

# **PERSPECTIVES IN SECURITY ASSISTANCE MANAGEMENT**

*a focus on special topics of interest*

## FY 82 SECURITY ASSISTANCE LEGISLATION

By

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### Introduction

In the closing hours of the first session of the 97th Congress on December 16, 1981, the Senate and House passed both an authorization act and an appropriations act which have a major impact on the future of the U.S. Security Assistance Program. The legislation was subsequently signed by President Reagan in California on December 29, 1981.

The authorization act (the "International Security and Development Cooperation Act of 1981" - Public Law 97-113) contains a variety of important changes affecting the conduct and management of security assistance; these changes are implemented through relevant amendments to the Foreign Assistance Act (FAA) of 1961, the Arms Export Control Act (AECA), and other foreign assistance-related legislation. Passage of the appropriations act (entitled "Foreign Assistance and Related Programs Appropriations, 1982" - Public Law 97-121) represents the first complete foreign assistance appropriations act to be enacted since 1979; foreign assistance appropriations, including those for security assistance, were effected through interim continuing resolutions for Fiscal Years 1980 and 1981, and the first quarter of FY 82.

This article provides an informational summary of the major features and key program changes affecting security assistance activities resulting from the recent legislation. The summary also includes a discussion of the original FY 82 program proposals of the executive branch and the various modifications implemented by the Congress. References to the specific legislative changes discussed herein are provided, where applicable, for the reader seeking further information. Useful reference sources include the Congressional Record, December 16, 1981, which provides a full rendering of the Joint Senate/House Conference Committee reports, and the joint committee print of the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs, Legislation on Foreign Relations Through 1981, Vol. I.

### FY 1982 Security Assistance Program Levels

The following tabulation identifies the various program levels that were appropriated for FY 1982 in PL 97-121, and are shown in

comparison to the original budget request figures which appear in the FY 1982 Congressional Presentation Document (CPD) for Security Assistance Programs.

<u>PROGRAM</u>	<u>PL 97-121 Appropriation</u>	<u>FY 1982 CPD Request Levels</u>
Military Assistance Program (MAP)	\$ 176,512,000	\$ 138,500,000
International Military Education and Training (IMET)	\$ 38,488,000	\$ 47,700,000
Foreign Military Sales (FMS) Financing Program	\$3,833,500,000	\$4,054,400,000
Direct Credit	[\$ 750,000,000]	[\$1,481,800,000]
Loan Guarantees	[\$3,083,500,000]	[\$2,572,600,000]
Economic Support Fund (ESF)	\$2,576,000,000	\$2,581,500,000
Peacekeeping Operations (PKO)	\$ 14,000,000	\$ 19,000,000

#### Military Assistance Program (MAP)

In 1979 the executive branch advised Congress that after FY 1981, grant MAP funds would only be provided in exceptional circumstances. Consequently, no specific MAP country programs were proposed for FY 1982. Rather, the executive branch requested MAP funds for three purposes: (1) to establish a Special Requirements Fund (SRF); (2) to provide reimbursements for prior year equipment drawdowns; and (3) to manage equipment deliveries funded under MAP in previous years, and for administrative and management costs.

The FY 82 budget request for MAP actually totalled \$173.2M in overall obligational authority (\$138.5M plus reimbursements of \$34.7M, as discussed below). Of this total, \$100M was requested for the SRF. This new fund was designed to enable the executive branch to provide grant military assistance in unforeseen situations. As noted in the FY 82 CPD, "such situations would be those which would not qualify as an emergency permitting grant assistance under other provisions of law, but where U.S. national security interests, or the recipient's economic conditions require grant aid."

An additional \$7.1M was requested as an initial reimbursement for U.S. military equipment valued at \$27.1M which had been previously drawdown from service inventories under the provisions of Section 506(a), FAA of 1961, as amended. In FY 1980, \$1.1M had been drawdown to meet emergency requirements in Thailand, and in

FY 1981, \$1.0M was drawdown for Liberia, and \$25.0M for El Salvador. The remaining \$20.0M has been requested for reimbursement during FY 1983.

Finally, \$66.1M in obligational authority was required for general costs involving the delivery of MAP materiel from prior year programs and MAP administrative and management costs. Since it was estimated that \$34.7M of the administrative costs would be recoverable (\$33.6M from FMS administrative surcharges and \$1.1M from the sales of MAP equipment), only \$32.3M in new budget authority was requested for general costs. Thus, the actual appropriation request for MAP amounted to just \$138.5M, as indicated below.

FY 82 MAP Budget Request  
[Dollars in Millions]

Special Requirements Fund	\$100.0
Reimbursements for Section 506(a) Drawdowns	\$ 7.1
Prior-Year Delivery and Management	+\$ 66.1
Net Obligational Authority	<u>\$173.2</u>
Less FMS Surcharge and MAP Sales Reimbursements	-\$ 34.7
Net Funding Request	<u>\$138.5</u>

Actual FY 82 appropriations approved by the Congress for MAP total \$176.5M; however, these appropriations reflect a considerably revised program than that originally proposed by the executive branch. A total of \$38.5M has been provided for MAP general costs and for reimbursement for earlier drawdowns (\$31.4M and \$7.1M respectively). The remaining \$138M is to be employed as MAP grants to selected countries in lieu of the "concessional" direct credits proposed for the FMS Financing Program, as described below. The Congress permitted \$25M of the overall MAP authorization to be available as special requirements MAP funds. However, since the MAP authorization was far short of the funding level the executive branch sought for concessionality, no funds are to be earmarked for a separate SRF.

