sidewinder (AIM-9L) missiles, howitzers, Mk 46 torpedoes, and various weapons upgrade kits.

- The Brown Amendment specifically prohibits the transfer of 28 F-16 fighter aircraft which Pakistan purchased before 1 Oct 1990 but which remain embargoed under the Pressler Amendment.

- The Government of Pakistan is relieved of its contractual obligation to pay the U.S. Government for the storage costs of items purchased prior to 1 October 1990 but not delivered by the United States, and reimbursement to Pakistan is authorized for such amounts paid, provided that such payments will have no budgetary impact.

- Defense items which are broken, worn, or unupgraded [sic], or their equivalent, which Pakistan paid for and took possession of prior to 1 Oct 1990, and which subsequently were sent to the U.S. for repair or upgrade, may now be returned to Pakistan provided that the President certifies to Congress that such equipment or equivalent neither constitutes nor has received any significant qualitative upgrade since being transferred to the U.S., and that its total value does not exceed \$25M;

- In their Conference Report, the Appropriations conferees stated their belief that "in light of this important administration policy initiative, the administration should provide to the Committees on Appropriations not later than 1 April 96, a report on conventional force reduction and non-proliferation in south Asia." Further, the Conferees acknowledged the Department of State's position that the "Pressler amendment prohibition applies to government-to-government sales [FMS] of military equipment, while the commercial sale of military equipment is subject to especially rigorous case by case license review."

- The Conferees also reported their belief that "certain items which may promote border security and stability, such as border surveillance equipment, radar, and radar warning receivers should be reviewed, consistent with current law, in light of their contribution as confidence building measures contributing to security in border areas in the region."

- *In General [Humanitarian Aid] (§562)*

- This provision has been informally termed the "Humanitarian Aid Corridor Provision." Its purpose is to deny aid to any country which restricts the transport of U.S. humanitarian assistance.

- Though not specifically identified as such, the target of this provision is Turkey whose forces reportedly have interfered with the furnishing of U.S. aid to Kurdish peoples residing in southeastern Turkey. This provision expressly prohibits assistance for any country if the government of such country prohibits or otherwise restricts, directly or indirectly, the transport or delivery of U.S. humanitarian assistance. A Presidential waiver of this prohibition is authorized if he determines that it is in the *national security interest* to do

---

so. This provision originated in the House; the Senate deleted it, but it was restored in conference.

- ***Withholding of Assistance to Countries Supporting Nuclear Plant in Cuba (§563)***

- This provision had its origin in a Senate amendment which was adopted by the Conference Committee. It requires the President to withhold assistance for any country, or any entity in such country, which supports the completion of the nuclear facility at Juragua, near Cienfuegos, Cuba. Excluding military assistance, several other exceptions to this provision are set forth, including assistance to meet urgent humanitarian needs, disaster assistance, refugee relief, political reform, rule of law activities, etc.

- ***Sanctions Against Countries Harboring War Criminal (§582)***

- This new provision prohibits U.S. assistance funds from being made available for the government of any country that knowingly grants sanctuary to war criminals.

- More specifically, section 582(c) defines a country to be sanctioned as a “country the government of which knowingly grants sanctuary to persons in its territory for the purpose of evading prosecution, where such persons:”

- (1) have been indicted by the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, or any other international tribunal with similar standing under international law; or

- (2) have been indicted for war crimes against humanity committed during the period beginning March 23, 1933 and ending on May 8, 1945 under the direction of, or in association with:

- (A) the Nazi government of Germany;

- (B) any government in any area occupied by the military forces of the Nazi government of Germany;

- (C) any government which was established with the assistance or cooperation of the Nazi government;

- (D) or any government which was an ally of the Nazi government of Germany.

- §582(b) also requires U.S. executive directors of international financial institutions to work in opposition to, and vote against, any extension by such institutions of financing or financial or technical assistance to any country as described above.

- ***War Crimes Tribunals - Drawdown Authority (§556)***

- In a related matter, Congress renewed for FY1996 this drawdown authority which was first introduced for FY1995.

- In accordance with §552, FAA, “if the President determines that doing so will contribute to a just resolution of charges regarding genocide or other violations of international law,” he may authorize the drawdown of up to \$25M in USG commodities and services to be furnished to the United Nations War Crimes Tribunal established by the United Nations

---

Security Council with regard to the former Yugoslavia, or to such other tribunals or commissions as the Security Council may establish to deal with such violations.

- *Drawdown Authority for Jordan (§572)*

- This new drawdown authority was introduced as a Senate amendment and was adopted in Conference. It authorizes the President during FY1996 to direct the drawdown from DoD resources of up to an aggregate of \$100M of defense articles, services, and training to be furnished to Jordan.

- Authorization for reimbursement to DoD and the military services for the drawdown items under Sec. 506(c), FAA, applies; however, reimbursement under §632(d), FAA, for other related expenses, such as packing, crating, handling, and transportation costs specifically “does not apply.”

- The Conference Report accompanying the FY1996 Foreign Operations Appropriations Act [P.L. 104-107] specified that this drawdown authority for Jordan is in recognition of Jordan’s new role in the Middle East Peace process. Similarly, the Conferees recommend the statutory designation of Jordan as a “major non-NATO ally,” and they urge the administration to “honor this increased risk to Jordan’s security brought about by the break with Iraq and accepting peace with Israel by carefully reviewing the Government of Jordan’s request to acquire up to 80 Egyptian-American built M1A1 tanks to address its near-term security needs.”

- Note: currently, only five countries are identified as major non-NATO allies: Australia, Japan, Egypt, Israel, and Korea. pursuant to §2350a(i)(3) of Title 10, U.S.C.

