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# LEGISLATION AND POLICY

## New Security Assistance Legislation for

### Fiscal Year 1997

By

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#### Introduction

This report, the latest in a series of annual *DISAM Journal* legislative studies, provides an expanded summary and analysis of significant new legislation related to the conduct of United States security assistance programs in FY1997 and beyond. Because of the unusually wide variety of statutory amendments and appropriations provisions enacted this year, together with the need for succinct and timely publication, this report employs an extended outline format. This summary approach, together with the use of boldface print to identify key topics, has proven useful in past years for reference purposes in locating specific statutory provisions. Our objective in producing these reports is to disseminate important new legislative information to better aid security assistance managers and executives throughout the world. This report should enhance their understanding of the changing statutory requirements which provide the program authorities and guidelines for implementing U.S. security assistance programs.

#### The FY1997 Legislative Process

A fairly straight forward process characterized the enactment of new security assistance legislation for FY1997, as compared to that experienced for the previous fiscal year. For FY 1996, the process was marked by severe partisan political excesses, with a resulting struggle between the President and the Congress culminating in two partial government shutdowns and the passage of nine separate continuing appropriations resolutions before funding for security assistance and other foreign operations activities finally was enacted on 1 March 1997.

The FY1997 legislative process proved surprisingly smoother. First, an unusual act was passed in July 1996 that made numerous amendments to both the Foreign Assistance Act of 1961 (FAA) and the Arms Export Control Act (AECA). This wide ranging act was introduced as H.R. 3121 in the House on 20 March 1996 by Rep. Benjamin Gilman (R, NY), the Chairman of the House International Relations Committee, and Rep. Lee Hamilton (D, IN), Ranking Democratic Member. Following passage in the House in early April, the bill seemed to languish in the Senate Foreign Relations Committee. In an effort to get action on the bill, in mid-May the House attached the bill to the pending National Defense Authorization Bill (H.R. 3230), thereby moving it to the jurisdiction of the Senate Armed Services Committee and the House National Security Committee. The original bill (H.R. 3121) subsequently was "revived" in the Senate where it was then passed on 27 June. Thereafter, the House adopted various Senate amendments, clearing the bill for the White House on 9 July, where it was signed by President Clinton on 21 July 1996. Enacted as P.L. 104-164, this Act bears an extremely lengthy and awkward title: "An Act to

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amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to make improvements to certain defense and security assistance provisions under those Acts, to authorize the transfer of naval vessels to certain foreign countries, and for other purposes.” Congress did not furnish an abbreviated title for this Act; to make reference more reasonable, the Act will be cited hereinafter either by its designated public law number, P.L. 104-164, or informally as the 1996 FAA and AECA Amendments Act.

In terms of content, P.L. 104-164 draws together numerous important security assistance provisions that had previously appeared in earlier proposed legislation, but which failed to be enacted. Its early antecedents can be found in a February 1989 House study, “Report of the Task Force on Foreign Assistance to the Committee on Foreign Affairs,” generally termed the Hamilton-Gilman Report for its two sponsors in the then-named House Foreign Affairs Committee (HFAC). [Interestingly, with a Democratic-controlled Congress in 1989, it was the aforementioned Congressman Hamilton who was then the Committee Vice-Chairman, and Congressman Gilman was the Vice-Ranking Republican Member.] This report led to the June 1989 introduction in the House of H.R. 2655, *International Cooperation Act of 1989*, which the HFAC termed, “the first complete revision of the Foreign Assistance Act of 1961 since the basic act was written.” The bill was approved in the House, but internal partisan differences in the Senate precluded Senate action and the bill failed passage. A further reform effort was attempted in a similar 1991 bill, H.R. 1508, which, unlike the earlier House effort, had the endorsement of the Bush Administration, but this bill never emerged from the Conference Committee. Finally, in November 1993, the Clinton Administration sent Congress a major new bill, *The Peace, Prosperity And Democracy Act*. This bill, which would have thoroughly revised the FAA, never made it out of either the House or Senate. Thus, this year’s Act (P.L. 104-164), while much more modest and far less comprehensive than any of these predecessor efforts, nevertheless stands out as a major legislative step in the evolution of security assistance legislation.

An important point should be noted: P.L. 104-164 is not a foreign assistance authorization act. With certain exceptions (e.g., naval ship transfer authorities), its essential purpose is to amend existing law rather than to establish legal authorities or provide recommended funding levels for specific government departments, agencies, programs, or other related activities. In fact, once again for the twelfth consecutive year since 1985, Congress has failed to produce such an annual authorization act, thereby leaving the passage of required enabling authorizations to be incorporated into the annual Foreign Operations Appropriations Act, as discussed below. [See §526, P.L. 104-208 for the enabling authorities.]

Following the July 1996 enactment of P.L. 104-164, and the usual August Congressional recess, Congress resumed business after Labor Day. Prior to the recess, the FY1997 appropriations process appeared to have stalled out. Of the thirteen separate appropriations acts which are required annually to finance federal government activities, only one such act—that for Agriculture—was enacted before the August recess; the remainder were in varying stages of completion, and the Republican Congress was still far apart from the President on many key funding issues. Yet, after Labor Day the appropriations process seemed to take on new life as it went forward under full steam. The upcoming national election on 5 November, and the wish of the members of Congress to return home and increase their electoral campaign activity, together with their desire to avoid the gridlock associated with the previous year’s appropriations process, provided important stimuli to quickly wrap up the appropriations for FY1997.

Congress, however, fell behind in its efforts to complete the regular appropriations process as scheduled. By 26 September, only four additional bills had been enacted. Two more were signed by the President on 30 September, thereby leaving six bills remaining. Three of these were the Foreign Operations, State, and Defense appropriations bills which all impact on various United States security assistance programs and activities. Nonetheless, unlike FY1996, there was no effort in Congress to enact interim funding measures for the remaining bills. Rather, this time

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Congress used the DoD Appropriations Bill (H.R. 3610) as the base for fashioning an extraordinary *Omnibus Consolidated Appropriations Bill* which incorporated the six separate FY1997 appropriations bills that remained to be enacted. This massive \$611B bill (presented in an 1196 page Conference Report) contains regular appropriations for a majority of federal government programs—the bill funds nine separate cabinet-level departments and related agencies—as well as supplemental appropriations that were passed to provide additional funding for various Congressionally-favored programs that had already been funded. The bill was cobbled together in late September, and was passed by the House on 28 September and the Senate on 30 September; later that evening it was signed by the President and was enacted as P.L. 104-208. Thus, Fiscal Year 1997 began on 1 October 1996 with all thirteen spending bills enacted (albeit in an unconventional fashion) prior to the first day of the new fiscal year; this event is reportedly, “only the fourth time that has happened since modern federal budgeting began in 1974.” [“Harmony Born of Pressure Speeds Spending Wrap-Up,” *Congressional Quarterly Weekly Report*, October 5, 1996, p. 2842.]

As noted above, the *Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997*, was one of the six such acts included in the Omnibus Act. The original bill (H.R. 3540) was passed by the House on 1 June 1996, and the Senate on 18 July 1996. However, the bill stalled in the Conference Committee, primarily over a recurring foreign assistance appropriations issue—U.S. funding for international family planning organizations that perform, finance, or otherwise support abortions (§§518 and 518A, H.R. 3540). Another foreign operations issue that proved contentious involved a new Senate provision to require all U.S. government publications to refer to Jerusalem as the capital of Israel (§575, H.R. 3540). Although Israelis themselves regard Jerusalem as their capital—it is, in fact, the seat of their national government—successive U.S. administrations have consistently recognized Tel Aviv as the Israeli capital and have maintained an embassy there since 1948 when the state of Israel was established. U.S. policymakers contend that competing Israeli and Arab claims make this a critical political issue, and the Clinton Administration argues that the future status of Jerusalem should be resolved through negotiations between the conflicting parties.

Resolution of these and various other outstanding issues did not occur until the last week of September when the foreign operations bill was being incorporated into the Omnibus Act, P.L. 104-208. The international family planning issue was resolved in conference with adoption of a restrictive funding formula similar to that employed for FY1996: the family planning appropriation was limited to \$385M; program funding was deferred for nine months—until 1 July 1997 unless Congress votes to release the aid by 28 February; and disbursements were limited to not more than eight percent per month. As for the issue of Jerusalem, the outbreak of renewed violence in Israel caused that conflictual proposal to be dropped in conference.

By its very nature, an omnibus appropriations act is not as desirable as a separate, stand-alone foreign operations appropriations act. Because of its collective, “catch-all” content, the FY1997 Omnibus Act is more complex and administratively cumbersome than a separate act. Nevertheless, its passage on 30 September, as opposed to a continuing appropriations act, allowed the Administration to continue, without interruption, the systematic conduct and funding of government programs on a known and stable appropriations base at the very beginning of the year. Last year, by way of contrast, the FY1996 Foreign Operations Appropriations Act was not enacted until 12 February 1996. This inordinately lengthy delay hampered effective program implementation for over four months into the new fiscal year.

With the above as a general overview of the FY1997 legislative process, the discussion that follows, as is the practice in these annual reports, opens with an examination of the security assistance program funding and related statutory provisions of the FY1997 Foreign Operations Appropriations Act. Funding is examined in detail for the Foreign Military Financing Program, the International Military Education and Training Program, the Economic Support Fund,

Voluntary Peacekeeping Operations, and other related programs. This is followed by a discussion of new general provisions (to include significantly modified statutes), country-specific provisions, and miscellaneous other related FY1997 appropriations legislation. The remainder of the report is devoted to a detailed examination of the new security assistance amendments to the FAA and the AECA which were enacted in P.L. 104-164, plus important related provisions in P.L. 104-201, the National Defense Authorization Act for FY1997.

**Table 1**

**SECURITY ASSISTANCE PROGRAM APPROPRIATIONS  
FISCAL YEARS 1996 AND 1997 FUNDING LEVELS  
(Dollars In Millions)**

	<b>P.L. 104-107 12 Feb 96 FY1996 Funding</b>	<b>FY1997 Budget Request 18 Mar 1996</b>	<b>H.R. 3540 House Proposal 11 Jun 1996</b>	<b>H.R. 3540 Senate Proposal 26 Jul 1996</b>	<b>P.L. 104-208 30 Sep 96 FY1997 Funding</b>
<b>FMFP</b>	<b>\$3,752.390[1]</b>	<b>\$3,598.278</b>	<b>\$3,546.065</b>	<b>3,764.000</b>	<b>\$3,764.000 [2]</b>
[Grants]	[3,208.390]	[3,228.250]	[3,222.250]	[3,224.000]	[3,224.000]
[Loans]	[544.000][3]	[370.028][4]	[323.815]	[540.000]	[540.000]
(Subsidy)	(64.400)	(40.000)	(35.000)	(60.000)	(60.000)
IMET	39.000	45.000	43.475	40.000	43.475
ESF	2,340.000	2,408.000	2,336.000	2,340.000	2,343.000
PKO	70.000	70.000	65.000	65.000	65.000
<b>TOTALS</b>	<b><u>\$6,201.390</u></b>	<b><u>\$6,121.278</u></b>	<b><u>\$5,990.540</u></b>	<b><u>\$6,209.000</u></b>	<b><u>\$6,215.475</u></b>

[1] Not included here is a supplemental FMFP grant appropriation of \$70M for Jordan for FY 1996 per P.L. 104-134.