Foreign Military Sales (FMS) Financing Program

The executive branch budget request for the FMS Financing Program proposed a total funding requirement of \$4,054.4M. Direct USG credits of \$500M were requested for Israel, for which repayment would be forgiven. Another \$981.8M in direct credit was proposed to be loaned at reduced, or "concessional," rates of interest to selected countries experiencing severe economic difficulties. In his testimony before the Congress on March 19, 1981, regarding this proposal, Mr. James L. Buckley, Under Secretary of State for Security Assistance, Science, and Technology, indicated that concessional rates of interest as low as three percent were planned. [Cf., DISAM Newsletter, Spring, 1981, p. 40.] The FY 82 CPD identified the following 15

countries and one regional program as potential recipients of these low interest loans: Dominican Republic, El Salvador, Egypt, Honduras, Israel, Jamaica, Kenya, Liberia, Portugal, Somalia, Sudan, Thailand, Turkey, Yemen, Zaire, and the Eastern Caribbean Region (i.e., Dominica, Barbados, St. Lucia, etc.). The remaining \$2,572.6M of the FMS Financing Program budget proposal was requested for the guaranteed loan program, i.e., loans which are provided by the Federal Financing Bank, with repayment guaranteed by the Department of Defense.

Following considerable debate within the Congress regarding the overall FMS Financing Program, and especially the innovative concessional loan approach, the Congress settled upon a compromise plan. The new authorization act provides for limited direct loans, but establishes special MAP grants to supplement guaranteed loans to selected countries.

In FY 82, only two countries, Israel and Egypt, are authorized direct loans (\$550M and \$200M, respectively), with repayment forgiven. [The term "forgiven credit" is commonly used to describe these financing programs; the more precise legislative terminology, as appears in Sections 31(b) and 31(c) of the amended AECA, states that Israel and Egypt are "released from . . . contractual liability to repay the United States Government. . . ."] This direct credit authorization represents a \$50M increase over that originally proposed for Israel; it also marks the first time such "forgiveness" has been granted to Egypt. Additionally, Israel and Egypt are also authorized guaranteed loans of \$850M and \$700M, respectively.

The concessional direct credit proposal was rejected by Congress. In its place, Congress authorized a total of \$138M in MAP grants (as noted above) to complement the guaranteed loan program for the 13 other countries and region (excluding Israel and Egypt) for which concessionality was originally proposed. These MAP grants could be viewed as loan subsidies whereby "concessionality" is achieved at an average ratio of approximately 25% grant, and 75% guaranteed credits for the selected recipients. In comparison to the originally envisioned concessionality, which assumed 100% direct credits at 3%, the combination of MAP grants and guaranteed loans, if applied in the 25/75 ratio, would be roughly equivalent to 100% in direct credits at 8% interest. However, in the subsequent allocation of these MAP funds to the selected countries, the distribution was effected on the basis of strategic priorities and prevailing economic conditions rather than in terms of a predetermined common ratio.

A further change to the FMS Financing Program involves the provision of special and favorable repayment terms for guaranteed loans to selected countries. For most countries participating in this program, full repayment of the principal and interest for such loans is normally required to be accomplished within eight years. For the past few years, Israel was permitted a 30-year repayment period, with a grace period on the repayment of principal for the first ten years of the 30-year period. In the new authorization act, these

same favorable terms have now been accorded to Egypt, Greece, Turkey, Sudan, and Somalia, as well as Israel. [Cf., Section 105, PL 97-113 which amends Section 31(b) of the AECA.]

### Two-Year Authorizations for Security Assistance

Under past Congressional practice, authorizations for security assistance and other foreign assistance programs were provided on an annual basis to cover a single fiscal year. However, in recent years, the enactment of the required authorization act occurred subsequent to the conclusion of the previous fiscal year. For example, the authorization act for FY 1981, required as of October 1, 1980, was not enacted until December 16, 1980 (PL 96-533). Similarly, the current fiscal year's legislation (PL 97-113) was enacted on December 29, 1981. Technically, therefore, a period of several weeks occurred in both 1980 and 1981 when the USG-financed portions of security assistance and other foreign assistance programs were conducted with only the continuing resolution authority (CRA) provided by the Congress.

In this year's authorization act, the Congress has remedied this technical problem by enacting authorizations for both FY 1982 and FY 1983, thereby assuring authority through September 30, 1983. Inasmuch as all of the security assistance funding levels authorized for FY 1983 are identical to those for FY 1982, some may view this two-year authorization as an attempt by Congress to restrain future increases in spending levels. However, the Congressional Conference Committee Report on PL 97-113 indicates that the committee recognizes that the President had not yet made his FY 83 legislative and budgetary requests, and noted that the passage of a two-year authorization act was not intended to preclude such requests. Rather, the report indicates that the cognizant congressional committees (the Senate Foreign Relations Committee and the House Foreign Affairs Committee) "will give full consideration to any additional recommendations by the executive branch." [Cf., House of Representatives Report 97-413, p. 56, hereafter cited as "Conference Report."]