- The Conference Report accompanying the National Defense Authorization Act (P.L.104-106) reflects a general concern over this new authority in the foreign operations budget. Since there are no specific appropriations designated to provide reimbursement, the Conferees believe that reimbursement may not be provided for the replacement of non-excess defense items or for transportation and other costs, and that such non-reimbursement will cause military readiness to suffer. The Defense Conference Committee directed the Secretary of Defense to provide a report to the congressional defense committees 60 days after enactment of the DoD Authorization Act (i.e., 10 April 96) that addresses “the cost to replace non-excess defense items provided to Jordan and an identification of funds included in the President’s fiscal year 1997 budget for this purpose.”

- *POW/MIA Military Drawdown (§535)*

- This provision permits the extension into FY1996 of prior year authority to drawdown DoD defense articles, services, and military education and training “not to exceed \$15M” in support of POW/MIA rescue efforts.

- A similar drawdown authority was first enacted at the same level for FY1993 and then reauthorized for FY1994 and FY1995. This authority is designed to assist efforts to locate and repatriate U.S. military and civilian personnel who have remained unaccounted for since the Vietnam War. Such drawdown assistance may be provided to Cambodia, Laos, and Vietnam.

- Also, authority is provided in FY1996 (as in FY1995 when it was first granted) to permit aircraft to be furnished only to Laos, and only on a lease or loan basis, but at no cost to Laos (notwithstanding §67 AECA, “Leasing Authority”). Further, such aircraft

---

may be maintained with defense articles, services, and training provided under the authority of §535.

- The Senate proposed adding authority to this program to reimburse DoD for these drawdowns, but this was rejected by the Conference Committee.

- *Authority to Assist Bosnia-Herzegovina (§540) (Military Drawdown Authority)*

- This is one of three separate statutory provisions involving U.S. assistance to Bosnia-Herzegovina in FY1996. This first section provides a military drawdown authority pursuant to a lifting of the United Nations embargo against Bosnia-Herzegovina or to a unilateral lifting of said arms embargo by the President of the United States.

- This authority enables the President, subject to prior Congressional notification, to transfer DoD defense articles and services to Bosnia-Herzegovina (without reimbursement by that country) of an aggregate value not to exceed \$100M in FY1996. This doubles the annual \$50M drawdown authority provided for in each of FYs 1994 and 1995, and results from the Conference Committee's acceptance of the Senate-proposed level of \$100M rather than the House level of \$50M.

- Within 60 days of any transfer under this authority, and every 60 days thereafter, the President is required to provide a report to Congress regarding the articles transferred and their disposition.

- Section 540(d) authorizes the appropriation of funds, "as may be necessary to reimburse the applicable appropriation, fund, or account for defense articles provided" under this drawdown authority.

- *Restrictions on the Termination of Sanctions Against Serbia and Montenegro (§540A)*

- This provision serves two functions:

- (1) First, it allows the President to permit assistance to Bosnia-Herzegovina only for the purposes of meeting emergency humanitarian needs or to achieve a negotiated settlement of the conflict in Bosnia-Herzegovina which is acceptable to all parties.

- (2) Secondly, it amends the restrictions of §660(b), FAA, "Prohibiting Police Training," to allow police training with respect "to sanctions monitoring and enforcement," and

to reconstitute civilian police authority and capability in the post conflict restoration of host nation infrastructure for the purposes of [a] supporting a nation emerging from instability, and [b] for providing professional public safety training, to include training in internationally recognized standards of human rights, the rule of law, anti-corruption, and the promotion of police roles that support democracy.

- The conferees reported that there "may be instances when there is no practical alternative to utilizing U.S. military personnel to conduct short-term training of civilian police," but they "intend that any such use of U.S. military personnel for police training should be on a limited, short term basis."

---

- *Limitation on Funds to the Territory of the Bosnia-Croat Federation (§584)*

- This third provision in P.L. 104-107 regarding Bosnia-Herzegovina, restricts the use of U.S. assistance funds appropriated under this Act for activities in the internationally-recognized borders of Bosnia and Herzegovina to be made available only for activities in the territory of the Bosnia-Croat Federation. Excluded from this restriction are such activities as refugee and disaster assistance and restoration of infrastructure, to include power grids, water supplies, and natural gas.

- *Revisions to Program to Facilitate Transition to NATO Membership (§585)*

- This lengthy section amends Title II of the NATO Participation Act of 1994 (P.L. 103-447; 10 U.S.C. 1928 note) by requiring the President to evaluate the degree to which “any country emerging from communist domination which has expressed its interest in joining NATO” meets certain specified criteria, as listed below.

- Within 60 days of the enactment of these provisions (i.e., by 12 April 1996) the President may designate one or more of such countries as eligible to receive assistance under a program established by the NATO Participation Act of 1994, as follows: ESF, Nonproliferation and Disarmament Fund, Peacekeeping Operations, and other programs. Additionally, DoD is authorized to provide the necessary packing, crating, handling, and transportation of [grant lethal and nonlethal] excess defense articles at no cost to the recipient of such articles.

- The criteria for evaluating these countries are, with respect to each country, that the country—(A) has made significant progress toward establishing (i) shared values and interests; (ii) democratic governments; (iii) free market economies; (iv) civilian control of the military, of the police, and of intelligence services, so that these organizations do not pose a threat to democratic institutions, neighboring countries, or to the security of NATO or the U.S.; (v) adherence to the rule of law and to the values, principles, and political commitments set forth in the Helsinki Final Act and other declarations by the members of the Organization on Security and Cooperation in Europe ‘OSCE’; (vi) commitment to further the principles of NATO and to contribute to the security of the North Atlantic area; (vii) commitment to protecting the rights of all their citizens and respecting the territorial integrity of their neighbors; (viii) commitment and ability to accept the obligations, responsibilities, and costs of NATO membership; and (ix) commitment and ability to implement infrastructure development activities that will facilitate participation and support for NATO military activities; (B) is likely, within five years of such determination, to be in a position to further the principles of the North Atlantic Treaty and contribute to the security of the North Atlantic area; and is not ineligible to receive assistance under §552 of the FY1996 Foreign Operations Appropriations Act, with respect to transfers of equipment to a country, the government of which the Secretary of State has determined is a terrorist government for purposes of §40(d) of the AECA.