[2] The FMFP total value of \$3,764M appropriated for FY1997 includes \$3,224M in grants and a maximum of \$540M in direct loans to be issued at current average treasury rates of interest. These loans are to be subsidized by a direct appropriation of \$60M. Congress placed ceilings on loans for Turkey and Greece at \$175.000M and \$122.5M, respectively, and also earmarked \$20M of the loan subsidy to be used to support direct loans for Poland, Hungary, and the Czech Republic. The FMF request included \$6M for demining which was funded in a new, separate account.

[3] The FY 1996 FMFP loan program provided \$66.4M in loan subsidy funding to support a maximum of \$544M in direct loans issued at then current average treasury rates of interest. Congress placed ceilings for these loans at no more than \$224M for Greece, and no more than \$320M for Turkey.

[4] The Administration's FY1997 FMFP request sought a subsidy of \$40M to support a direct loan program not to exceed \$370.028M: loans of \$175M and \$122.5M were proposed for Turkey and Greece, respectively, for sustainment of their U.S. supplied military equipment; also, a loan program of \$72.528M was sought in support of a new Central European Defense Loan Program.

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## The Foreign Operations Budget for FY1997

- The Administration's FY1997 federal budget request sought a total of \$12,927,910,000 for foreign operations assistance programs. The House responded with its bill (H.R. 3540) which provided \$11,919,045,000 for FMFP, a major cut of over \$1 billion to the Administration's proposal. The Senate version restored some of the House cut with a proposed funding level of \$12,291,981,000. The final bill, with additional funds added in the final Conference Committee, approved \$12,311,120,000—a budget still almost \$617M (or 4.8%) less than the Administration's original request.

- By way of comparison, for FY1996 the Administration's foreign operations budget request was substantially higher, totaling \$14,773,905,000; and Congress cut the FY1996 request far more severely, by over \$2.67B (or 18%) to \$12,103,537,000.

- Also noteworthy is the fact that both the House and Senate proposals for FY1997 (\$11,919,045,000 and \$12,291,981,000, respectively) were each below the final funding level (\$12,311,120,000) produced in the Conference Committee and subsequently enacted. In prior years, the Conference Committee funding levels have ordinarily fallen below the proposed levels of at least one of the two Houses.

- The evolution of the FY1997 budget levels for security assistance programs—from budget request, through legislative action in the House and Senate, to final Congressional passage—is illustrated in Table 1.

- Note: The FY1997 country and program funding allocations for FMFP, IMET, ESF, and PKO, as indicated herein, are extracted from the FY1998 Congressional Presentation materials which were released on 6 February 1997.

- The following section of this report examines the various provisions of the Foreign Operations Appropriations Act, FY1997 (P.L. 104-208), beginning with a review of the Foreign Military Financing Program.

- **Foreign Military Financing Program (FMFP) (*Title III, Military Assistance, and Title V, Chapter 7, International Security Assistance, P.L. 104-208*)**

- In contrast to prior year Congressional funding, the FY1997 FMFP appropriations process was characterized by several unique factors.

- The FY1997 FMFP funding level (\$3,764.000M), which includes total grant and loan program values, exceeds the Administration's original budget request (\$3,598.278M) by \$165.722M (or 4.4%)—a fairly small but nevertheless significant increase in light of the propensity of Congress in prior years to invariably cut Administration budget requests for security assistance programs.

- FMFP funding for FY1997 represents yet another important departure from past year funding. In the period from FY1984 through FY1996, FMFP funding declined annually, falling over 41% (or \$2,675.610M) below the comparable FY1984 grant funding (FMFP and MAP) of \$6,428.000M. For FY1997, however, FMFP funding exceeds the FY1996 level of \$3,752.390 by \$11.610M. Admittedly, this is a fairly small increase relative to prior year cuts; nevertheless, it represents a change that, for the first time in 13 consecutive years, increases rather than decreases available resources for the FMFP support of Foreign Military Sales (FMS) and Direct Commercial Sales (DCS). (See Table 2 which identifies FMFP appropriations and legislatively earmarked funding allocations for FY1996 and FY1997.)

**Table 2**

**PART I - FOREIGN MILITARY FINANCING PROGRAM GRANT FUNDING**  
(Dollars in Millions) (E - Earmark; C - Ceiling)

<u>Country/Program by Geographical Region</u>	<u>FY1996 FMFP Grant Funding</u>	<u>FY1997 Budget Request</u>	<u>FY1997 FMFP Grant Funding</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	30.000	30.000	30.000
Jordan Supplemental	70.000	0.000	0.000
Subtotals	3,200.000	3,130.000	3,130.000
<b><u>EUROPE &amp; THE NIS</u></b>			
Baltic Battalion	0.750	0.000	0.000
Partnership for Peace (PFP)	53.100 [1]	60.000	60.000 [E][2]
Subtotals	60.000	60.000	60.000
<b><u>LATIN AMERICA</u></b>			
Caribbean Regional	2.000	2.000	2.000
Subtotals	2.000	2.000	2.000
<b><u>AFRICA</u></b>			
Africa Crisis Response Force	0.000	0.000	3.000
Sudan "Front Line States"	5.030	6.000	4.750
Subtotals	5.030	6.000	7.750
<b><u>EAST ASIA &amp; PACIFIC</u></b>			
Cambodia	1.000	1.000	1.000
Subtotals	1.000	1.000	1.000
<b><u>MISCELLANEOUS</u></b>			
Landmine Clearing & Training	7.000	6.000	0.000 [3]
Defense Admin Expenses	23.250C	23.250C	23.250 C
Subtotals	30.250	29.250	23.250
<b><u>TOTAL GRANT PROGRAM</u></b>	<b><u>\$3,292.3240</u></b>	<b><u>\$3,228.250</u></b>	<b><u>\$3,224.000</u></b>

Table 2, Continued

**PART II - FOREIGN MILITARY FINANCING PROGRAM LOAN FUNDING**  
(Dollars in Millions)

<u>Country/Program by Geographical Region</u>	<u>FY1996 FMFP Loan Funding</u>	<u>FY1997 Budget Request</u>	<u>FY1997 FMFP Loan Funding</u>
<b><u>EUROPE &amp; THE NIS</u></b>			
Turkey [Loan]	320.000C	175.000	175.000C
Greece [Loan]	224.000C	122.500	122.500C
Central Europe Defense Loans	0.000	72.528	242.500
<b><u>TOTAL LOAN PROGRAM</u></b>	<b><u>\$544.000</u></b>	<b><u>\$370.028</u></b>	<b><u>\$540.000</u></b>
<b><u>TOTAL GRANT PROGRAM</u></b>	<b><u>\$3,292.340</u></b>	<b><u>\$3,228.250</u></b>	<b><u>\$3,224.000</u></b>
<b><u>PROGRAM TOTALS [4]</u></b>	<b><u>\$3,836.000</u></b>	<b><u>\$3,598.278</u></b>	<b><u>\$3,764.000</u></b>

[1] The FY1996 grant funding for the Partnership for Peace 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].

[2] This \$60M in FMFP grant funding was appropriated in two separate accounts. See discussion of the Partnership for Peace funding below. Title III, P.L. 104-208, also authorizes up to a total of \$7M in grant FMFP to be transferred to the FY1997 FMFP account from the same two economic assistance accounts identified in note 1 above, for support of NATO expansion and the Warsaw Initiative Program. These latter funds are not included in the FY1997 PFP grant program total shown here.

[3] \$7M in funding has been appropriated for demining for FY1997; however, this funding has been moved from the FMFP account to a separate new account in P.L. 104-208, entitled, *Nonproliferation, Anti-Terrorism, Demining, and Related Programs*. See discussion of this account in the Miscellaneous Appropriations and Related Provisions section below.

[4] These program totals reflect the sum of all *grant* appropriations plus the actual value of the *loan* programs. Also, note that FY1997 FMFP *grant* funding was provided in two separate appropriations in P.L. 104-208: Title III (the usual source of FMFP funding) provides \$3,164M, and Title V of the Omnibus Consolidated Appropriations Act provides an additional \$60 million for FMFP grants.

• Also unusual for FY1996 is the fact that the FMFP funding level identified in *Title III, Military Assistance*, P.L. 104-208 is \$60M below the actual total funding that was appropriated for FMFP. The additional \$60M (which is supplemental to the *grant* funding portion of the FMFP appropriation) is provided in a special, unprecedented section of the annual appropriations act (*P.L. 104-108, Title V, Additional Appropriations, Chapter 7, International Security Assistance*). Similarly, the entire funding level for Voluntary Peacekeeping Operations

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has also been shifted from Title III to Title V. Thus, the student of these matters should be aware that besides the usual legislative sources for security assistance funding, an additional Title V must be consulted for FY1997 FMFP and PKO funding.

- ***FMFP Grant Funding (nonrepayable credits)***

- The FMFP grant funding level of \$3,224M for FY1997 reflects the Conference Committee's adoption of the Senate's proposed funding level, and, as noted above, the total reflects the sum of a \$3,164M appropriation in Title III and an additional \$60M appropriation in Title V of P.L. 104-208.

- ***FMFP Grant Earmarks***

- FY1997 FMFP grant funding for **Egypt, \$1.3 billion, and Israel, \$1.8 billion**, has again been earmarked for these two countries at the same levels which have been appropriated annually since FY1987.

- o These two earmarks for Egypt and Israel total \$3,100M and represent over 96 percent of FY1996 grant FMFP funding.

- ***Special FMFP Provisions for Israel***

- As in past years, the following special conditions were attached to the FMFP appropriation for Israel.

- The disbursement of Israel's entire FMFP account shall occur within 30 days of the enactment of the annual Appropriations Act, or by 31 October 1997, whichever is later.

- 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 FY1997 for procurement in Israel of defense articles and services, including research and development.

- In its discussion of these special provisions for Israel, the House Appropriations Committee (HAC) reported its concern that:

Israel's technological military edge could erode as a result of the unrestrained sales of advanced military equipment to Israel's potential adversaries by other nations and the increasing sophistication and cost of advanced weapon systems. Therefore, the Committee continues to believe the United States must make every effort to carry out its long-standing policy of ensuring that Israel's technological edge is maintained. [*HAC Report to accompany H.R. 3540, May 29, 1996, p. 45.*]

- ***Special grant funding for the Partnership for Peace***

- A total of \$60M in FMFP grant funds has been appropriated for the Partnership for Peace in two separate accounts. Title III, P.L. 104-208, earmarks \$30M jointly for three former Warsaw Bloc countries—Poland, Hungary, and the Czech Republic—to facilitate their transition to future NATO membership [per Title II, P.L. 103-447, *The NATO Participation Act of 1994* and §585, P.L. 104-107, *The NATO Participation Act Amendments of 1995*]. An additional \$30M in grant FMFP funding was appropriated in §607, P.L. 104-208, for NATO Enlargement Assistance pursuant to §203(c)(4) of the NATO Participation Act of 1994, but no specific countries were identified in this appropriation provision.