### Drawdown Authority Ceiling Increase

As noted earlier, the President has the authority to draw down defense articles from the stocks of the Department of Defense to meet an unforeseen emergency requirement for immediate military assistance to a foreign country or international organization. Heretofore, such authority was limited to an "aggregate value not to exceed \$50M in any fiscal year."

The Senate sought an increase in the aggregate ceiling to \$100M. No consideration of this issue was addressed in the House. The Conference Committee settled upon an increase to a \$75M annual ceiling, and this was subsequently enacted [cf., Section 110(b), PL 97-113 which amends Section 506(a), FAA of 1961]. On February 2, 1982, President Reagan authorized an initial FY 1982 drawdown of \$55M to meet emergency requirements in El Salvador.

## Changes in Congressional Reporting Thresholds and Certification Periods

The legislative proposal submitted by the executive branch to the Congress requested several important changes in the legislative requirements for certifications to the Congress of proposed arms transfers. Among these were included a recommendation for raising the reporting thresholds throughout the law for proposed FMS sales, direct commercial sales, third party transfers, and leases/loans [see below] of defense articles from \$7M to \$14M for major defense equipment (MDE), and from \$25M to \$50M for other defense articles and services. These increases were requested to account for the inflationary impact on the costs of military articles and services which has occurred since the notification requirements were last adjusted in 1976. For example, Under Secretary Buckley advised the Congress that the DoD procurement pricing index had increased by approximately 59 percent since 1976, with a consequent increase in Congressional notifications "to a point where the more important proposals are being obscured by virtue of the sheer number of cases involved." [Cf., DISAM Newsletter, Spring 1981, p. 43.] Acting on this recommendation, the Congress enacted the requested changes in reporting thresholds. [Cf., Section 101, PL 97-113 which amends Sections 3d(1), 3d(3), 3d(4), 36(b)(1), and 36(c) of the AECA.]

It should also be noted in this connection that no similar legislative change has been made in the existing thresholds for the quarterly reporting of Price and Availability estimates, which remain at the \$7M and \$25M levels. However, the legislation does extend the period for submitting these reports, as requested by the executive branch, from five days to 15 days after the end of each quarter. This latter change will provide DoD with a more reasonable period in which to provide complete, up-to-date reports to Congress. [Cf., Section 101, PL 97-113 which amends Sections 28(a) and 28(b), AECA.]

The executive branch further proposed that an exemption from the requirement for providing certifications be granted for proposed FMS cases, commercial exports, and third party transfers to NATO, NATO member countries, Japan, Australia, and New Zealand. This particular request, as well as others discussed below in regard to these countries, was designed to expedite such sales and transfers. In the words of former Director of the Defense Security Assistance Agency (DSAA), Lt Gen Ernest Graves, in his March 19, 1981, testimony to Congress, "there have been no controversial sales to these allies, and doing away with the advance Congressional review of these cases would, in fact, generate more time for the Congress to devote to the more complicated and significant cases" and would also help "reduce the extensive delays that have throttled and raised irritating obstacles to defense cooperation" with our allies. [Cf., DISAM Newsletter, Spring 1981, p. 47.]

The Congress, however, was not prepared to completely eliminate the requirements for certifications for these countries. Rather, a

form of compromise was again reached whereby the formal notification period for FMS sales and third country transfers to NATO, NATO members, Japan, Australia, and New Zealand is now reduced from 30 days to 15 days. Moreover, in a "sense of the Congress" statement, the Conference Committee indicated the 20-day informal (non-legislative) notification requirement would no longer be applicable for these countries for FMS cases and third country transfers. However, the AECA retains the requirement for a 30-day certification period for the notification of direct commercial sales to any country or international organization. [Cf., Section 101 and Section 102, PL 97-113 amending the AECA.]

#### Waiver of Non-Recurring Cost Recoupment and Asset Use Surcharges

Prior to this year's legislation, Presidential authority to waive or reduce non-recurring cost recoupments for research and development costs and for asset use surcharges was permitted only for NATO and NATO member countries. The executive branch proposed extending this privilege to other close U.S. allies, namely Japan, Australia, and New Zealand. The Congress concurred, and this authority was extended to these additional three countries.

The authority to waive or reduce such costs is aimed at reducing the cost of procurement of U.S. manufactured equipment in support of U.S. efforts to achieve rationalization, standardization, and interoperability with the forces of such allied countries. However, the relevant provisions in the AECA, as previously amended, had indicated a two-fold objective: in addition to promoting standardization, the waiver/reduction provision would also be permitted if it would "significantly advance United States Government interests in . . . foreign procurement in the United States under coproduction agreements." The executive branch requested repeal of this latter provision, indicating that it had led to what General Graves described as "the widely held misconception that a waiver . . . is available to any country willing to make arrangements to coproduce U.S. developed items." [Emphasis added, op. cit., p. 46.] Concern for reducing the extent of coproduction programs so as to reduce their potential adverse impacts on domestic employment and the U.S. production base, coupled with the legislative history regarding the issue of coproduction, were cited by General Graves as reasons for requesting the repeal of this particular provision. Congress, however, retained the provision in the new authorization bill and added an additional phrase regarding waivers/reductions for Japan, Australia, and New Zealand. As amended, the relevant provision reads as follows: "The President may reduce or waive the charge or charges . . . for particular sales that would, if made, significantly advance United States Government interests in North Atlantic Treaty Organization standardization, standardization with the Armed Forces of Japan, Australia, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries, or foreign procurement in the United States under coproduction arrangements." [Emphasis added to identify the amended terminology as enacted in Section 104, PL 97-113 which amends Section 21(e)(2), AECA.]