- *Depleted Uranium*

- Missing from the FY1996 Foreign Operations Appropriations Act is a legislative provision which had its introduction in the FY1987 Omnibus Supplemental Appropriations Act (§508, 100-71). This statute established a sales prohibition dealing with certain types of U.S. anti-tank ammunition, namely, “the M-833 antitank shell or any comparable anti-tank shells containing a depleted uranium [DU] penetrating component.”

- Initially, NATO-member countries and major non-NATO countries were exempted from this prohibition.

---

- As this provision was renewed in annual foreign operations appropriations acts, various modifications were enacted.

- For FY1989, Pakistan was added to the exempted country list.

- Then, for FY1991, Congress authorized the President to waive the provision for any non-exempt country if he determined that the sale of such DU rounds was in the *national security interest* of the United States.

- Congress amended the prohibition once more for FY1992, by deleting Pakistan and adding Taiwan to the list of eligible purchasers.

- By choosing not to renew this provision in P.L. 104-107, Congress has removed all statutory-based sales restrictions on DU antitank shells.

- **MODIFICATIONS TO GENERAL LEGISLATIVE PROVISIONS OF PRIOR YEARS**

- *Deobligation-Reobligation Authority [§510(b)]*

- Deobligation-Reobligation authority permits the Administration to deobligate unused country/program-allocated funds from prior years in order to reobligate them for a different country/program in the current year. Congress has previously authorized this practice for the FMF program in FY1991 and in FY1994.

- The current provision was sponsored by the Senate and provides that FY1994 obligated balances, if deobligated, will remain available during FY1995 for the same purposes. This provision, however, is unusual in its prohibition in a FY1996 appropriations act of the use of this authority to reobligate FY1995 FMF funds for use in FY1996.

- *Special Notification Requirements (§520)*

- A special 15-day notification to Congress is required prior to obligating or expending any of the funds appropriated for FY1996 in P.L. 104-107 for Colombia, Dominican Republic, Guatemala, Haiti, Liberia, Nicaragua, Pakistan, Peru, Russia, Sudan, or Zaire.

- Removed from the FY1996 list of countries for whom this notification requirement applied in FY1995 are El Salvador, Indonesia, and Rwanda. Added to the FY1996 list is Russia.

- Exempted from this special notification requirement are any FY1996 funds appropriated for development assistance programs for Nicaragua under the provisions of Chapter 1 [Development Assistance] of Part I of the FAA.

- *Limitation on Availability of Funds for International Organizations and Programs (§516)*

- This section of P.L. 104-106 prohibits any of the FY1996 U.S. foreign assistance funds appropriated for International Organizations and Programs to be made available for the United States proportionate share, for any programs for the following countries as identified in §307, FAA: Burma, Iraq, North Korea, Syria, Libya, Iran, Cuba, or the Palestine Liberation Organization.

---

- This restriction also applies, at the discretion of the President, to the **Communist countries** listed in §620(f), FAA. This listing, which only six years ago identified 18 countries, has been reduced over the past several years to only five: **North Korea, China, Cuba, Vietnam, and Tibet**

- *Stockpiles of Defense Articles [War Reserve Stockpiles for Allies, WRSA] (§531B)*

- The House had proposed \$200M in FY1996 additions to the U.S. defense stockpile in **Israel**. However, a Senate amendment, which was subsequently adopted in Conference, changes §514(b)(1), FAA, to make Israel eligible for future stockpile additions without the annual statutory authorizations that are required for other non-NATO countries. Thus, the Administration may increase the contents/value of the stockpile in Israel as required without requesting Congressional authority to do so.

- This provision also provides new authorizations for stockpile additions for **South Korea (\$40M) and Thailand (\$10M)** for each of FYs 1996 and 1997.

- Finally, this amendment to the FAA now permits the President, subject to a 15-day notification of the appropriations committees, to designate additional countries for the establishment of WRSA stockpiles without requiring further statutory authorization. In the past, the Administration was required to obtain specific legislative authority to establish any new non-NATO based stockpile.

- **COUNTRY-SPECIFIC PROVISIONS IN P.L. 104-107.**

- *Limitation on Funds for Haiti (§564)*

- This is one of two separate provisions dealing with Haiti.

- Effective 1 March 1996, Section 564 prohibits assistance funding for Haiti when it is made known to the President that the Haitian government is controlled "by a regime holding power through means other than the democratic elections scheduled for calendar year 1995 and [not] held in substantial compliance with the requirements of the 1987 Constitution of Haiti. This was a House provision that the Senate deleted but was restored in Conference.

- A Presidential election (reported to be generally peaceful and democratic in form) was conducted in Haiti in December, 1995, and the new President of Haiti, Rene Preval, was inaugurated on 7 February 1996. The Preval candidacy was supported by then-President Jean-Bertrand Aristide, and the inauguration represented Haiti's first peaceful transfer of political power from one elected government to another.

- *Limitation on Assistance for Haiti (§583)*

- This second Haitian provision prohibits foreign assistance funds for Haiti until the President determines that the Government of Haiti is conducting thorough investigations of extrajudicial and political killings which have occurred in Haiti, and is cooperating with U.S. authorities in the investigation of political and extrajudicial killings.

- This prohibition also may be waived per §583(c) if the President reports to Congress that such a waiver is in *the national interest* of the U.S., or is necessary to ensure the safe and timely withdrawal of American forces from Haiti. The managers of the Conference agreed that this provision does not restrict the availability of humanitarian or electoral assistance to Haiti.