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- ***Additional Partnership for Peace FMFP Funding***

- P.L. 104-208 also authorizes the transfer to the FMFP grant account of up to \$7M in funding from two separate economic assistance 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 specifically to provide support for NATO expansion and the Warsaw Initiative (WI) Program and they will support defense infrastructure improvements and defense cooperation activities in Central Europe.

- A similar transfer authority of up to \$20M was authorized in the FY1996 FMFP legislation. In that year, the Administration chose to transfer \$15.610M into the FMFP account, withdrawing \$7.805M from each of the two economic assistance accounts.

- The Conference Committee noted “the success of the Partnership for Peace [PFP] and the Warsaw Initiative which receive funds from this [FMFP] account.” The conferees further stated that the “PFP is doing an excellent job preparing nations for possible membership in NATO as well as providing a framework for other nations to develop a closer relationship with NATO.” The Managers of the Conference Committee have instructed the Secretary of State, in consultation with the Secretary of Defense to furnish the Committees on Appropriations, no later than March 15, 1997, with a detailed report of PFP activities, to include the following: the types and extent of PFP programs; the nations participating in PFP; the resources being contributed by current NATO members participating in PFP; a detailed description of the PFP budget; an estimate of the possible costs to the United States associated with membership in NATO of Poland, Hungary, the Czech Republic or Slovenia; and related issues including the feasibility of Combined Joint Task Forces and recommendations on enhancing the crisis management process between NATO and PFP members. [*Conference Report to Accompany H.R. 3610*, 28 September 1996, p. 972.]

- Despite its stated support for the Partnership for Peace program, Congress has retained for FY1997 its prior year special PFP reporting requirement: in order to make FMFP funds available for *any* non-NATO country participating in the PFP, the Administration is required to provide a 15-day notification to the House and Senate Committees on Appropriations. In commenting on this continuing requirement, the HAC noted “that while Russia is a member of the Partnership for Peace, the Committee strongly believes it is still extremely premature to consider providing military assistance to Russia.” [*HAC Report*, p. 46.]

- ***Funding for the General Costs of Administering Military Assistance***

- These funds are appropriated through the FMFP account, and are used to finance administration costs associated with the following activities/functions: the International Military Education and Training Program; all security assistance activities incurred by the Unified Commands; all non-FMS related security assistance administration costs incurred by the Military Departments and the Defense Security Assistance Agency (DSAA); and operating costs of non-FMS activities of overseas security assistance organizations (SAOs).

- For FY1997, the Administration requested funding for this account at \$23.250M, the same level as Congress approved for FY1996. Congress concurred. However, in the view of the House and Senate, this funding authority serves as a limitation (or ceiling) on administrative expenses more than an authorization of such expenses. Further, the legislation does not contain any provision to permit an increase of the \$23.250M ceiling. (Such a provision, for example, is contained in the authority for the related *FMS Administrative Budget* discussed below.)

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- **FMS Administrative Budget**

- For FY1997, Congress capped the *non-appropriated* FMS Administrative Budget with a spending ceiling of \$355M, the same as imposed for FY1996.

- This budget supports the administrative expenses of security assistance organizations, agencies, military departments, etc., related to the implementation of foreign military sales.

- The FMS Administrative 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 fifth consecutive year that Congress has imposed a ceiling on obligations for the FMS Administrative Budget. In comments regarding this limitation on expenditures, the House Appropriations Committee reported that it "believes that it is important to retain this overall limitation. . . in order to ensure that funds collected to pay for personnel dedicated to the operation of the FMF [*sic*, FMS] system are used for that purpose only." [*HAC Report*, p. 46.]

- 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. Though it remains a non-appropriated funding source, Congress began limiting annual expenditures in the FY 1993 budget, with a cap of \$300M.

- Unlike the FMFP-funded Defense Administration Costs budget discussed previously, the annual legislative provision covering the FMS Administration Budget includes an authority to increase this spending level through the regular (15-day) prior notification procedures of the House and Senate Appropriations Committees. This provision has been implemented twice.

- For FY1994, the budget had an initial ceiling of \$290M; however, on 16 November 1993, the Administration submitted a notification to Congress advising that the budget was being increased by \$42.1M to \$332.1M.

- Similarly, on 24 February 1995, the Administration notified Congress that it had increased the authorized FY1995 ceiling of \$335M by \$16M, to \$351M.

- **Discretionary FMFP Grant Funds**

- A total of \$3,224M was appropriated for or authorized for transfer to the FY1997 FMFP grant account (not including the \$7M PFP funds transfer authorization). After accounting for the FMFP funding earmarks for Israel and Egypt (\$3,100M), plus the designated funding for the PFP (\$60M), and the general costs of administering military assistance and sales (\$23.25M), which totals \$3183.25M, only \$40.75M remained available in the FMFP grant account for discretionary allocation for non-earmarked country/program accounts. The Administration chose to allocate this \$40.75M for the following countries/programs: Jordan, \$30M; Cambodia, \$1M; Caribbean Regional, \$2M; the new Africa Crisis Response Force, \$3M; and the Sudan Front Line States Program, \$4.75M.

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- **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 Treasury 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”).

- Congress appropriated \$60M to subsidize a FY1997 direct loan program totaling \$540M. As in the past, this program will provide assistance to **Greece** and **Turkey**, but in a departure from the past, loans are planned to be available for creditworthy Central European countries.

- Since FY1980, Congress has maintained a 7 to 10 ratio on the level of FMFP assistance to Greece and Turkey. Until FY1993, such assistance was provided as a combination of grants and repayable loans. Beginning in FY1993, annual FMFP assistance funding for the two countries has been limited to repayable loans. Further, such funding has declined annually from FY1993 levels of \$350M for Greece and \$500M for Turkey, to the FY1996 levels of \$224 for Greece and \$320M for Turkey. This downward funding trend continued for FY1997. To support requirements for the sustainment of U.S. origin equipment in these two NATO-members’ respective military inventories, the Administration requested and Congress approved FY1997 FMFP loans not to exceed \$122.5M for Greece and \$175M for Turkey.

- The House Appropriations Committee reported that the FY1997 loan program for these countries, “reaffirms that last year [FY1996] marked the graduation of both Greece and Turkey as annual FMF loan program recipients for the purpose of supporting major new weapons acquisitions.” The Committee went on to observe that the FY1997 program for these two countries “is to be used to support upgrades or replacement parts for existing U.S. origin equipment currently in the inventories of the Turkish and Greek armed forces.” [*HAC Report*, p. 47.]

- The Administration also requested Congressional approval for a new Central European Defense Loan (CEDL) program to support expanded defense cooperation with the friendly democratic states of Central Europe and the Baltics and their acquisition of NATO-compatible equipment.

- In its budget request, the Administration proposed a \$72.528M loan program which would require a loan subsidy of \$7.840M. The request, however, did not specify any particular countries to receive such loans. The program was indirectly approved by Congress in that \$20M of the FMFP loan subsidy was authorized for three Central European countries—Hungary, Poland, and the Czech Republic—without any specific legislative reference to the CEDL. Moreover, no specific country funding levels for these loans are identified in Title III, P.L. 102-208.

- It should also be noted that these FMFP *loans* are in addition to the FMFP *grant* funding allocated to these three countries, as previously discussed.

- **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 FY1997. However, Title III again exempts all such contracts for Egypt and Israel from this ceiling, and since their contracts represent the preponderance of the FMFP account, this provision has only marginal effect. The provision would impact primarily on commercial contracts for Turkey and Greece; also, DSAA reports that Morocco, Portugal, and Tunisia all have prior-year FMFP funds that may be available.

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- This annually enacted restriction on the funding of direct commercial contracts has now been added by §102, P.L. 104-164, as a permanent amendment to §23, AECA.

- ***Countries Prohibited/Restricted from Receiving FMFP Funding***

- For FY1997, as in FY1996, no FMFP funding may be provided to **Guatemala, Liberia, Sudan, and Zaire.**

- Waiver exceptions for FMFP and IMET for Guatemala are discussed below in the country-specific legislative section.]

- Funding for **Peru** had been prohibited in FY 1996, but it has been removed from this year's list of prohibited countries. The House Appropriations Committee reported that this was the result of "considerable progress in the areas of political pluralization and meaningful free market reform." Nevertheless, the House and subsequently, the Conference Committee reported that, "there are still significant human rights issues which remain of concern, particularly those relating to the Peruvian military [and] as a result, the conferees would not support the provision of Foreign Military Financing assistance to Peru." [*HAC Report*, p.43, and *Conference Report to Accompany H.R. 3610*, p. 973.]

- ***Limitations on Entertainment and Representational Allowances (§505, P.L. 104-108)***

- The following ceilings apply on FY1997 allowances and are identical to those authorized for FY1996 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. 104-208)***

- The appropriations process for FY1997 IMET funding was far less complex than that of the previous year when the question of jurisdictional authority over the IMET account arose between the Senate Appropriations Subcommittee on Foreign Operations (SACFO) and the Senate Armed Services Committee (SASC). That issue was resolved last year in favor of retaining jurisdiction in the SACFO which has traditionally managed the IMET account.

- For FY1997, the Administration's IMET budget request for \$45M (representing a \$6M increase over the FY1996 appropriation) proceeded through Congress without any similar jurisdictional diversions.

- The Administration's request was supported by the HAC, but was reduced on the House floor to \$43.475M; the cut of \$1.525M was reported by Rep. David Obey (D, WI) to correspond to the amount that would be saved by not funding the "high income countries" (see discussion below).

- The Senate Appropriations Committee subsequently proposed, and the full Senate approved, a further cut to \$40M. The lack of agreement by the two Houses was then resolved by the Conference Committee which agreed on the House proposal, and Congress then passed an IMET budget of \$43.475M. (See Table 3 for IMET country and program allocations.)