## Direct Commercial Sales

As previously noted, the new legislation makes no change to the requirement for a prior 30-day certification to Congress of proposed direct commercial sales of defense articles or services exceeding the \$14M and \$50M thresholds. However, the legislation has effected a major change to this security assistance program, the impact of which remains to be seen.

At the initiative of Senator John Glenn (Dem., Ohio), the Senate version of the authorization bill repealed the previously established \$100M ceiling on the direct sale of commercial exports of major defense equipment. The House of Representatives did not address this issue, but the repeal of the ceiling was approved by the Conference Committee and subsequently enacted. [Cf., Section 106, PL 97-113, which amends Section 38(b)(3), AECA.]

Elimination of a ceiling on direct commercial sales conceivably could lead to substantial future increases in such sales. However, the established preferences of many foreign countries for obtaining required defense equipment and services directly from the U.S. government through FMS is likely to have a limiting influence on any major rise in the level of commercial sales. Further, it should be remembered that the President retains the authority to direct that any sale of defense articles or services be conducted through FMS channels. [Cf., Section 38(a)(3), AECA.]

## Special Defense Acquisition Fund (SDAF)

For many years DoD procurement programs and U.S. military equipment deliveries to foreign purchasers have been seriously hampered by a combination of long-lead production times for major defense articles (exceeding three years for some items) and the periodic need to divert equipment from U.S. forces to assist foreign countries in emergency situations. As one means of reducing the impact of these related problems, the executive branch proposed establishing in FY 1982 a new budgetary account to expedite the procurement of defense articles and services. The account, to be called the Special Defense Acquisition Fund (SDAF), would "permit the advance procurement of equipment likely to be required by foreign purchasers . . . , reduce delivery lead times, [and] allow more rapid response to the security needs of friends and allies while at the same time protecting U.S. force readiness." [Buckley, op. cit., p. 41.]

Funds to establish, or capitalize, the SDAF were proposed to consist of three types of FMS-derived monies which, under normal circumstances, are deposited as miscellaneous receipts in the U.S. treasury. These include: (1) receipts from overseas sales of U.S. service stocks not intended for replacement in service inventories; (2) non-recurring research, development, and production costs for U.S. military equipment which the U.S. and foreign purchasers share on a pro-rata basis; and (3) asset use and facility charges for the

use of DoD facilities and equipment in the production of defense materiel for FMS. The revenues from these sources are sizeable; in FY 1980, the Treasury received over \$300M from these FMS collections. The FY 1982 budget proposal called for initial SDAF capitalization at \$350M, which represented estimated FY 1981 receipts from the designated FMS sources. Further, the proposal envisaged the SDAF as a revolving account, i.e., once established, future receipts from sales of equipment purchased with SDAF monies would revert to the SDAF, thereby replenishing the fund on a continuing basis. The executive branch informed Congress that total SDAF capitalization could amount to about \$2.1 billion over a six-year period, i.e., by the end of FY 1987. [Cf., Senate Committee of Foreign Relations Report #97-83, 15 May 1981, p. 15.] Such an account clearly would provide a substantial source for relieving procurement lead-time and FMS diversion problems. Most significantly, the use of FMS-derived funds would mean that no direct appropriations would be required.

In testimony before the Congress in support of the proposal, executive branch officials pointed out that SDAF-procured equipment would not be used to build up inventories or to drive foreign sales [Buckley, op. cit., p. 42], and that such items could be employed by U.S. forces if they were not required for use overseas [Graves, op. cit., p. 44]. Observing that establishment of the SDAF "could go a long way towards restoring the belief . . . that the U.S. is reliable and is an interested and active participant in collective defense efforts," General Graves urged the Congress to give the proposal "top priority" [ibid.].

Initial action on the SDAF within Congress was divergent. The House of Representatives supported establishment of the fund, but proposed it be capitalized through direct appropriations rather than from FMS collections. The House thereby authorized direct appropriations of \$150M annually for the SDAF for FY 1982 and FY 1983. The Senate, however, supported the executive branch proposal for SDAF capitalization, and established limits on the size of the fund at \$350M in FY 1982 and \$700M in FY 1983. A compromise was agreed upon in the Conference Committee which followed the Senate version in capitalizing the SDAF through FMS-derived funds, but set reduced total limits of \$300M for FY 1982 and \$600M for FY 1983. It was this version which was enacted. [Cf., Section 108, PL 97-113 which adds a new "Chapter 5 - Special Defense Acquisition Fund" to the AECA, and also amends Section 138 of Title 10 U.S.C. establishing ceilings for the SDAF.]