---

- *Guatemala (§578)*

- This section allows the provision of IMET and/or FMFP assistance to Guatemala only if the President certifies that the Guatemalan military is cooperating with efforts to resolve human rights abuses, "which elements of the Guatemalan military or security forces are alleged to have committed, ordered, or attempted to thwart the investigation of."

- Pursuant to §578(b), the prohibitions on IMET and FMFP for Guatemala do not apply to any funds that may be made available to implement a cease-fire or peace agreement.

- Special Congressional reporting requirements apply if any such funds are made available for Guatemala in FY1996.

- Finally, any IMET assistance funds which may be made available for Guatemala, may only be for the Expanded IMET program.

- *Liberia (§573)*

- This new provision was introduced by the House and adopted by the Conference Committee. It grants exemptions for Liberia for FY1996 from the prohibitions on assistance which apply to countries that are delinquent in their repayment of Foreign Assistance Act loans [per §620(q), FAA], and/or Foreign Assistance loans [i.e., per the Brooke-Alexander amendment provisions which are renewed in the annual Foreign Operations Appropriations Act (e.g., §512 of this year's Act, P.L. 104-107)].

- A Senate amendment to this provision, which was rejected in Conference, would have provided a permanent exemption for Liberia from these sections. This failed amendment also included language expressing the sense of Congress regarding the peace process in Liberia, namely, that the United States should support the peace process, including diplomatic engagement, support for the West African peacekeeping force, humanitarian assistance, and assistance for demobilizing troops and for the resettlement of refugees.

- **MISCELLANEOUS APPROPRIATIONS/PROVISIONS OF GENERAL INTEREST IN P.L. 104-107**

- *Anti-Terrorism Assistance (Title I, Bilateral Economic Assistance)*

- The Conference Committee settled on a FY1996 appropriation of \$16M for Anti-Terrorism Assistance. The House had proposed \$17M and the Senate sought \$15M. The FY1995 appropriation was \$15.244M.

- *Migration and Refugee Assistance (Title II)*

- The FY1996 appropriation of \$671M for Migration and Refugee Assistance is identical to the amount which was appropriated for this program in FY1995.

- *U.S. Emergency Refugee and Migration Assistance (Title II)*

- For FY 1996, this fund was also appropriated at the same level as FY1995, i.e., \$50M.

---

- *International Narcotics Control (Title II)*

- An FY1996 appropriation of \$115M was provided for the International Narcotics Control Program.

- The Administration originally requested \$213M; the House proposed \$113M, and the Senate sought \$150M; the Conference Committee settled on \$115M. This represents an increase of \$10M over the direct appropriation for FY1995 of \$105M.

- Additionally, Congress provided authority (pursuant to §577, FAA) for the transfer to the International Narcotics Control account of an additional \$20M from either the Development Assistance or Economic Support Fund accounts. (A failed Senate amendment would have required the additional \$20M to be transferred from funds made available to the Agency for International Development.)

- The Conference Committee also deleted a Senate proposal which would have earmarked \$1.8M for an FBI Legal Attaché office in Cairo, Egypt, and \$5M for the FBI and Secret Service to establish and maintain offices in the triborder area of Argentina, Brazil, and Paraguay.

- *International Disaster Assistance (Title II)*

- Congress appropriated \$181M for International Disaster Assistance for FY1996 (The House sought \$200M, whereas the Senate asked for \$175M.) The FY1996 funding increases this program by \$11.002M over the FY1995 appropriation of \$169.998M.

- *Humanitarian Assistance to the Former Yugoslavia (Title II)*

- This provision earmarks \$40M of the funds appropriated in Title II, P.L. 104-107 (Bilateral Economic Assistance) to be available only for emergency humanitarian assistance to the former Yugoslavia, of which not less than \$6M is to be available only for humanitarian assistance to Kosova.

- *Assistance for Eastern Europe and the Baltic States (Title II)*

- The House originally proposed \$324M to be appropriated for FY1996 assistance for Eastern Europe and the Baltic States (i.e., Latvia, Lithuania, and Estonia). The Senate sought an increase to \$335M, but the Conference Committee accepted the House proposal.

- *Assistance for the New Independent States (NIS) of the Former Soviet Union (FSU) (Title II)*

- The House originally proposed \$580M for assistance for the NIS, whereas the Senate sought \$705M. The Conference Committee compromised by dividing the difference between the two proposals (\$125M) and settling on a \$641M appropriation for FY1996.

- As in FY1995, various earmarks and specific requirements were attached to this section, as the following examples illustrate:

- (1) The Conference Committee supported a House amendment which places a ceiling of not more than \$195M of the total (\$641M) that may be made available for FY1996 for Russia, "in consideration of the fact that Russia has been allocated more than 60 percent of the funds obligated under this heading since fiscal year 1993."

- 
- (2) None of the funds in this account may be made available to **Mongolia**;
  - (3) Not less than \$15M should be available only for a family planning program for the NIS.
  - (4) Not less than \$225M shall be made available for **Ukraine**.
  - (5) Not less than \$85M shall be made available for **Armenia**.
  - (6) not less than \$30M shall be made available for **Georgia**.
  - (7) Not less than 15M shall be made available for a Trans-Caucasus Enterprise Fund.
  - (8) Not less than \$12.6M shall be made available for activities in support of training and investigations related to international crime in Central and Eastern Europe, Ukraine, and Russia. The conferees report that this latter provision (i.e., a funding earmark for combating international crime) “is a minimum amount, and the [U.S.] coordinators of aid to Eastern Europe and the NIS should make this a top priority in allocating funds if additional amounts are required.”