**Table 3****International Military Education And Training (IMET)****FY 1996 and FY1997 Funding  
(Dollars in Thousands)**

<u>Country/Program by Geographical Region</u>	<u>FY1996 IMET Allocations</u>	<u>FY1997 Funding Request</u>	<u>FY1997 Allocated Funding</u>
<b><u>AFRICA</u></b>			
Angola	000	125	125
Benin	281	350	350
Botswana	454	450	450
Burundi	71	125	0
Cameroon	83	100	100
Cape Verde	64	100	100
Central African Republic	110	150	150
Chad	000	25	25
Comoros	64	75	75
Congo	162	175	175
Cote d'Ivoire	151	150	150
Djibouti	150	100	100
Eritrea	261	375	375
Ethiopia	327	400	400
Ghana	257	275	260
Guinea	35	150	150
Guinea-Bissau	88	125	125
Kenya	297	350	300
Lesotho	72	75	75
Madagascar	102	100	100
Malawi	154	225	225
Mali	155	125	150
Mauritania	000	25	000
Mauritius	000	25	25
Mozambique	203	175	175
Namibia	190	200	200
Niger	11	225	000
Rwanda	243	300	300
Sao Tome & Principe	75	75	75
Senegal	637	650	650
Seychelles	31	75	75
Sierra Leone	134	100	115
South Africa	466	700	700
Swaziland	50	75	75
Tanzania	126	175	225
Togo	000	25	25
Uganda	189	250	300
Zambia	99	150	150
Zimbabwe	224	275	275
Regional Totals	6,016	7,625	7,325

(Continued on next page.)

**IMET, Table 3, Continued**

<b><u>Country/Program by Geographical Region</u></b>	<b><u>FY1996 IMET Allocations</u></b>	<b><u>FY1997 Funding Request</u></b>	<b><u>FY1997 Allocated Funding</u></b>
<b><u>EAST ASIA AND PACIFIC</u></b>			
Cambodia	403	500	500
Indonesia	577	800	600
Malaysia	613	600	600
Mongolia	70	150	325
Papua New Guinea	162	200	200
Philippines	1,210	1,400	1,250
Singapore	20	25	000
Solomon Islands	85	150	150
South Korea	9	25	000
Thailand	1,445	1,600	1,500
Tonga	85	100	100
Vanuatu	88	100	100
Western Samoa	79	100	100
Regional Totals	4,846	5,750	5,425
<b><u>EUROPE &amp; THE NIS</u></b>			
Albania	432	600	600
Austria	15	025	000
Belarus	279	300	300
Bosnian Federation	259	500	500
Bulgaria	708	800	800
Croatia	218	350	350
Czech Republic	795	800	800
Estonia	386	500	500
Finland	14	25	000
Georgia	302	275	275
Greece	54	25	25
Hungary	1,034	1,000	1,000
Kazakhstan	388	400	400
Kyrgyzstan	231	250	250
Latvia	388	500	500
Lithuania	498	500	500
Malta	30	100	100
Moldova	273	250	250
Poland	1,021	1,000	1,000
Portugal	769	800	800
Romania	758	800	800
Russia	760	800	800
Slovakia	473	600	600
Slovenia	253	400	400

(Continued on next page.)

**IMET, Table 3, Continued**

<b><u>Country/Program by Geographical Region</u></b>	<b><u>FY1996 IMET Allocations</u></b>	<b><u>FY1997 Funding Request</u></b>	<b><u>FY1997 Allocated Funding</u></b>
<b><u>EUROPE, Cont'd</u></b>			
Spain	49	50	000
The FYRO Macedonia	249	300	300
Turkey	1,095	1,500	1,400
Turkmenistan	213	250	250
Ukraine	1,019	1,000	1,000
Uzbekistan	293	250	250
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Regional Totals	13,256	14,950	14,750
<b><u>LATIN AMERICA &amp; CARIBBEAN</u></b>			
Argentina	588	600	600
Bahamas	116	100	100
Belize	217	250	250
Bolivia	547	500	500
Brazil	200	225	225
Chile	301	400	400
Colombia	95	900	600
Costa Rica	196	150	150
Dominican Republic	507	500	500
Eastern Caribbean	507	400	400
Ecuador	547	425	425
El Salvador	535	450	450
Guatemala	000	225	225
Guyana	220	175	175
Haiti	169	300	300
Honduras	500	425	425
Jamaica	469	500	500
Mexico	992	1,000	1,000
Nicaragua	000	200	150
Panama Canal Area			
Military School (PACAMS)	500	500	500
Paraguay	155	200	200
Peru	380	450	450
Suriname	85	100	100
Trinidad & Tobago	83	100	100
Uruguay	380	275	275
Venezuela	428	350	350
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Regional Totals	8,717	9,700	9,350

(Continued on next page)

**IMET, Table 3, Continued**

<b><u>Country/Program by Geographical Region</u></b>	<b><u>FY1996 IMET Allocations</u></b>	<b><u>FY1997 Funding Request</u></b>	<b><u>FY1997 Allocated Funding</u></b>
<b><u>NEAR EAST</u></b>			
Algeria	75	75	75
Bahrain	108	150	125
Egypt	1,009	1,000	1,000
Jordan	1,202	1,600	1,600
Lebanon	474	575	550
Morocco	830	800	800
Oman	119	150	150
Tunisia	816	775	800
Yemen	50	50	50
Regional Totals	4,683	5,175	5,150
<b><u>SOUTH ASIA</u></b>			
Bangladesh	326	300	300
India	357	400	400
Maldives, Republic of	80	100	100
Nepal	140	200	200
Pakistan	000	300	000
Sri Lanka	179	200	200
Regional Totals	1,082	1,500	1,200
<b><u>NON-REGIONAL</u></b>			
Defense Administrative Costs	400	300	275
Non-Regional Totals	400	300	275
<b>TOTAL BUDGET REQUEST AND FY 1997 BUDGET AUTHORITY</b>	<b><u>\$39,000</u></b>	<b><u>\$45,000</u></b>	<b><u>\$43,475</u></b>

- ***IMET Funding for High Income Countries***

- For the first time in eight years, the annual Foreign Operations Appropriations Act does not itself contain any language restricting grant-funded IMET training for *high income countries*. Rather, the restrictions on such funding have now been placed in the Foreign Assistance Act, as described below.

- Beginning in FY1989, Congress imposed restrictions on IMET funding for so-called high income countries whose gross national product (GNP) per capita annual income

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exceeded \$2,349. Countries in that category were required to use their own resources to fund the transportation costs and living allowances of their respective students, with IMET funds provided only for student tuition costs.

- In FY1993 a further legislative restriction was established whereby a ceiling of \$300,000 was placed on the annual amount of IMET funding that such a high income country was permitted to receive. That ceiling continued until FY1996 when it was further limited to \$100,000.

- All of the prior year legislation dealing with this issue had been included in annual appropriations acts. The subject of IMET funding for high income countries has now been placed in a new Section 546 that has been added to the Foreign Assistance Act of 1961. This new section, entitled, "Prohibition on Grant Assistance for Certain High Income Foreign Countries." and its significant provisions are summarized below. [Sec. 112, P.L. 104-164, 21 July 1996, provided the amending language for this new FAA provision.]

- §546(a), FAA, now eliminates any IMET funding whatsoever for high income countries, identified as **Austria, Finland, the Republic of Korea, Singapore, and Spain.** [§112(c), P.L. 104-164, as amends §546(a) and §546(b), FAA. All but Korea correspond to current IMET recipients that are listed in the *World Development Report*, 1994, as a high income earning country.

- The *World Development Report* is published annually by the World Bank, i.e., the International Bank for Reconstruction and Development, a United Nations affiliated agency. The report classifies a high income country as one with an annual per capita GNP of \$8,956 or more. The 1996 edition continues to use the rankings developed for the 1994 edition, and it identifies the per capita GNPs of the designated countries as follows: Austria, \$24,630; Finland \$18,850; Singapore, \$22,500; and Spain, \$13,440. The Republic of Korea is ranked just under the high income category with a listing as an *upper-middle income country* with a per capita GNP of \$8,260.

- Section 21(a)(1)(C), AECA, has also been amended to permit designated high income countries to continue to obtain military training at incremental costs (FMS-IMET pricing rather than at the full FMS price), notwithstanding the termination of their IMET programs. [§112(c)(2), P.L. 104-164, as amends §21(a)(1)(C), AECA.]

- ***Further Restrictions and Prohibitions on IMET***

- For FY1997, Congress has again limited **Indonesia** to Expanded IMET funding only. E-IMET was first initiated for Indonesia in FY1996 after a three-year IMET funding prohibition. This 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-claimed island of East Timor.

- The House Appropriations Committee "strongly urged" the Administration, "to continue to carefully review candidates from Indonesia [for the E-IMET Program] to make certain they have not been involved in previous human rights abuses." The Committee stated further that it "hopes that making expanded IMET available to Indonesia will substantially improve the human rights performance of the Indonesian military." [*HAC Report to Accompany H.R. 3540*, p. 43.]

- With respect to the overall value of the IMET Program, the House Appropriations Committee reported its belief that IMET offers the military of other nations:

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full exposure to how the United States military performs as a professional, highly respected institution in a civil, democratic society governed by the rule of law. It is the Committee's view that the attainment of such a military must be a fundamental objective of any underdeveloped nation in its pursuit of economic growth and prosperity and that the IMET program plays an important role in supporting this objective. [*FY1997 HAC Report to Accompany H.R. 3540*, p. 43.]

- A total prohibition on any IMET funding for **Zaire** also continues for FY1997. This prohibition has been imposed annually since it was first established in FY 1992, following a wide variety of serious human rights violations which continue to persist. Also, as noted above, a similar prohibition on FMFP funding for Zaire is also in effect for FY1997.

- ***Mongolia***

- The Appropriations Conference Committee expressed its "strong support for the newly elected government in Mongolia," and urged the Administration, "to utilize IMET training, particularly expanded IMET, for the new members of the State Great Hural [national legislature], particularly those sitting on the security committee, as well as civilian and military personnel at the Ministry of Defense." Further, the Committee recommended \$350,000 of the IMET account be used to carry out such training, and urged the Administration, "to accelerate the provision of this training to the maximum extent practical." (*Conference Report to Accompany H.R. 3610*, p. 971.)

- ***School of the Americas***

- Although the FY1997 Foreign Operations legislation does not contain any specific provisions related to the U.S. Army School of the Americas at Ft. Benning, Georgia, the House Appropriations Committee Report addresses the issue in some detail.

- The Committee urges the Department of Defense to do the following: continue its ongoing efforts to incorporate human rights training into the School's regular training curriculum; increase the human rights component of the curriculum; rigorously screen potential students to make certain they have not taken part in past human rights abuses; and, with the Department of State, place increased emphasis on monitoring the human rights performance of the school's graduates.

- The House Appropriations Committee further instructed the Secretary of Defense, in consultation with the Secretary of State, to provide to the House and Senate Committees on Appropriations no later than January 15, 1997 a report which:

- (a) details the overall selection process for potential students, (b) describes the process used to screen potential students to determine if they have participated in past human rights abuses, and (c) describes the long-term monitoring of School of the Americas' graduates in the area of human rights, to include, cases of human rights abuses as well as cases where graduates make significant contributions to democracy-building and improved human rights practices. [*HAC Report to Accompany H.R. 3540*, pp. 43-44.]