The ceilings on the size of the fund encompass the total of all the FMS collections annually accruing to the SDAF, plus the value (in terms of acquisition cost) of SDAF-procured defense articles which remain untransferred to foreign countries. The authorization act also requires annual reports be provided to Congress which identify actual and estimated future SDAF-financed procurements. The U.S. military services are authorized to use SDAF-procured defense articles prior

to their transfer to foreign countries, and the services bear responsibility for operational and maintenance costs as well as restoration or replacement costs. The fund may also be used to pay for required storage, maintenance, and transfer preparation costs of SDAF-procured equipment, and also certain related DoD administrative costs.

Although the SDAF is now authorized, at the time of this writing the DoD had yet to receive obligational authority from Congress to commit any SDAF monies. The FY 1982 appropriations act (PL 97-121) does not provide this required expenditure authority, but DoD has requested a supplemental appropriations authority for FY 1982 in conjunction with its submission to Congress in February, 1982, of the FY 1983 budget request. When enacted, DoD plans to initiate SDAF procurements within established priority requirements of the military services.

#### Leasing of Defense Articles

At the initiative of the House of Representatives, a new Chapter 6 dealing with leases and loans of U.S. defense articles has now been added to the Arms Export Control Act by Section 109, PL 97-113. A special article in the "Legal Notes" section of this issue of the Newsletter details the specific provisions of this major amendment; consequently, only a brief discussion is provided herein.

The new chapter is designed to insure that future leases/loans by the U.S. of defense articles to foreign countries be conducted under the legislative provisions of the AECA or the FAA, rather than under the authority of Title 10 U.S.C. 2667 as has previously been DoD practice. The Senate bill had retained foreign leasing authority under Title 10, but in the Conference Committee resolution, the House version was adopted and Chapter 6 was enacted.

The following represent the principal provisions of the new chapter: a requirement for a Presidential determination that "compelling foreign policy and national security reasons" justify a lease rather than a sale; full costing is required for leases, with certain specified exceptions; and a requirement for prior Congressional review regardless of the value of the leased property, with the same potential as FMS for the legislative veto of leases which exceed \$14M for major defense equipment and \$50M for other defense equipment. (Cf., Conference Report. pp. 60-61.)

#### Overseas Management of Assistance and Sales Programs

The executive branch proposed a variety of important changes in the FAA requirements governing the overseas management of security assistance programs, ranging from authorized security assistance manning levels to a clarification of management functions authorized to be performed by security assistance personnel.

Personnel Strengths. Prior law required that Congress must specifically authorize (in the annual authorization act) the countries where more than six security assistance military personnel can be assigned. For countries with six or less personnel, the manning figures presented in the annual CPD serve as the approved authorization levels. The difference in these requirements reflected Congressional interest in regulating the level of the overseas presence of U.S. military personnel, as well as their security assistance functions as discussed below. The lack of flexibility in increasing overseas security assistance organizations (SAOs) above six military personnel was cited in executive branch testimony before Congress as "tedious and time-consuming;" and this issue was illustrated in the example of Egypt where the U.S. was "unable to meet any urgently needed increase in personnel" because of the requirement for specific legislative authority [Graves, op. cit., p. 45]. The executive branch proposed that all SAO personnel levels be authorized annually on the basis of the CPD, with any future required increases over the numbers justified in the CPD to be effected through notifications to the congressional authorization committees.

The Senate approved this proposal, but the House sought to retain the requirement for identifying in the law those specific countries authorized larger than six-man military SAO organizations. The House, however, agreed to a provision whereby increases above six could occur if a Presidential determination were made that U.S. national interests required such an increase. A determination of this sort would have to be reported to Congress 30 days prior to effecting such an increase. The Conference Committee adopted the House version which was subsequently enacted. Thus, the law now specifies 12 countries which "are authorized to have military personnel strengths larger than six . . . to carry out international security assistance programs;" the countries so specified are Indonesia, the Republic of Korea, the Philippines, Thailand, Egypt, Jordan, Morocco, Saudi Arabia, Greece, Portugal, Spain, and Turkey [cf., Section 112 which amends Section 515(c), FAA of 1961].

Management Functions. Prior to the current legislation, the FAA established authorized personnel functions for SAO-assigned military personnel, but these functions differed on the basis of the size of the SAO. For those organizations with over six military personnel, four primary functions were identified, i.e., "logistics management, transportation, fiscal management, and contract administration of country programs" [Section 515(b)(1), FAA]. Less specific functional terminology was employed for smaller SAO's wherein assigned military personnel were authorized simply to "perform accounting and other management functions with respect to international security assistance programs . . ." [Section 515(c), FAA].

Since security assistance management requires similar personnel functions at all SAO's, regardless of size, the executive branch wished to clarify this issue. Additionally, the listing of specified functions tended to prove restrictive in meeting the manifold management requirements associated with security assistance. Consequently,

Congress was asked to amend the FAA to permit military personnel at any authorized SAO "to perform necessary management and other functions. . . ." The Senate endorsed this approach; however the House supported an expanded listing of seven specific functions which would be authorized for military personnel at any SAO. The House version was adopted by the Conference Committee and subsequently enacted. Thus, SAO assigned military personnel are authorized to perform one or more of the following functions:

- (1) equipment and services case management
- (2) training management
- (3) program monitoring
- (4) evaluation and planning of the host government's military capabilities and requirements
- (5) administrative support
- (6) promoting rationalization, standardization, interoperability, and other defense cooperation measures among members of the North Atlantic Treaty Organization and with the Armed Forces of Japan, Australia, and New Zealand
- (7) liaison functions exclusive of advisory and training assistance. [Cf., Section 112, PL 97-113 which amends Section 515a, FAA of 1961.]