- *Korean Peninsula Energy Development Organization (KEDO) (Title IV, International Organizations and Programs)*

- This is a new provision for FY1996 which is related to the Agreed, Multilateral Framework between the United States, Japan, the Republic of Korea (ROK), and the Democratic People's Republic of Korea (DPRK). This agreement was signed on 21 October 1994 and calls for assistance in the construction of light-water nuclear reactors in the DPRK, and also to provide heavy oil for the DPRK. KEDO is the international consortium that has been established to implement the aspects of the Agreed Framework

- The United States is to organize and lead KEDO, with central roles also played by the Republic of Korea and Japan. All three countries have agreed to jointly finance the program which has a total estimated cost of over \$4B; the DPRK is to repay the cost over a period of 20 years.

- Under this new legislative authority, U.S. funds may be made available to KEDO for administrative expenses and heavy fuel oil costs associated with the Agreed Framework. No funds are to be made available for such costs beyond the total amount included for KEDO in the FY1996 congressional presentation (i.e., \$22M). Further, these funds may only be made available if the President determines and certifies in writing to Congress that the following actions have been undertaken:

- (a) KEDO has designated a ROK company, corporation, or entity for the purpose of negotiating a prime contract to carry out construction of the “proliferation resistant” light water reactors provided for in the Agreed Framework.

- (b) The DPRK is maintaining the freeze on its nuclear facilities as required in the Agreed Framework.

- (c) The U.S. is taking steps to assure that progress is made on (1) the North-South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services, and financial transactions; and (2) implementation of the 1 January Joint Declaration on the Decnuclearization of the Korean

---

Peninsula. This provision also requires that a report on efforts taken in support of subsections (a), (b), and (c) above shall be submitted to Congress six months after the date of enactment of this Act, and every six months thereafter.

- Finally, the Conference Committee reports that the conferees are agreed that none of the funds made available for KEDO in FY1996 "may be used to contribute [directly] to the light water nuclear reactors being provided to North Korea under the terms of the Agreed Framework."

[For additional information, see the *FY1996 Congressional Presentation* document report on KEDO which is reprinted herein following this article.]

- **SIGNIFICANT SECURITY ASSISTANCE-RELATED PROVISIONS IN THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FY 1996, P.L. 104-106, 10 FEB 1997**

- *Transfer of Naval Vessels to Certain Foreign Countries (§1012, P.L. 104-106)*

- Under this new section, the Secretary of the Navy is authorized in FY1996 to transfer eight FFG-7 class guided missile frigates to various countries. Four of the frigates are to be transferred by grant, and the remaining four by lease or sale.

- The grant transfers include one ship each to Bahrain and Egypt, and two to Turkey. Transfers by lease or sale include one each to Egypt, Oman, Turkey, and the United Arab Emirates.

- Any expenses incurred by the U.S. in connection with a transfer of any of these eight vessels shall be charged to the recipient government. As a further condition of any such transfer, any repair or refurbishment that is necessary prior to the transfer, must be performed at a shipyard located in the United States.

- Transfer authority is authorized for a two-year period, beginning on the date of the enactment of this Act (i.e., 10 Feb 1996); in the case of a transfer by lease, the lease may be renewed.

- Section 1012(c) also amends §23, AECA (§2763, Title 22, U.S.C.) to permit foreign countries to use Foreign Military Financing Program funds to finance any transfer by lease of these vessels, "in the same manner as if such transfer were a procurement by the recipient nation of a defense article." This is the first legislation to permit the use of FMFP or other appropriated funds for foreign leases rather than sales.

- Requirements for notifying Congress of such transfers under the provisions of §5126, FAA, and §§21 and 61, AECA, are not waived by this authority, as they traditionally have been in the past.

- Finally, this section amends §516, FAA (§2321j, Title 22, U.S.C.), to prohibit future grant transfers of any vessels that are in excess of 3,000 tons, or that are less than 20 years old.

- The Defense Conference Committee Conferees report their awareness that in some cases, U.S. national security will be best served by a grant transfer, particularly when the recipient is an important coalition defense partner that is making valuable contributions to U.S. security or lacks the resources to obtain a vessel by lease or sale. Accordingly, they

---

included authority [§1012(g)(2), P.L. 104-106] for the President to request a future grant transfer if it is determined to be in the *national security interest* of the U.S.

- ***Repeal of Quarterly Report on Price and Availability Estimates [§1064(a), P.L. 104-106]***

- This provision repeals Section 28 of the AECA (22 U.S.C. 2768) which formerly required the submission to Congress of quarterly reports on FMS price and availability (P&A) estimates that the United States Government provided to foreign governments during each calendar quarter.

- ***Defense Export Financing Program (DEFP) (§1321, P.L. 104-106)***

- This new provision requires the Secretary of Defense to establish a program by which to guarantee commercial loans for selected countries to allow their purchase, or long term lease, of U.S. defense articles, defense services, or design and construction services. This new program would apply to commercial exports [i.e., Direct Commercial Sales (DCS)], Foreign Military Sales (FMS), or long-term leases.

- The concept of a guarantee loan program to support DCS and FMS has been evolving for several years. The U.S., like other western industrialized countries, has long provided export financing assistance for general commercial exports, but unlike such other countries, the U.S. generally has excluded armaments exports from such support.

- A Guarantee Reserve Fund (GRF) program was managed by DoD during the 1970s and early 1980s, but this program proved difficult to administer effectively, particularly in view of the frequency by which several participating countries fell into arrears on their loan repayments.

- The Bush Administration proposed a program for defense export loan guarantees for FY 1992, but it failed enactment.

- For FY1994, Congress authorized a \$1B program (the Kempthorne Amendment, named for Senator Dirk Kempthorne, R-Idaho), but failed to appropriate the \$25M that would have been required to fund the costs of subsidizing the loan guarantees.

- During debate within the Clinton Administration regarding the formulation of the 1995 Conventional Arms Transfer Policy (PDD-34), the subject again received attention. The Administration concluded that such a program was unneeded at the time, but might be pursued if market conditions warranted such action.