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

- The Administration requested \$2.408M for the ESF Program for FY1997. The House proposal reflected a reduction of \$72M to \$2,336M, while the Senate supported a lesser cut of \$68M to \$2,340M. Thereupon, the Conference Committee, in an uncommon action, reported out a higher level than that of either house, proposing a funding level of \$2,343M. That level, which

was subsequently passed, represented a \$3M increase above the FY1996 ESF funding of \$2,340M (See Table 4 which identifies ESF appropriations and legislatively earmarked funding allocations for FY1996 and FY1997.)

**Table 4**

**Economic Support Fund (ESF)  
FY 1996 and FY1997 Funding  
(Dollars in Thousands) (E=Earmark) (C = Ceiling)**

<u>Country/Program by Geographical Region</u>	<u>Actual FY1996 Funding</u>	<u>FY1997 Budget Request</u>	<u>FY1997 Allocated Funding</u>
<b><u>MIDDLE EAST</u></b>			
Egypt	815,000 E	815,000	815,000 E
Israel	1,200,000 E	1,200,000	1,200,000 E
Jordan	7,200	10,000	10,000
Lebanon	2,000	4,000	12,000
Middle East Development			
Bank Transition	000	000	1,000
Middle East Democracy	000	1,400	750
Middle East Peace Process			
Multilaterals	3,000	5,000	3,250
Middle East Regional			
Cooperation	7,000	7,000	7,000
Northern Iraq Peace			
Monitor Force	000	000	1,500
West Bank-Gaza	75,000	75,000	75,000
Regional Totals	2,109,200	2,117,400	2,125,500
<b><u>EUROPE and the NIS</u></b>			
Cyprus	15,000 E	15,000	15,000 E
Ireland Fund	19,600 E	19,600	19,600 E
Turkey	33,500 C	60,000	22,000
Bosnia Commission on Missing Persons	000	000	1,300
Regional Totals	68,100	94,600	57,900
<b><u>SUB-SAHARAN AFRICA</u></b>			
Africa Regional Fund	\$12,000	\$10,000	9,000
Angola	000	10,000	5,000
Regional Totals	12,000	20,000	14,000

(Continued on next page.)

**ESF, Table 4, Continued**

<b><u>Country/Program by Geographical Region</u></b>	<b><u>Actual FY1996 Funding</u></b>	<b><u>FY1997 Budget Request</u></b>	<b><u>FY1997 Allocated Funding</u></b>
<b><u>LATIN AMERICA &amp; CARIBBEAN</u></b>			
AOJ/ICITAP [1]	7,000	10,000	7,500 [1]
Haiti	60,000	80,000	72,000
LAC Regional Fund	28,300	25,000	22,700
Regional Totals	----- 95,300	----- 115,000	----- 102,200
<b><u>EAST ASIA AND PACIFIC</u></b>			
Asia Regional Fund	2,500	8,000	7,000
Cambodia	29,500	35,000	35,000
Mongolia	4,000	4,000	7,000
So. Pacific Fisheries Treaty	14,000	14,000	14,000
Regional Totals	----- 50,000	----- 61,000	----- 63,000
<b><u>NON-REGIONAL</u></b>			
Counternarcotics/Crime	25,000	000	000
Non-Regional Totals	----- 25,000	----- 000	----- 000
<b><u>PROGRAM TOTALS</u></b>	<b><u>\$2,359,600</u></b>	<b><u>\$2,408,000</u></b>	<b><u>\$2,362,600 [2]</u></b>

[1] AOJ/ICITAP - Administration of Justice/International Criminal Investigation Training Assistance Program of the U.S. Department of Justice.

[2] Total includes \$19.6M for the Ireland Fund which for FY1997 was appropriated in a separate account

- In FY1997, for the eleventh consecutive year, Congress earmarked **Israel** and **Egypt** to receive ESF grants of \$1,200M and \$815M, respectively. Their combined funding (\$2,015M) represents 86% of the total ESF account of \$2,343M. The House Appropriations Committee Report emphasizes that these "levels of assistance for Israel and Egypt are based in great measure upon their continued participation in the Camp David accords and upon the Egyptian-Israeli peace process." (*FY1997 HAC Report*, p. 28.)

- The funds for **Israel** are once again to be made available as a cash transfer and are stipulated to be disbursed within 30 days of enactment of the Foreign Operations Appropriations Act (i.e., by 30 Oct 1996) or by 31 Oct 1996, whichever is later.

- With respect to **Egypt**, cash transfer of its grant ESF appropriation is once again authorized for FY1997, "with the understanding that Egypt will undertake significant

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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.”

- For FY1997, as in FY1996, the annual \$15M funding earmarked for Cyprus has been designated to be drawn from both the annual Economic Support Fund and the Development Assistance appropriations accounts. (In earlier years—FY1980-FY1995—an annual earmark of \$15M in the ESF account alone was earmarked by Congress for Cyprus.) The purpose of this funding remains unchanged—the funds are “to be used only for scholarships, administrative support of the scholarship program, bicomunal projects, and measures aimed at reunification of the island and designed to reduce tensions and promote peace and cooperation between the two communities on Cyprus.” [Title II, Bilateral Economic Assistance, Development Assistance, P.L. 104-208.]

- In its comments on the continuing annual ESF earmarked appropriation of \$15M for Cyprus, the House Appropriations Committee stated that such funding serves, “as a demonstration of support for a peaceful reunification of the island in accordance with relevant United Nations resolutions and in the belief that greater bicomunal cooperation will facilitate such goals as the withdrawal of Turkish troops and demilitarization of the island.” The HAC further reported that it “strongly urges the Administration to carry through on its pledge to make resolution of the Cyprus situation a top priority in 1997.” (*FY1997 HAC Report to Accompany H.R. 3540*, p. 29.)

- *Limitation on ESF Assistance to Turkey*

- For FY1997, Congress set a ceiling of \$22M on the amount of ESF that can be made available to Turkey. [§588, P.L. 104-208]. A similar, but higher ceiling of \$33.5M was placed on Turkey’s FY1996 ESF account. [§566, P.L. 104-107.] In the past three years Turkey’s ESF program has fallen dramatically from \$119.978M in FY1994 to its present level of \$22M, a cut of \$97.978M (or 82%).

- *Prohibition on ESF funding for Zaire*

- As in every year since FY1993, Zaire is again prohibited from receiving ESF assistance in FY1997. P.L. 104-208 does not specifically prohibit ESF assistance for any other country.

- *Peacekeeping Operations (PKO) (Voluntary) (Title V, Additional Appropriations, P.L. 104-208)*

- The Administration requested \$70M for FY1997 assistance to friendly countries and international organizations for voluntary peacekeeping operations. Although this funding was equal to the FY1996 funding level, both the House and Senate cut the request to \$65M, and this was the level enacted for FY1997.

- As noted earlier, the PKO account was placed in a new Title V, Additional Appropriations, Chapter 7, International Security Assistance account in the annual Foreign Operations Appropriations Act (P.L. 104-208) rather than in its traditional PKO account in Title III, Military Assistance.

- See Table 5 which identifies PKO country and program funding allocations for FY1996 and FY1997.

**Table 5**

**Peacekeeping Operations (PKO)  
FY 1996 and FY1997 Funding  
(Dollars in Thousands)**

<u>Program</u>	<u>FY1996 PKO Allocations</u>	<u>FY1997 Budget Request</u>	<u>FY1997 PKO Allocations</u>
Africa Regional	\$12,000	\$10,000	\$2,000
African Crisis Response Force	000	000	8,000
ARA Regional [1]	000	4,000	000
Eastern Slavonia/Bosnia Police	9,600	000	000
Europe Regional	3,000	10,000	000
Haiti	12,066	4,000	15,200
Israel-Lebanon Monitoring Group	992	000	1,200
Multinational Force & Observers	15,500	17,000	15,500
Northern Iraq Peace Monitor Force	000	000	1,500
Organization of African Unity	3,000	3,000	3,000
Europe Regional/OSCE [2]	5,400	17,000	18,600
Demining	1,287	000	000
Baltic Battalion	1,119	000	000
Sanctions Assistance	6,036	5,000	000
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PKO Total	\$70,000	\$70,000	\$65,000

[1] ARA Regional - Latin America and Caribbean Regional

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

- Voluntary PKO appropriations 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 Voluntary PKO account promotes conflict resolution, multilateral peace operations, sanctions enforcement, and similar efforts outside the context of assessed U.N. peacekeeping operations.

- Funding for Voluntary Peacekeeping Operations is distinct from the bulk of international peacekeeping assistance which is contributed by the U.S. and other countries in fulfillment of their United Nations financial assessments, and which in U.S. budget documentation is termed, "Contributions for International Peacekeeping Activities" (CIPA).

- In addition to the \$70M appropriated for FY1997 Voluntary PKO, \$352M was appropriated for CIPA in Title IV, "Contributions for International Peacekeeping Activities," of the *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997*, which was enacted as part of the Omnibus Appropriations Act for FY1997, P.L. 104-208.

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- The Senate Appropriations Committee reported that although the Voluntary PKO account “is designed to afford the administration a measure of flexibility to respond to emerging problems, the Committee has not been satisfied with the administration’s record in fulfilling commitments.” Accordingly, the SAC recommended a continuance of a FY1996 legislative requirement that the House and Senate Appropriations Committees be notified 15 days prior to the obligation or expenditure of any of the funds provided for the PKO account. [*FY1997 SAC Report to Accompany H.R. 3540*, p. 55.] [This requirement was first enacted in 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).]

- For its part, the House Appropriations Committee reported that its funding recommendation, “assumes that the Administration will focus its support on high-priority, on-going peacekeeping operations and activities.” The Committee further suggested that, “Up to \$3M could be used to support implementation of the agreement between the Patriotic Union of Kurdistan and the Kurdistan Democratic Party.” [*FY1997 HAC Report*, p. 47.] A total of \$1.M was allocated to the Northern Iraq Peace Monitor Force, as reflected in Table 5.

- The House Appropriations Committee further reported its strong support for, “the efforts of the War Crimes Tribunal in its work to ensure the impartial administration of justice regarding war crimes committed during the Bosnian conflict. Accordingly, the HAC stated that, “up to \$3M of the funds” appropriated to the PKO account, “may be provided to the Tribunal as a voluntary contribution.” [*FY1997 HAC Report to Accompany H.R. 3540*, pp. 47-48.] As indicated in Table 5, no PKO funds were allocated to the War Crimes Tribunal.

## **P.L. 104-208: Significant New/Modified Security Assistance Provisions**

Only a relatively few *new* statutory items appear in the FY1997 Appropriations Act, as most of the general provisions in the Act involve the annual renewal for FY1997 of prior year statutes. The introduction of many new security assistance provisions in P.L. 104-164 in July 1996 (as examined later in this report) also helps explain the limit of such new statutes in the Appropriations Act.

- ***Special Notification Requirements (§580)***

- A special 15-day notification to Congress is required prior to obligating or expending any of the funds appropriated for FY1997 in P.L. 104-107 for **Colombia, Dominican Republic, Haiti, Liberia, Pakistan, Peru, Serbia, Sudan, Zaire, or Guatemala**; however, this requirement does not apply to *development assistance* for Guatemala.