With respect to the functions of advisory and training assistance, the executive branch had not requested any change whatsoever in the prevailing legislative restrictions governing such activities. The restrictions were retained in the authorization act, but additional emphasis was given to this subject, as indicated in the following amended section:

Advisory and training assistance conducted under this section shall be kept to an absolute minimum. It is the sense of the Congress that advising and training assistance in countries to which military personnel are assigned under this section shall be provided primarily by other personnel who are not assigned under this section and who are detailed for limited periods to perform specific tasks. [Emphasis added to identify amended key terminology in Section 112 PL 97-113 amending Section 515(b), FAA of 1961.]

Miscellaneous Provisions. Since Section 515 of the FAA of 1961 has now been thoroughly revised, a number of additional features regarding overseas program management should be noted.

The executive branch requested Congress delete the special provisions of Section 515(f) which served to limit the performance of security assistance management functions by U.S. defense attaches. Among these provisions were the requirement for a Presidential determination and report to Congress whereby the assignment of such

duties to a defense attache in a given country were determined to be "the most economic and efficient means of performing such functions." Section 515(f) also established limits governing the number of defense attaches who could be assigned security assistance management functions. All of the provisions of Section 515(f) were repealed in the new appropriations act, thereby permitting the executive branch to establish and maintain its own policies with respect to this management matter. [Cf., Section 112, PL 97-113.] In this regard, the Defense Security Assistance Agency (DSAA), has identified defense attaches in the following countries to be added to those previously authorized to perform security assistance functions: Bangladesh; Canada (responsibility limited to in-country FMS functions); Indonesia; the Ivory Coast (to also manage programs for Niger, Upper Volta, and Togo); Malawi; Senegal (to also manage programs for Mali); South Africa (to only manage programs for Botswana); and Zaire (currently manages programs for Gabon; now to also manage programs for the Congo). [DSAA message 040126Z Feb 82.]

Two important provisions of Section 515 have been retained in the current legislation. The present law continues to stipulate that SAO personnel "serve under the direction and supervision of the Chief of the United States Diplomatic Mission . . ." [Section 515(d)]. Also retained is the provision which directs the President to instruct U.S. diplomatic and military personnel overseas "that they should not encourage, promote, or influence the purchase by any foreign country of United States-made military equipment unless they are specifically instructed to do so by an appropriate official of the executive branch" [New Section 515(f)].

#### Reports on Endangered U.S. Personnel

Prior to the recent legislation, the AECA included a provision requiring Presidential reports to the Congress "within 48 hours after the outbreak of significant hostilities involving a country where U.S. personnel are performing defense services . . ." [Section 21(c)(2)]. The required reports were to include the country, the description of the hostilities, the location of such personnel, "the precise nature of their activities, and the likelihood of their becoming engaged in or endangered by hostilities" [Section 21(c)(2)(B)].

At the initiative of the Congress, these provisions were significantly revised in the authorization act. The revised provision now requires such reports "within forty-eight hours of the existence of, or a change in status of significant hostilities or terrorist acts or a series of such acts which may endanger American lives or property . . ." [emphasis added to identify amended terminology]. Additionally, the new provisions delete the requirement for identifying the location and nature of the activities of the endangered U.S. personnel, and also no longer require an estimate of the likelihood of their involvement; the reports now need only identify the country, describe the hostilities or terrorist acts, and identify the number of endangered personnel. [Cf., Section 103, PL 97-113 which amends Section 21(c)(2), AECA.]

## Periodic Review of the U.S. Munitions List

The U.S. Munitions List provides an enumeration of defense articles and services, and is published in the International Traffic in Arms Regulation (ITAR). Articles and services identified on the Munitions List can only be sold abroad through direct commercial sales if an appropriate export license has been issued to an exporter by the Office of Munitions Control within the Department of State. The policies and procedures employed in the issuance of such commercial export licenses are far more stringent than those governing other types of commercial exports which are licensed by the Department of Commerce.

In an effort "to respond in a responsible way to legitimate industry concerns about the appropriate level of U.S. arms control," the House Foreign Affairs Committee initiated an amendment to the AECA calling for a periodic review of the Munitions List to identify items which might be deleted. [House of Representatives Report 97-58, May 19, 1981, p. 21.] This requirement was subsequently enacted in the authorization act.

The new provision requires that such periodic reviews be reported to the Congress at least 30 days before the removal of any item, with a description of "the nature of any controls to be imposed" on such items "under the Export Administration Act of 1979" [cf., Section 107, PL 97-113 which adds a new subsection 38(f) to the AECA]. The Conference Report further indicates that the conferees "expect that the munitions list should be reviewed at least annually," and that it is their intention that this provision

"not be used to circumvent controls for certain countries otherwise ineligible to purchase defense articles or services because of U.S. law or because of other U.S.-imposed restrictions on [sic.] international embargoes which the United States upholds." [Conference Report, op. cit., p. 59.]