- The DEFP, which has now been both authorized and funded for FY1996 (and is planned to be extended into the future) is intended to assure a lender against losses of principal or interest, or both, arising out of the financing of commercial export sales or government-to-government sales or leases.

- Section 1321, P.L. 104-106, which amends Chapter 148, Title 10, U.S.C., identifies the countries which will be eligible to participate in the DEFP, to include:

- NATO member countries.
- Major NON-NATO allies (i.e., Israel, Egypt, Australia, Japan, and Korea).

---

- A central European country that has changed its form of government from nondemocratic to democratic since 1 Oct 1989, or is in the process of making such a change.

- A noncommunist country that was a member nation of the Asia Pacific Economic Cooperation (APEC) council as of 31 Oct 1993.

- Loan Guarantees may be issued only to such extent or in such amounts as may be provided in advance in appropriations acts. Section 8075 of the Defense Appropriations Act for FY1996 (P.L. 104-61) requires the Secretary of Defense to issue loan guarantees of up to \$15,000,000,000 in FY1996 in support of this program.

- An exposure fee must be charged for each loan guarantee. This fee is intended to meet any potential USG liability regarding the loan guarantee program, and would be based on the creditworthiness of the respective country receiving any such loan. P.L. 104-61 states that "the exposure fees charged and collected by the Secretary of Defense for each guarantee, shall be paid by the country involved, and shall not be financed as part of a loan guaranteed by the United States." Further, the FY1996 Defense Authorization Act provides that, "to the extent that the cost of guarantees is not otherwise provided for in appropriations acts, the fee shall be fixed in an amount sufficient to meet potential liabilities of the United States under the loan guarantee."

- Administrative fees will also be charged and credited to a special Treasury account for the payment of loan start-up and ongoing administrative expenses of the DoD that are directly attributable to the administration of this loan program.

- P.L. 104-61 provides for up to \$500,000 in FY1996 DoD appropriations under Title 10, Operations and Maintenance accounts, to be used to meet first year start-up costs, with these funds to be replenished from the special Treasury account.

- With respect to these administrative fees, the Defense Appropriations Conference Committee Report states that, "The conferees intend to monitor the administration of this program closely to ensure that the method of funding the administrative fees does not impact the process of approval of the loan guarantees."

- A further condition applied to this new program is contained in Section 2540b, P.L. 104-106. This section provides that the terms and conditions which are offered to a country seeking a medium-term or long-term loan guarantee under this DEFP authority, "may not be more beneficial than those that would be provided to the recipient by the Export-Import Bank of the United States under similar circumstances in conjunction with the provision of guarantees for nondefense articles and services."

- Guidance and procedures to be used in implementing this new program are being developed by components within the Office of the Secretary of Defense.

- *Annual Report on Military Assistance, Military Exports, and Military Imports [§1324(c), P.L.104-106]*

- This section amends the FAA by adding a new Section 655 to the FAA which calls for a new annual report to be submitted to Congress not later than 1 February of each of 1996 and 1997 concerning military assistance authorized or furnished for the fiscal year ending the previous 30 September.

- This report is to include an aggregate dollar value and quantity of defense articles (including EDA), defense services, and military education and training, authorized or

---

furnished by the United States to each recipient foreign country and international organization. The report shall indicate whether these articles, services, or training were furnished pursuant to the FAA, or by sale under chapter 2 of the AECA, or were authorized by commercial sale licensed under Section 38 of the AECA.

- Additionally, this report must also include the total amount of military items of non-United States manufacture that were imported into the United States during the fiscal year covered by the report, to include identification of the country of origin, the type of item being imported, and the total amount of items.

- *International Competitiveness [Non-Recurring Costs] (§4303, P.L. 104-106)*

- No security assistance issue has drawn more attention in recent years than that involving the recovery of the non-recurring costs of research, development, and production associated with export sales of U.S. defense articles and technology. New legislation for FY1996 adds another dimension to the issue, as the following discussion indicates.

- Since the early 1960s, DoD has been required by statute and federal regulation to charge foreign purchasers a fair price for the value of the DoD investment in the development and production of U.S. defense articles and related technology. This price is added to other costs associated with such foreign purchases.

- Current law [§21(e)(1)(B), AECA] calls for the inclusion in FMS cases of appropriate charges for "a proportionate amount of any nonrecurring costs [NC] of research, development, and production of major defense equipment," except for equipment wholly paid for either from Military Assistance Program (MAP) funds or nonrepayable FMFP grant funds. Also, per §21(e)(2), AECA, a reduction or waiver of the recoupment requirement may be authorized by the President on a case by case basis for:

particular sales that would, if made, significantly advance United States Government interests in North Atlantic Treaty Organization standardization, standardization with the Armed Forces of Japan, Australia, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries, or foreign procurement in the United States under coproduction arrangements.

- Major defense equipment (MDE) is defined as significant military equipment [as designated on the U.S. Munitions List] having a nonrecurring RDT&E cost of more than \$50 million or a total production cost of more than \$200 million. The NC recoupment charge is based on a *pro rata* assessment of items or technology releasable for FMS or Direct Commercial Sales (DCS). The specific *pro rata* charge is calculated using an estimate of the total production quantity base and the total associated costs. Individual item costs may be quite high and add substantially to the total cost of an item. For example, the current recoupment charge for a single F-100-PW-229 engine for the F-15 or F-16 aircraft is over \$637,000, and the charge for a single AMRAAM (advanced medium range air to air missile) exceeds 40 percent of the total price of the missile.

- Prior to 1992, NC recoupment applied to non-MDE as well as MDE for both FMS (pursuant to the AECA) and DCS (pursuant to USG policy). In June, 1992, as part of an effort to reduce the burden of government regulation of U.S. business, DoD announced the elimination of the recoupment policy requirement for non-MDE for both FMS and DCS. Then, in October, 1992, an even more significant policy change was effected with the elimination of the policy requirement (non-statutory) for NC recoupment for MDE sold through DCS channels. However, the statutory requirement for recoupment for FMS cases

---

[§21(e)(1)(B), AECA] remained in effect since only a statutory rather than a policy change could alter the FMS requirement.