- Removed from the FY1997 list of countries for whom this notification requirement applied in FY1996 are **Nicaragua** and **Russia**. Added to the FY1997 list is **Serbia**.

- ***Landmines (§556)***

- In new legislation last year, Congress authorized the provision of U.S. “demining equipment available to any department or agency and used in support of the clearing of landmines 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.” [§558, P.L. 104-107.] This provision, which applied to any government department or agency, has been changed for FY1997 to apply only to “equipment available to the Agency for International Development and the Department of State and used in support of the clearing of landmines and unexploded ordnance for humanitarian purposes.” This provision removes the prior year Foreign Operations authority for the grant disposal of landmine equipment available to DoD. However, §1304(a)(3). P.L. 104-201 (National Defense Authorization Act for FY1997) permits the provision of DoD

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- The remainder of the funds in the new consolidated appropriations account are to be used for the following activities.

- **Korean Peninsula Energy Development Organization (KEDO).** For FY1997, this organization is funded at \$25M, \$3M above the \$22M funding level authorized for FY1996.

- This funding allocation supports the *Agreed, Multilateral Framework between the United States, Japan, the Republic of Korea [ROK], and the Democratic People's Republic of Korea [(DPRK)]* of 21 October 1994.

- That agreement 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 Agreed Framework. The FY1997 funding may only be used for administrative expenses and heavy fuel oil costs.

- Several additional restrictive provisions are attached to the availability of this funding in FY1997. Title II, P.L. 104-208, requires that before any funds may be obligated for KEDO for FY1997, the President must certify and report to Congress that:

(1)(A) the U.S. is taking steps to assure that progress is [being] made on the implementation of the January 1, 1992 Joint Declaration on the denuclearization of the Korean Peninsula and the implementation of the North-South dialogue; and

(B) North Korea is complying with the other provisions of the Agreed Framework between North Korea and the United States and with the Confidential Minute; [and that]

(2) North Korea is cooperating fully in the canning and safe storage of all spent fuel from its graphite-moderated nuclear reactors and that such canning and safe storage is scheduled to be completed by the end of fiscal year 1997; and

(3) North Korea has not significantly diverted assistance provided by the United States for purposes for which it was not intended.

A Presidential waiver of these certification requirements may be issued if the President "deems it vital to the *national security interests* of the United States." A number of additional detailed items also must be reported to Congress before KEDO funding may be obligated. Further, the Secretary of State is required to submit to Congress,

an annual report . . . providing a full and detailed accounting of the fiscal year request for the United States contribution to KEDO, the expected operating budget of the Korean Peninsula Energy Development Organization, to include proposed annual costs associated with heavy fuel oil purchases and other related activities, and the amount of funds pledged by other donor nations and organizations to support KEDO activities on a per country basis.

- ***Migration and Refugee Assistance (Title II)***

- The FY1997 appropriation for Migration and Refugee Assistance is \$650M, a cut of \$21M below the \$671M which was provided in each of the previous two fiscal years.

- Not less than \$80M of this account is designated to be made available for refugees from the former Soviet Union and Eastern Europe and other refugees resettling in Israel.

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- In addition to providing funding for other general activities to meet refugee and migration needs, this account also includes U.S. contributions (amounts unspecified) to the following organizations: the International Committee of the Red Cross; the International Organization for Migration; and the United Nations High Commissioner for Refugees.

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

- For FY1997, this assistance was funded at \$50M, identical to the levels appropriated in FY1995 and FY1996.

- ***International Narcotics Control (Title II)***

- \$213M was provided for the FY1997 International Narcotics Control Program, an exceptional increase of \$100M (or 89%) above the \$113M appropriation for FY1996.

- None of the FY1997 international narcotics assistance funds “may be provided to any unit of the security forces of a foreign country if the [U.S.] Secretary of State has credible evidence to believe such unit has committed gross violations of human rights.” This restriction may be waived if, “the Secretary of State determines and reports to the Committees on Appropriations that the government of such country is taking steps to bring the responsible members of the security forces unit to justice.”

- The Conference Report reflects the Conferees expectation that, “a significant portion of these [international narcotics assistance] funds will be used to expand programs in alternative development, to enable farmers in Latin America to shift from growing coca to legitimate agricultural crops.” [*Conference Report to Accompany H.R. 3610*, p. 969.]

- The appropriating language for this account also authorizes the Department of State in FY1997 to use the authority of Section 608, FAA, to receive non-lethal excess property from an agency of the U.S. Government “for the purpose of providing it to a foreign country” under the International Narcotics Control provisions (Chapter 8 of Part I) of the FAA.

- ***International Disaster Assistance (Title II)***

- Congress appropriated \$190M for International Disaster Assistance for FY1997, an increase of \$9M over the FY1996 appropriation of \$181M.

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

- \$475M has been appropriated for FY1997 for economic assistance and for related programs for Eastern Europe and the Baltic States to carry out the provisions of the FAA and the Support for Eastern European Democracy (SEED) Act of 1989. This is an increase of \$151M (or 47%) over the \$324M appropriated for this account for FY1996. Certain important stipulations introduced by the Senate have been attached to this account.

- None of these funds may be used “for new housing construction or repair or reconstruction of existing housing in **Bosnia and Herzegovina** unless directly related to the efforts of United States troops to promote peace in said country.”

- Also, 50 percent of the funds made available for economic revitalization for Bosnia and Herzegovina may only be made available if the President determines and certifies to the House and Senate Appropriations Committees that:

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- (1) the Federation of Bosnia and Herzegovina has complied with the 1995 Dayton Agreement [Article III of Annex 1-A, *General Framework Agreement for Peace in Bosnia and Herzegovina*] regarding the withdrawal of foreign forces; and that,

- (2) “intelligence cooperation on training, investigations, and related activities between Iranian and Bosnian officials has been terminated.”

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

- For FY1997, Congress appropriated \$625M for the NIS and for related programs, a cut of \$16M below the \$641M provided last year. As in prior years, numerous conditions and funding earmarks were attached to this account, as the following examples illustrate:

- (1) None of the funds in this account may be made available to the **Government of Russia** unless: (1) that Government “is making progress in implementing comprehensive economic reforms based on market principles, private ownership, negotiating repayment of commercial debt, respect for commercial contracts, and equitable treatment of foreign private investment;” or (2) if that Government applies or transfers U.S. “assistance to any entity for the purpose of expropriating or seizing ownership or control of assets, investments, or ventures.” Such funds may be made available if the President determines that to do so is in the *national interest*.

- (2) A similar prohibition applies on making funds available for Russia unless the President certifies to Congress that the Government of Russia, “has terminated implementation of arrangements to provide Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor or related nuclear facilities or programs.” A Presidential waiver of this prohibition is authorized if it is important to the *national security interest* of the U.S.

- (3) Also, none of the funds in this account may be made available for any state “that directs any action in violation of the territorial integrity or sovereignty of any other new independent state. . . .”

- (4) Similarly, none of the funds in this account may be made available “for any state to enhance its military capability.”

- (5) Not less than \$10M shall be made available for **Mongolia**.

- (6) Not less than \$225M shall be made available for **Ukraine**.

- (7) Not less than \$95M shall be made available for **Armenia**.

- (8) Not less than \$15M shall be made available for a family planning program for the New Independent States comparable to the program currently administered by the U.S. Agency for International Development “in the Central Asian Republics and focusing on population assistance which provides an alternative to abortion.”

## **P.L. 104-164: Significant FAA and AECA Amendments**

- ***Foreign Military Financing Program (FMFP) Amendments to the AECA (§§101-102)***

- §101 amends §31(c), AECA to require that **FMFP loans** be provided, “at rates of interest that are *not less* than the current average market yield on outstanding marketable

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obligations of the United States of comparable maturities.” [Emphasis added.] Earlier legislation had permitted FMFP loans to be furnished at rates of interest as low as 5%; however, in recent years the Administration has requested only Treasury rates of interest (i.e., average market yield) for such loans.

- §102(a) adds the following new sections to §23, AECA. These amendments make permanent various legislative provisions which have formerly been included in annual foreign operations appropriations acts.

- New §23(f), AECA, requires the Secretary of Defense, at the request of the Director, DSAA, and on an annual basis, to **conduct nonreimbursable audits** of private firms that have entered into FMFP-funded direct commercial contracts with foreign governments for the purchase of defense articles, defense services, or design and construction services.

- New §23(g), AECA, requires a 15-day notification to Congress of any proposed sales involving **FMFP cash flow financing** in excess of \$100M (in accordance with the notification requirements of §634A(a), FAA). Cash flow financing is defined in §25(d), AECA, as “the dollar amount of the difference between the total estimated price of a [FMS] Letter of Offer and Acceptance or other purchase agreement that has been approved for financing under this act [AECA] or under section 503(a)(3) of the Foreign Assistance Act of 1961 and the amount of the financing that has been approved therefor.”

- New §23(h), AECA, limits to no more than \$100M the amount of annual FMFP funds which may be used by countries for financing **direct commercial contracts**. FMFP purchases by Israel and Egypt are exempted from this limitation.

- §102(d), adds a new subsection 25(a)(12) to the AECA, that establishes a new annual reporting requirement for a detailed accounting of the furnishing of U.S. assistance to each country and international organization “for the **detection and clearance of landmines**,” to include the provision “of articles, services, credits, guarantees, or any other form of U.S. assistance” for those purposes. This landmine detection and clearance report shall be included in the “Annual Estimate and Justification for Sales Program” (i.e., the annual *Congressional Presentation for Foreign Operations*) required by §25(a), AECA, and will provide “an analysis and description of the objectives and activities undertaken during the preceding fiscal year, including the number of personnel involved in performing such activities.”

- ***Drawdown Special Authorities (§103)***

- This section amends various legislative drawdown provisions, as follows:

- §506(a)(1), FAA, is amended to raise to \$100M (from \$75M) the annual ceiling on the value of drawdowns of DoD stocks and services which may be made in support of an unforeseen emergency which requires immediate military assistance to a foreign country or international organization.

- §506(a)(2), FAA, is amended to increase to \$150M [from \$75M] the ceiling on the value of annual drawdowns of defense articles and services from *any agency in the U.S. Government*], for the following purposes: (1) counternarcotics (limited to not more than \$75M annually); (2) international disaster assistance; (3) migration and refugee assistance; and (4) POW/MIA location and repatriation activities in Vietnam, Laos, and Cambodia (limited to not more than \$15M annually).

- §103 also limits to not more than \$75M annually the value of DoD resources that can be used in support of §506(a)(2), AECA. Also, any drawdown for counternarcotics or

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migration and refugee assistance under this authority now requires a 15-day prior notification of Congress.

- ***Transfer of Excess Defense Articles (EDA) (§104)***

- Extensive changes have been accomplished in the Foreign Assistance Act provisions governing EDA, to include the following:

- §§517, 518, 519, and 520, FAA, have all been repealed.