## Foreign Intimidation and Harassment

The following represents an amendment to the AECA that was initiated within the House of Representatives, and which establishes new restrictions on FMS sales, financing, and direct commercial sales:

Sec 6. FOREIGN INTIMIDATION AND HARASSMENT OF INDIVIDUALS IN THE UNITED STATES. --- No letters of offer may be issued, no credits or guarantees may be extended, and no export licenses may be issued under this Act with respect to any country determined by the President to be engaged in a consistent pattern of acts of intimidation or harassment directed against individuals in the United States. The President shall report any such determination

promptly to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate." [Section 115, PL 97-113 which adds a new section 6 to Chapter 1, AECA.]

### Comprehensive Analysis of Foreign Assistance

At the initiative of the Senate, the authorization act contains a new provision which requests the President provide Congress with "a comprehensive report . . . on his approach to foreign assistance." [Section 722(a), PL 97-113]. In the report of the Conference Committee, this new report is viewed as "an important opportunity for the executive branch to lay out its overall approach to foreign assistance in light of its first year of experience" [op. cit., p. 89].

A preliminary report is requested by March 31, 1982, with a final report by June 30, 1982. The Congress also provided a listing of issues for which they requested an analysis and recommendations in the President's report, to include the following:

- (1) the relationship between foreign assistance and defense expenditures as means of conducting foreign policy;
- (2) the appropriate mix between military and economic assistance;
- (3) the strengths and weaknesses, and appropriate mix, of bilateral and multilateral assistance programs;
- (4) the relevance of the basic human needs approach to current aid policy;
- (5) the performance of other aid donors, and the benefits they derive from their programs;
- (6) criteria for determining the appropriate size and composition of country programs;
- (7) the appropriateness of the current mix of grants and loans, and the possibility of combining them with new or existing guarantee, insurance, and export credit programs;
- (8) specific means to more actively engage the private sector in assistance programs; and
- (9) the usefulness of current functional categories in constructing the development assistance budget.

### External Debt Burdens

Concern arose within the Congress regarding the increasing external debt burdens experienced by the Governments of Egypt, Israel, and Turkey. Since the U.S. financing of various assistance programs may serve to further exacerbate their indebtedness, Congress has sought assistance from the executive branch "in examining United States assistance for these countries."

A special provision in the recent authorization act requires the President to provide reports to the Congress regarding prevailing

economic conditions "in Egypt, Israel, and Turkey which may affect their respective ability to meet their international debt obligations and to stabilize their economies." Further, the law requires the report to "also analyze the impact on Egypt's economy of Arab sanctions against Egypt." The first report is required not later than 120 days after enactment of the authorization act (i.e., April 28, 1982), with the second report required not later than one year after enactment (i.e., December 29, 1982). [Cf., Section 723, PL 97-113.]

#### Reaffirmation of Human Rights

Substantial concern was raised by members of both the House and the Senate regarding the issue of human rights, particularly with respect to the U.S. provision of assistance to countries alleged to be in violation of internationally recognized human rights. [See the discussion below regarding Argentina, Chile, and El Salvador.] General concern for this matter prompted the Congress to include the following special section in the authorization act:

- Sec. 713. (a) The Congress reaffirms its support for the various statutory provisions which have been enacted in order to promote internationally recognized human rights.
- (b) It is the sense of the Congress that a strong commitment to the defense of human rights should continue to be a central feature of United States foreign policy. [PL 97-113.]

#### Assistance to Argentina and Chile

U.S. security assistance to Chile was halted by the Congress in 1976 and was similarly denied to Argentina in 1977. [Cf., respectively, Section 406, International Security Assistance and Arms Export Control Act of 1976, and Section 620B, FAA of 1961, as amended.] In both countries, governmental violations of internationally recognized human rights were a principal reason for the denial of U.S. assistance. The new authorization act repeals the previous legislative prohibitions, but the resumption of security assistance for either country remains dependent upon a variety of determinations which must be made by the President and reported to Congress.

With respect to Argentina, future security assistance is dependent upon Presidential determinations that (1) "the Government of Argentina has made significant progress in complying with internationally recognized principles of human rights" and (2) that the provision of security assistance "is in the national interests of the United States." Moreover, the Argentine government's accountability for "disappeared persons" and its treatment of prisoners must also be considered in the determination process, as specified in the following provision:

- Sec. 725. (c) The Congress welcomes the actions of the Government of Argentina to adjudicate numerous cases of those detained under the National Executive Power of the

Argentine Government, and the Congress hopes that progress will continue, especially with regard to providing information on citizens listed as "disappeared" and prisoners remaining at the disposition of the National Executive Power. In the process of making the determination required in paragraph (1) of subsection (b), among other things, the President shall consider--

(1) efforts by the Government of Argentina to provide information on citizens identified as "disappeared"; and

(2) efforts by the Government of Argentina to release or bring to justice those prisoners held at the disposition of the National Executive Power (PEN). [Section 725, PL 97-113.]