- Beginning in 1993, DoD sought legislative relief from Congress to provide a more level pricing base for FMS and DCS cases. Two schools of thought regarding this issue developed. One school advocated the total elimination of the NC recoupment requirement for FMS. The second school, seeking a restoration of federal revenues that were lost in the 1992 termination of the DCS requirement, sought to reinstate this requirement for future DCS as well as to retain it for FMS. After several years of failed legislative initiatives, the 104th Congress came up with its own novel approach.

- Section 4303 of the FY1996 Defense Authorization Act (P.L. 104-106), which amends §21(e)(2), AECA, permits a *conditional* waiver of nonrecurring costs for FMS cases. Such a waiver depends on a Presidential determination that either:

- The imposition of such costs would result in the loss of a particular sale; or,
- A waiver of such costs would reduce MDE unit costs to the United States Government and such savings would substantially offset the lost revenue. The savings would come from lower per unit costs through increased production for foreign orders.

- This revision to the AECA also authorizes the President to waive any portion of a recoupment that is attributable to a correction in an earlier estimate of a production quantity base used to calculate the *pro rata* recoupment charges for a specific item.

- In addition to the conditionality attached to such NC reductions/waivers, there are yet other factors which come into play.

- None of these provisions go into effect in FY1996. Rather, they will only become operative upon the President's submission, and the subsequent enactment, of a FY1997 budget with specific "qualifying offsetting legislation," i.e., legislation which expressly provides for fully compensating the government for the estimated revenues that would be lost by granting such waivers. Further, this legislation must provide for such offsetting revenue for each of fiscal years 1997 through 2005. And finally, this offsetting legislation must be "included in full on the PayGo scorecard," i.e., the budget estimates that are made by the Congressional Budget Office and the Office of Management and Budget under §252(d) of the *Balanced Budget and Emergency Deficit Control Act of 1985*. In short, none of these authorities may be exercised until FY1997, at the earliest, and only then if the Administration can come up with an acceptable funding source(s) to offset the revenue losses which would accompany waivers of NC recoupment under this new legislation.

- Neither the advocates for the elimination of all such FMS recoupments, nor those who wish to maintain the FMS requirements and reinstate the charges for DCS, have been heartened by the unique solution which Congress has produced. It is now up to the Administration to develop the legislative means for implementing these new statutory authorities and thereby satisfying the concerns of Congress.

- **PROPOSALS WHICH FAILED PASSAGE DURING THE APPROPRIATIONS LEGISLATIVE PROCESS**

- *Proposed Limitation on Assistance to Mexico (H.R. 1868)*

- The House proposed prohibiting any U.S. assistance for Mexico unless the Government of Mexico:

---

- (1) is taking action to reduce the amount of illegal drugs entering the U.S. from Mexico (as determined by the U.S. Director of the Office of National Drug Control Policy), and

- (2) the government of Mexico (A) is taking effective actions to apply vigorously all law enforcement resources to investigate, track, capture, incarcerate, and prosecute illegal drug kingpins and their accomplices, individuals responsible for, or otherwise involved in, corruption, and individuals involved in money-laundering; and (B) is pursuing international anti- drug trafficking initiatives.

- This initiative was opposed in the Senate and was deleted by the Conference Committee. The Conference Managers, however, stated that they “expect the United States government to continue to urge the government of Mexico to take actions to reduce the amount of illegal drugs entering the United States from Mexico, and to take effective law enforcement actions to deal with illegal drug activities, especially illegal narcotics trafficking.”

- *Proposed Sense of Congress Statement on Honduras*

- The Conference Committee deleted a Senate-proposed “Sense of Congress” statement calling for the President to declassify “any documents . . . pertaining to persons who allegedly ‘disappeared’ in Honduras, and promptly make such documents available to Honduran authorities who are seeking to determine the fate of these individuals.” In place of this rejected statement, the Conference Committee report includes the following comments:

The conferees note that during the 1980’s, a secret Honduran army death squad known as Battalion 316 allegedly engaged in a campaign of systematically kidnapping, torturing, and murdering suspected subversives. Victims included Honduran students, teachers, labor leaders, and journalists. Also, in 1993 there were reportedly 184 unsolved cases of persons who were allegedly ‘disappeared,’ and are presumed dead. The conferees urge the President to order the expedited declassification of any documents in the possession of the United States Government pertaining to persons who allegedly ‘disappeared’ in Honduras, and promptly make such documents available to Honduran authorities who are seeking to determine the fate of these individuals.”

## CONCLUSION

Notwithstanding the extraordinary partisan conflict that accompanied the protracted FY1996 budget process, significant new and modified security assistance legislation emerged from the fray. Although appropriations for security assistance programs generally continued to decline, this year’s appropriations act included a welcome 53% increase over FY1995 in the IMET account, plus a doubling of the Nonproliferation and Disarmament Fund. Nevertheless, the continued fall in grant and credit funding in the FMFP account—down overall 42% from a record high in FY1984 of \$6,428M to the FY1996 program level of \$3,752.39M—is less encouraging, particularly when one views the FMFP decline as a drop in recipient country purchasing power. Moreover, the FMFP figures are only available in terms of *annual* dollar value, rather than *constant* dollars; if the effects of varying annual inflation rates from FY1984 to the present could be applied, they would illustrate an even greater decrease in purchasing power.