- §516, FAA, has undergone a major revision whereby it now incorporates and broadens the essential prior authorities of §§517-520.

- A thorough discussion of the numerous details of these various changes may be found in a DSAA message, 191247Z Aug 96, entitled, "Legislative Changes to the Excess Defense Articles Program," which is reprinted herein following this report.

- ***Assistance for Indonesia (§111)*** This section places the same limitation on IMET assistance to Indonesia for FY1997 as that enacted in the FY1997 Foreign Operations Appropriations Act discussed earlier in this report, i.e., only E-IMET may be made available to Indonesia during the current fiscal year.

- ***Additional [IMET] Requirements (112)*** This section makes various changes to IMET authorities in the FAA.

- §541, FAA, has been amended to place into permanent law the authority to provide E-IMET training to "**individuals who are not members of the government.**" This authority was first provided in the FY1995 Foreign Operations Appropriations Act, and was renewed in the following year's Appropriations Act. In practice, the personnel for whom this training is intended are members of Non-Governmental Organizations (NGOs) in their respective countries.

- §541, FAA, has also been amended to provide a new reciprocal exchange training authorization [§541(b)]. This provision permits the training of foreign military and civilian defense personnel at U.S. flight training schools and programs, to include test pilot schools, without charge if such training "is pursuant to an agreement providing for the exchange of students on a one-for-basis each fiscal year between those United States flight training schools and programs. . . and comparable flight training schools and programs of foreign countries."

- A new §547, *Prohibition on Grant Assistance [IMET] for Certain High Income Foreign Countries*, has been added to the FAA. Discussion of this new provision was provided earlier in this report in the general review of the IMET Program legislation.

- ***Standardization of Congressional Review Procedures for Arms Transfers (§141)***

- In this long-anticipated legislation, Congress has standardized various legislative reporting requirements for different types of arms transfers.

- A uniform 15-day Congressional notification period for NATO, NATO member countries, Australia, New Zealand and Japan, and a uniform 30 day period for all other countries, now applies for all Third Country Transfers (§3, AECA), Direct Commercial Sales [§36(c), AECA], and Leases (§62, AECA), as well as for FMS transfers [§36(b), AECA] that meet the dollar thresholds or durations for notification.

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- The impact of these changes is to bring them into conformance with existing FMS notification requirements.

- The one reporting deviation which remains is the additional “informal 20-day notification” for FMS cases; this requirement has never been enacted in law, but it continues as an informal agreement with Congress to apply only to FMS cases for all countries other than NATO members, Australia, New Zealand, and Japan.

- Although Congress also considered raising the dollar thresholds for such Congressional notifications, these thresholds remain unchanged. [Under the proposed changes, the \$14M threshold for Major Defense Equipment sales cases would have been raised to \$25M; the \$50M threshold for total case value would have been raised to \$75M; and the \$200M threshold for FMS design and construction cases would have been increased to \$300M.]

- ***Standardization of Third Country Transfers of Defense Articles (§142)***

- This provision amends §3, AECA, to exclude requirements for prior Presidential consent for certain types of third party transfers of U.S. origin components that were originally transferred on a government-to-government basis. Presidential consent is no longer required if:

- The recipient of the articles to be transferred is a NATO member country, or Australia, Japan, or New Zealand, and has not been designated as a country that supports international terrorism under §620A, FAA; and.

- The articles to be transferred constitute components which had been incorporated into foreign defense articles; however, to qualify for the exclusion, such articles *may not be*: (1) significant military equipment; (2) defense articles requiring Congressional notification under §36(b), AECA; or (3) items identified by regulation as Missile Technology Control Regime items.

- Not later than 30 days after the date of the transfer of such defense articles, the foreign country or international organization making the transfer must provide notification of the transfer to the United States Government.

- These third-party transfer provisions for FMS-acquired items correspond to those requirements which already apply to U.S. origin components that were originally transferred on a direct commercial sales basis.

- ***Increased Standardization, Rationalization, and Interoperability of Assistance and Sales Programs (§143)***

- Amends §515(a)(6), FAA, to broaden the duties of overseas security assistance organization (SAO) personnel. Previously, such personnel were specifically authorized by statute, “to promote rationalization, standardization, and interoperability [RSI], and other defense cooperation measures [only] among members of the North Atlantic Treaty Organization and with the Armed Forces of Japan, Australia, and New Zealand.” As amended, SAO personnel are now authorized to promote RSI and other defense cooperation measures without any limitation to a particular country or group of countries.

- ***Definition of Significant Military Equipment (§144)***

- Amends §47, AECA, to place into law the same definition of significant military equipment which has long been included in the Department of State’s *International Traffic in Arms Regulation*. As it now reads in §47(9), AECA, “significant military equipment means

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articles—(A) for which special export controls are warranted because of the capacity of such articles for substantial military utility or capability; and (B) identified on the United States Munitions List.”

- ***Cost of Leased Defense Articles That Have Been Lost or Destroyed (§146)***

- This is one of two legislative amendments related to the lease of U.S. defense articles by a foreign government or international organization.

- §146, P.L. 104-164 amends §61(a)(4), AECA, to modify the requirements for reimbursement to the U.S. when leased U.S. defense articles are lost or destroyed while under lease.

- In the event of a lost or destroyed leased item prior to this amendment, the leasing government would have to reimburse the USG for the full replacement cost of the item (less any depreciation in its value), regardless of whether or not DoD intended to replace it.

- Under the amended provision, if the U.S. *does not intend to replace* a lost or destroyed leased article, the leasing country would only have to pay “an amount not less than the actual value (less any depreciation in the value) [as] specified in the lease agreement.” Of course, full replacement cost (less any depreciation in value) would still have to be paid if the U.S. intends to replace the item.

- ***Annual Military Assistance Report (§148)***

- Amends §655, FAA, to place into permanent legislation a requirement for an annual military assistance report. Unlike previous requirements which applied only to arms transfers under the FAA, these new provisions apply to transfers under *any* authority of law.

- The new requirements call for an annual report to be submitted to Congress not later than 1 February of each year which shows the aggregate value and quantity of defense articles, defense services, and international military education and training authorized by the U.S. during the preceding fiscal year to each foreign country and international organization. (Exempted from these reporting requirements are activities reportable under Title V of the National Security Act of 1947 relating to covert programs.)

- For defense articles, the report must specify whether the articles were furnished: (1) by grant under the authority of the AECA or under any other authority of law; (2) sold under the authority of Chapter 2, AECA (i.e., FMS); or (3) licensed for export under Section 38, AECA (i.e., DCS).

- The report also must include the total amount of military items manufactured outside the U.S. that were imported into the U.S. during the fiscal year covered by the report. And for each country of origin, the report must specify the type of items being imported and the total amount of the items.

- ***National Security Interest Determination to Waive Reimbursement of Depreciation for Leased Defense Articles (§153)***

- This provision amends §61, AECA, with respect to one particular type of “no-cost lease.”

- Since 1981 when legislation on leases was placed in a new Chapter 6 of the AECA, four types of leases have been authorized to be issued by the U.S. at no cost to the

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recipient governments or international organizations. These include “leases entered into for purposes of [1] cooperative research or development, [2] military exercises, or [3] communications or electronics interface projects, or [4] to any defense article which has passed three-quarters of its normal service life.” No rental costs (i.e., reimbursements for depreciation) are assessed for these types of leases. (However, the costs of packing, crating, handling, and transportation, plus any necessary repairs must still be reimbursed to the USG.)

- §158, P.L. 104-164, has attached a new requirement that applies only to the fourth type of no-cost lease. Before reimbursement of depreciation costs may be waived on any lease of defense articles which have passed three-quarters of their normal service life, the President now must first determine that a waiver of the lease rental costs, “is important to the national security interest of the United States.”

- The House International Relations Committee reported that it is the intent of the Committee that this waiver authority be used sparingly and that the authority for granting the waiver should not be delegated below the level of the Secretary of Defense.

- DSAA Ops-Mgt message 191233Z 19 August 1996, “Legislative Changes to Leases of Defense Articles,” established requirements for implementing these new provisions. Per this message, the Military Departments are now “required to provide a written justification to DSAA as to why the rent should be waived in the interest of national security. . . .” DSAA will evaluate the proposed waiver, and if it determines such a waiver is warranted, DSAA will then “seek the national security interest determination from the Secretary of Defense.”

- *Designation of Major Non-NATO Allies (§147)*

- Since 1987, the term “major non-NATO ally” has been applied to certain countries which are of special military and political importance to the U.S. The legislative definition of the term had been provided in Section 2350a(i)(3) of Title 10, United States Code, and has now been added as a new §644, FAA, and reads as follows: “Major non-NATO ally” means a country which is designated in accordance with section 517 [FAA] as a major non-NATO ally for purposes of this Act and the Arms Export Control Act (22 U.S.C. 2752 et. seq.)

- §147, P.L. 104-164, also adds as an FAA amendment the aforementioned Section 517, FAA, “Designation of Major Non-NATO Allies” [22 U.S.C. 2311 et seq.] which establishes requirements for making such designations, and provides “initial designations,” to include the following six countries: **Australia, Egypt, Israel, Japan, the Republic of Korea, and New Zealand**, the latter the only addition to previous designations.

- Further additions to the list may be designated by the President (previously, additions could be made by the Secretary of Defense with the concurrence of the Secretary of State). A 30 day advance Presidential notification of Congress is required before such designations can become effective. Just such an addition went into effect on 13 November 1997 with President Clinton’s naming of **Jordan** as a major non-NATO ally pursuant to §517, FAA, as amended. Earlier in 1996, the Conference Committee that convened to approve the long delayed FY1996 Foreign Operations Appropriations Act, recommended to the Administration that it apply the statutory designation as a major non-NATO ally to Jordan in light of its “break with Iraq and [its accepting of] peace with Israel. . . .”

- Major non-NATO allies enjoy certain statutory benefits as designated in various laws. Some of these include: eligibility for priority consideration for the delivery of excess defense articles [(§516(c)(2), FAA); the stockpiling of U.S. defense articles [§514(c), FAA]; the purchase of depleted uranium ammunition (§620G, FAA); participation in cooperative research

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and development programs (10 U.S.C 2350a); and eligibility for the new Defense Export Loan Guarantee (DELG) program (§1321, P.L. 104-106).

- ***Depleted Uranium Ammunition (§149)***

- In the *FY1987 Omnibus Supplemental Appropriations Act* (§508, P.L. 100-71), Congress introduced a legislative restriction on the sale of certain anti-tank munitions. This provision was renewed in every subsequent annual Foreign Operations Appropriations Act through FY1995. Although it was missing in the FY1996 Act, it was subsequently enacted in P.L. 104-164 as a new permanent Section 620G, FAA, entitled *Depleted Uranium Ammunition*.

- This new statute, as its predecessors, places a prohibition on “the sale of the M-833 antitank shells or any comparable anti-tank shells containing a depleted uranium [DU] penetrating component.”