The Presidential determinations required for resuming assistance to Chile are similar. Chilean progress in the human rights area, as well as a consideration of U.S. national interests are required in a detailed certification report to Congress. Additionally, issues of international terrorism and the adjudication of Chileans involved in the murders in the U.S. of a former Chilean diplomat and his American associate must be addressed, as indicated in the following certification requirements:

. . . that the Government of Chile is not aiding or abetting international terrorism, and has taken appropriate steps to cooperate to bring to justice by all legal means available in the United States or Chile those indicted by a United States grand jury in connection with the murders of Orlando Letelier and Ronni Moffitt. [Section 726(b)(C), PL 97-113.]

#### Assistance to El Salvador

Congressional concerns regarding political, economic, and human rights conditions in El Salvador resulted in extensive legislative provisions regarding assistance to that country. [Cf., Sections 727 through 731, PL 97-113.] The following section of the new authorization act reflects the general interest of the Congress in the situation in El Salvador together with the recognition that the Government of El Salvador is confronted with forces which hamper its efforts to improve its economy and security:

The Congress finds that peaceful and democratic development in Central America is in the interest of the United States and of the community of American States generally, that the recent civil strife in El Salvador has caused great human suffering and disruption to the economy of that country, and that substantial assistance to El Salvador is necessary to help alleviate that suffering and to promote economic recovery within a peaceful and democratic process. Moreover, the Congress recognizes that the efforts

of the Government of El Salvador to achieve these goals are affected by the activities of forces beyond its control. [Section 728(a)(1), PL 97-113.]

In terms of continuing U.S. military assistance and sales to El Salvador in FY 1982 and FY 1983, the new authorization act calls for a series of periodic Presidential certifications to Congress. The first certification was required no later than 30 days following enactment of the legislation, and President Reagan transmitted his certification to Congress on January 28, 1982; subsequent certifications are required every 180 days thereafter. Any failure to make such certifications "at any of the specified times" would require the President to immediately suspend all military assistance to El Salvador and to:

order the prompt withdrawal from El Salvador of all members of the Armed Forces performing defense services, conducting international military education and training activities, or performing management functions under section 515 of the Foreign Assistance Act of 1961. [Section 728(c), PL 97-113.]

Such suspension would remain in effect until the President submitted the appropriate certification to Congress.

Since the required certifications involve a variety of critical issues which have prompted considerable public debate in recent months within the U.S. and abroad, the following represents a complete list of the determinations to which the President must certify.

. . . the Government of El Salvador --

(1) is making a concerted and significant effort to comply with internationally recognized human rights;

(2) is achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens by these forces;

(3) is making continued progress in implementing essential economic and political reforms, including the land reform program;

(4) is committed to the holding of free elections at an early date and to that end has demonstrated its good faith efforts to begin discussions with all major political factions in El Salvador which have declared their willingness to find and implement an equitable political solution to the conflict, with such solution to involve a commitment to--

(A) a renouncement of further military or paramilitary activity; and

(B) the electoral process with internationally recognized observers.

Each such certification shall discuss fully and completely the justification for making each of the determinations required by paragraphs (1) through (4).

(e) On making the first certification under subsection (b) of this section, the President shall also certify to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that he has determined that the Government of El Salvador has made good faith efforts both to investigate the murders of the six United States citizens in El Salvador in December 1980 and January 1981 and to bring to justice those responsible for those murders [Sections 728(d) and 728(e), PL 97-113].

### Assistance to Pakistan

The invasion and occupation of Afghanistan by Soviet military forces, and the corresponding security threat which this presented to neighboring Pakistan, prompted the executive branch and the Congress to develop an effective economic and military program for Pakistan. Heretofore, Pakistan was prohibited from participating in any security assistance grant or credit programs under the provisions of Section 669 of the FAA of 1961, as amended. These provisions essentially deny such assistance to any country involved in the transfer of nuclear enrichment equipment, materials, or technology unless an agreement exists whereby any such transfers are conducted under multilateral auspices and management, when available, and the recipient country agrees to participate in the safeguards system established by the International Atomic Energy Agency. A waiver of these provisions for any country could only be permitted upon a Presidential determination that (1) the termination of assistance would adversely effect vital U.S. interests, and (2) the President had "received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so." [Section 669(b)(1), FAA of 1961]. No such determination had been made for Pakistan.

The new authorization act now allows for a specific waiver of Section 669 for Pakistan whereby grant and credit security assistance is permitted if the President determines "that to do so is in the national interest of the United States." Such a waiver authority is limited, however, to the period from the enactment of PL 97-113 to September 30, 1987 [cf., Section 736, PL 97-113, which adds Section 620E to the FAA of 1961]. Notwithstanding this new waiver provision, Congress has retained the authority to terminate such assistance should Pakistan, or any other recipient country, transfer a nuclear explosive device to a non-nuclear-weapon state, or if such a country is a non-nuclear-weapon state and receives or detonates a nuclear explosive device. [Cf., Sections 736 and 737, PL 97-113.]

### Conclusion

This review of recently enacted legislation related to the U.S. Security Assistance Program reveals a considerable number of substantial changes affecting the management of this program. It is

clear that these changes will result in many new implementing policies and procedures which will impact on managers and executives throughout the security assistance community. It is hoped that this article will assist our readers in understanding the background and implications of these changes.

#### ABOUT THE AUTHOR

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