Other features of the FY1996 legislation also merit comment. For example, this year’s legislation substantially modified the 1985 nuclear proliferation sanctions that have prohibited most U.S. assistance to Pakistan since 1990. Despite the absence of any evident change in Pakistan’s nuclear stance, restoration of much U.S. assistance has now been implemented, to include IMET funding and deliveries of previously purchased military equipment, with the

---

important exception of 28 F-16 aircraft. Restrictions on future FMS, DCS, and other military assistance continue to apply. Ironically, just when DoD was authorized to return some of the previously embargoed material to Pakistan, Chinese sales of nuclear-related material to Pakistan were widely reported throughout the world. Nonetheless, following several months of review, DoD formally notified Congress in mid-April 1996 of its intent to deliver \$368M of previously purchased U.S. military equipment to Pakistan. This activity prompted new congressional debate on the issue, and it is clear that the subject of military assistance to Pakistan will *undoubtedly* arise again in future legislative deliberations.

Another important FY1996 change includes the dropping of statutory prohibitions involving sales/transfers of anti-tank shells containing a depleted uranium penetrating component. Restrictions on the export of such DU rounds were first enacted for FY1987 and were renewed annually until FY1996. Advances in the technology of reactive armor plating have eased allied concerns regarding these shells, and the Administration supported the elimination of these statutory restrictions.

Several significant new programs have been introduced for FY1996. Among these are the Defense Export Financing Program and the expanded authority for the waiver of non-recurring costs associated with foreign military sales of major defense equipment. Both of these subjects have been described at length herein; it now remains to be seen how these statutes will be implemented in the future and what impact they will have upon the Foreign Military Sales Program.

Also significant are the new provisions which prohibit assistance to any country that knowingly grants sanctuary to war criminals who have been indicted by an international tribunal. Although this legislation specifically applies to such personnel who formerly were associated with the Nazi regime, as well as those involved in the turmoil in Rwanda, and the conflict in the former Yugoslavia, it is the latter situation which is receiving most current attention. As U.S. and allied forces serve in Bosnia-Herzegovina in support of the Dayton accords, the disposition of those Serbs, Muslims, Croats, et. al., involved in mass civilian executions and other atrocities remains in question. If criminal trials become a reality, flight from prosecution is likely, with neighboring Central and Eastern European countries serving as probable choices for such refuge. These are the very countries which the U.S. and its allies are currently assisting in their transition from communism to open political and economic systems. If any should "knowingly grant sanctuary" to war criminals, the subsequent scenario, with the threat of termination of U.S. assistance, will indeed present important foreign policy challenges to U.S. government decision makers.

A further area of concern relates to the "hidden killers," i.e., antipersonnel landmines. The widespread casualties resulting from the presence of these weapons on former battlefields throughout the world continues to prompt new statutory responses from the Congress. In addition to the extension to 22 October 1997 of the existing U.S. moratorium on the *sale/transfer* of such weapons, the current Congress, under the prodding of Senator Patrick Leahy (D-VT), has established the legislative foundation for a moratorium on the *use* of such weapons. Although the enabling legislation does not call for this *use moratorium* to be implemented until 12 February 1999, and then only for one year, the concept has drawn much attention. Certain current military leaders have reported considerable reservations regarding the denial of such weapons to U.S. forces which use them in combat to deter attacks by enemy ground forces. Press reports, however, suggest the current Chairman of the Joint Chiefs of Staff, Gen. John M. Shalikashvili, USA, is supportive of the policy, as are a number of retired flag officers who urged support of the moratorium in an April letter to the New York Times. This issue too remains to be resolved.

Finally, on 20 March 1996, H.R. 3121, a wide ranging bill designed to amend the FAA and the AECA, was introduced in the House by Rep. Benjamin Gilman, R, NY, the Chairman of the

---

House International Relations Committee, and Rep. Lee Hamilton (D, IN), Ranking Democratic Member. This bill draws together numerous important security assistance provisions that had previously appeared in earlier proposed legislation, but which failed to be enacted. Some of these provisions include: a proposed standardization of congressional review procedures for arms transfers; end-use monitoring of defense articles and defense services; additional requirements and terms of loans under the FMF Program; proposed standardization of the many different authorities governing the transfer of excess defense articles; and significant changes in the legislation governing the transfer of U.S. naval vessels to foreign countries. H.R. 3121 was passed in the House on 16 April 1996, and is reported to have a good chance of passage in the Senate. If this bill is enacted, a full report of its provisions will be provided in a future issue of *The DISAM Journal*.

The challenge now facing the security assistance community is to develop effective policies and procedures for implementing the many changes reported herein. Last year's legislative report on security assistance legislation (*The DISAM Journal*, Fall, 1995) concluded that "the only relatively safe prediction that can be made in anticipation of new legislation for next year is that, like FY 1995, FY1996 will likely consist again of a wide variety of renewed, revised, and entirely new statutes." This year's report supports that view, and there is every reason to believe that the legislative process for FY1997, which has already begun, will produce similar results.

#### ACKNOWLEDGMENTS

As in previous years, the various analytical memoranda produced within the Plans Division of the Defense Security Assistance Agency provided a valued source for the preparation of this article. Of particular benefit were the several reports prepared by Sherry Reckler and Peter Ipsen, the latter who also kindly reviewed the article. The author remains dependent on the valued advice and continuing support of the DISAM faculty, especially the insightful views of Dr. Larry Mortsof, and the keen focus on details of Ken Martin.

#### ABOUT THE AUTHOR

Dr. Louis J. Samelson has served on the DISAM faculty for almost fifteen years. He is the Institute's Director of Research, and is also the Editor of *The DISAM Journal*. A specialist in United States national security policy, international relations, and security assistance legislation and policy, he is also a retired Air Force lieutenant colonel with extended experience in military intelligence. Dr. Samelson was awarded a Ph.D. in Political Science from the University of Illinois in 1972, and has served as an adjunct professor at the University of Alaska, Auburn University, and Wright State University. The present article represents his twelfth annual report for *The DISAM Journal* covering security assistance legislation.