- NATO-member countries and major non-NATO allies continue to be exempted from this prohibition, just as they have been since the 1987 introduction of this legislation

- Over the years 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.

- These various provisions are consolidated in the exemptions provided in the new §620G, FAA, which permits sales to NATO member countries, major non-NATO allies, Taiwan, or any country for which the President determines that such a sale “is in the national security interest of the United States.” With respect to this latter provision, in 1994 President Clinton designated **Saudi Arabia** and **Bahrain** as eligible recipients of M-833 DU antitank ammunition, and **Saudi Arabia** and **Kuwait** as eligible recipients of M-829 DU ammunition. [Presidential Determination 94-39, “Military Sales of Depleted Uranium Ammunition,” 20 July 1994.]

- ***End-Use Monitoring of Defense Articles and Defense Services (§150)***

- P.L. 104-164 adds a new Chapter 3A, Section 40A, to the AECA, entitled as above, which calls for the establishment of a program to provide for the end-use monitoring of defense articles and services which are sold, leased, or exported under the AECA or FAA.

- This program is to improve accountability and provide, “reasonable assurance that—(i) the recipient is complying with the requirements imposed by the United States Government with respect to use, transfers, and security of defense articles and services; and (ii) such articles and services are being used for the purposes for which they are provided.” ([§40A(a)(2), AECA])

- Program emphasis is on the end-use verification of defense articles and defense services that (1) incorporate sensitive technology, (2) that are particularly vulnerable to diversion or other misuse, or (3) whose diversion or other misuse could have significant consequences. Also, the program should prevent “the diversion (through reverse engineering or other means) of technology incorporated in defense articles.” [§40A(b), AECA]

- These new requirements apply to defense articles and defense services “provided before or after the date of the enactment” of P.L. 104-164 (i.e., 21 July 1996).

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- Since these new provisions were enacted, preliminary implementation guidance was furnished to the field in DSAA/OPS-MGT message, 151718Z, November 1996, Subject: "End-Use Monitoring of Defense Articles and Services," which is reprinted herein following this report. In addition, a DSAA pamphlet with the same title distributed in January 1996 to all SAOs, Unified Commands, and Military Departments. This pamphlet will be provided to DISAM students in the future, and extra copies may be obtained through DISAM.

- ***Brokering Activities Relating to Commercial Sales of Defense Articles and Services (§151)***

- This new provision amends §38(b)(1)(A) to require all individuals who are engaged in "arms transfer brokering" activities (other than personnel acting in an official USG capacity) to register with the USG and pay a registration fee as prescribed by regulation.

- Brokering activities include: "the financing, transportation, freight forwarding, or the taking of any other action that facilitates the manufacture, export, or import of a U.S. or foreign defense article or defense service." [Note the application here to arms *imports* as well as to *exports*.] A "foreign defense article or defense service," for the purposes of this provision, includes any non-U.S. "defense article or defense service described on the United States Munitions List, regardless of whether such article or service is of U.S. origin or whether such article or service contains U.S. origin components."

- No brokering license is required for such activities undertaken by or for a USG agency for the use by a USG agency, or for "carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means."

- This provision went into effect as mandated in the legislation on 18 November 1996 (i.e., 120 days after the enactment of P.L. 104-164 which occurred on 21 July 1996).

- ***Return and Exchange of Defense Articles Previously Transferred Pursuant to the Arms Export Control Act (§152)***

- §152 adds a new §21(l), "Repair of Defense Articles," to the AECA which clarifies DoD's authority to process FMS repair transactions on the same basis as it processes its own repairs.

- Under prior procedures for the repair of items from FMS customers, an item requiring repair was placed into the repair systems of some Military Departments and was tracked through the repair cycle to ensure that the very same item was returned to the FMS customer. Both the cost of repair and the time taken to make the repair was increased by the requirement to track the item throughout the entire repair process. With this new provision, DoD now has clear legislative authority to furnish its FMS customers with a new or serviceable replacement part from DoD stocks when they turn an item in for repair, rather than having to repair the returned item.

- §152 further amends the AECA by adding a new §21(m), *Return of Defense Articles.* This new subsection permits DoD to accept the return of U.S. defense articles that originally were sold through FMS to a country or international organization that afterward wishes to return the items to the U.S.

- The returned items must be in fully functioning condition (without need of repair or rehabilitation), and may be accepted for U.S. use, or for subsequent FMS sale to a third country or to an international organization. However, significant military equipment, as defined in §47(9), AECA, does not qualify for return.

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- In the past, there has been significant debate within DoD regarding the legality of this process, which is often referred to as “U.S. Buyback” or “Foreign Excess Materiel Return” (FEMR). With the enactment of P.L. 104-164, DoD now has positive legal authority to participate in this process.

- A change to the *Security Assistance Management Manual* (DoD 5105.38-M) which will provide guidance for implementing these new authorities is under preparation by DSAA.

- ***Publication of Arms Sales Certifications (§155)***

- This provision adds a new §36(e), AECA, to require publication in the *Federal Register* of “the full unclassified text of each numbered certification” submitted to Congress (i.e., Congressional notification) of defense articles or defense services to be transferred pursuant to §36(b) [FMS] and §36(c) [DCS].

- ***Release of Information (§156)***

- Amends §38(e), AECA, to require information to be available for public disclosure regarding “the names of the countries and the types and quantities of defense articles for which licenses are issued” for direct commercial sales, “unless the President determines that the release of such information would be contrary to the national interest.” Formerly, such public releasability determinations were made by the Secretary of State.

## **P.L. 104-201: Security Assistance-Related Provisions**

- The following items represent significant security assistance-related statutory provisions enacted in P.L. 104-201, *National Defense Authorization Act For Fiscal Year 1997*, 23 September 1996.

- ***Quarterly Reports Regarding Coproduction Agreements (§1045)***

- This provision amends §36(a), AECA, by adding a new subsection 36(a)(12) which establishes new Congressional reporting requirements applicable to all coproduction agreements entered into after 23 September 1996 (i.e., the date of enactment of P.L. 104-201).

- These new reporting requirements are to be included in §36(a) quarterly reports to Congress to identify all concluded FMS and DCS agreements (including memoranda of understanding or agreement) involving foreign coproduction or licensed production outside of the United States of U.S.-origin defense articles.

- The added information in these reports must include:

- (A) the identity of the foreign countries, international organizations, or foreign firms involved;

- (B) a description and the estimated value of the articles authorized to be produced, and an estimate of the quantity of the articles authorized to be produced;

- (C) a description of any restrictions on third-party transfers of the foreign-manufactured articles; and

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- (D) if any such agreement does not provide for U.S. access to and verification of quantities of articles produced overseas and their disposition in the foreign country, a description of alternative measures and controls incorporated in the coproduction or licensing program to ensure compliance with restrictions in the agreement on production quantities and third-party transfers.

- ***Authorization of Disposals and Use of Funds (§3303, P.L. 104-201) [Nonrecurring Cost Recoupment Offset]***

- In last year's National Defense Authorization Act (§4303, P.L. 104-106), Congress amended §21(e)(2), AECA, to expand DoD authority to **waive reimbursement of nonrecurring costs (NC)** of research, development, and production of defense equipment associated with the sale of major defense equipment through the FMS program.

- In addition to the waivers which may be granted under earlier law for sales to NATO member countries, Australia, New Zealand, and Japan, and also for fully funded, non-repayable FMFP sales, the new authority permits waivers under two additional conditions: (1) when the imposition of nonrecurring costs would result in the loss of a sale; or (2) when a waiver of such costs would reduce MDE unit costs to the USG and such savings would substantially offset the lost revenue. In the latter case, the savings would result from lower per unit costs through increased production for foreign orders (i.e., an application of the "economies of scale" principle).

- Implementation of this expanded waiver authority was made dependent on the passage in the FY1997 budget of "qualifying offsetting legislation" that would expressly provide a means for fully compensating the USG during the period FY1997 through FY2005 for the estimated revenues that would be lost by the new waiver authority.

- The FY1997 National Defense Authorization Act (§3303, P.L. 104-201) fulfills the requirements for such legislation. The new statute authorizes offsetting revenues to be obtained from the disposal of specified quantities of materials contained in the National Defense Stockpile so as to result in receipts of \$81M in FY1997 and \$612M during the ten-fiscal year period ending 30 September 2006.

- The receipts of these sales shall be deposited in the general fund of the Treasury or, "to the extent necessary, used to offset the revenues that will be lost as a result of execution of" the new NC waiver authority. The materials authorized for disposal include: aluminum, cobalt, columbium ferro, germanium metal, indium, palladium, platinum, rubber, and tantalum.

- A summary of the current legislation and the procedures DSAA has developed for processing such waivers is provided in USDP: DSAA message, 041655Z October 1996, Subject: "Changes to Waiver Procedures for Nonrecurring Cost (NC) Recoupment Charges Caused by Recent Legislation." For background information, the reader may also wish to review the author's detailed report of the relevant FY1996 legislation which was published in the Spring, 1996 issue of *The DISAM Journal*, pp. 36-37.

## **Conclusion**

Each new year can be expected to bring with it certain congressional changes in the legislative authorities, policies, and procedures required for the conduct of security assistance programs and activities. The year 1996 has been indeed significant. For one thing, it brought forth two separate Foreign Operations Appropriations Acts (P.L. 104-17 for FY1996 and P. L. 104-208 for FY1997) as well as major amendments to the FAA and the AECA. In preparing this report, the author cannot remember any time in the past sixteen years (i.e., the author's period of

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tenure at DISAM) in which such a remarkably diverse and important array of statutory changes and additions to foreign assistance legislation were enacted.

Each of the congressionally-funded security assistance programs—FMFP, IMET, ESF and PKO—have been impacted by the new legislation. Implementation of the many new legislative requirements is well underway, as illustrated in the messages from the Defense Security Assistance Agency which are reprinted in the following pages. As always, the success of these programs rests with the various security assistance executives, managers, and the administrative, contracting, logistics, financial, training, and overseas SAO personnel who together constitute the worldwide security assistance community. It is hoped that this report will prove useful in their important work.

### **Acknowledgments**

As usual, no effort such as this report can be accomplished without the important support of others. The legislative summaries provided by the Plans Division, Defense Security Assistance Agency, were important sources of information. Of particular help were the reports authored by John Caves and Peter Ipsen, both of whom kindly reviewed the manuscript. The author also appreciates the reviews and helpful suggestions of William Brandt and Wayne Wells in DSAA's Operations Directorate. Similarly, the author is grateful for the continuing support of the DISAM faculty, especially the respected insight and guidance of Dr. Larry Mortsolf, and the many valued contributions of my close colleague, Ken Martin. Of course, final responsibility for this report rests with the author.

### **About The Author**

Dr. Louis J. Samelson has served on the DISAM faculty for sixteen 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, the University of Kentucky, and Wright State University. The present article represents his thirteenth annual report for *The DISAM Journal* covering security assistance legislation.