

SECURITY ASSISTANCE LEGISLATION AND POLICY

Security Assistance Program Authorizations and Appropriations for Fiscal Year 1986

By

Louis J. Samelson
Editor, *The DISAM Journal*

One of our highest national security priorities in the years ahead must be to reinvigorate our foreign assistance program. At a time of defense reductions, we must pay particular attention to our most compelling international security needs.[1]

Ronald W. Reagan

With the above statement on 8 August 1985, the President signed into law the *International Security and Development Cooperation Act of 1985* (Public Law 99-83). This Act provides program and funding authorizations for security assistance and other foreign assistance programs for both Fiscal Years 1986 and 1987. It also contains a considerable number of important substantive changes affecting the management and implementation of the U.S. Security Assistance Program--changes which have been effected through relevant amendments to the Foreign Assistance Act of 1961 (FAA), the Arms Export Control Act (AECA), and other foreign assistance related legislation.

Public Law 99-83 is the first foreign assistance authorization bill to be passed in almost four years, or since the enactment of Public Law 97-113 on 29 December 1981. Congressional efforts to produce such legislation in the intervening years proved fruitless: in 1984, for example, the House of Representatives approved an authorization bill for FY85, but despite a favorable report by the Senate Foreign Relations Committee on a companion bill (S. 2582, 18 April 1984), the Senate did not act.[2] This year, the Senate acted first, approving a bill (S. 960) on 15 May 1985. The House of Representatives responded with its bill (H.R. 1555) on 15 July; and following the completion of a reconciliation of the two bills in a joint conference committee, both the House and the Senate approved the final bill on 29 and 31 July, respectively.

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Congressional action on the critical second phase of the legislative process--the enactment of a formal appropriations bill to provide the actual funding for the authorized security assistance programs--did not fare as well as the authorization bill. The House Appropriations Committee (HAC) reported a bill (H.R. 3228) to the full House on 1 August, but no similar action occurred in the Senate. Congressional action languished until, as FY85 was drawing to a close, it became apparent that at least a temporary spending bill was required. Thus, the House and the Senate (on 18 and 25 September, respectively) approved an omnibus continuing appropriations resolution (P.L. 99-103) which provided continuing appropriations in lieu of a regular appropriations bill.[3] This continuing resolution (CR) applied not only to security assistance, but also included temporary appropriations for other government programs, such as those of the Department of Defense, State, Commerce, Justice, Agriculture, Housing and Urban Development, Interior, Treasury, and Transportation, all of whose regular appropriations bills had also failed to be enacted before the start of FY86. Security assistance funding was authorized in the CR at the FY85 rate of operations, and only from 1 October to 14 November 1985, or until a regular Foreign Assistance Appropriations bill was enacted. The Senate Appropriations Committee (SAC) subsequently reported a bill to the Senate on 30 October 1985. However, by early November, it was obvious that action on a regular bill would not be completed by 14 November; thus, a second CR, similar to the first, was enacted on 14 November (P.L. 99-154), extending the period of temporary appropriations through 12 December 1985. This action was then followed by the passage of two additional short-term CRs, P.L. 99-179 and P.L. 99-184, which continued appropriations through 16 and 19 December, respectively. Finally, on 19 December, Congress passed and the President signed into law a fifth comprehensive CR, P.L. 99-190, which includes a section providing security assistance appropriations entitled, "Foreign Assistance and Related Programs Appropriations Act, 1986." This last CR differs from the earlier four in that it identifies individual program appropriation levels for FY 1986, rather than merely extending the FY 1985 levels; further, P.L. 99-190 makes appropriations effective through 30 September 1986, i.e., until the end of FY 1986. Thus, for the fourth consecutive year, appropriations for security assistance programs will be provided under the legislative aegis of a continuing resolution.

This article provides a synopsis of the major security assistance provisions and key program changes resulting from the recent legislation. It begins with an analysis of the program funding authorizations and appropriations for FY86, and then examines specific changes impacting on the conduct of the various security assistance program elements. Finally, discussions of general legislative changes and country specific provisions are provided. Readers seeking more expanded information are encouraged to consult the various annotated references furnished at the end of the article.

FISCAL YEAR 1986 SECURITY ASSISTANCE FUNDING

In the words of the Chairman of the Senate Foreign Relations Committee, Senator Richard G. Lugar (Republican, Indiana), the passage of the authorization bill (P.L. 99-83) was "a major achievement," particularly inasmuch as "the constituency for this type of legislation is always limited." [4] In the Administration's view, although P.L. 99-83 contains many favorable provisions, it nevertheless falls far short of providing the funding authorities requested, and also requires reductions from FY85 levels once increases for Israel, Egypt, and the Philippines are covered. On the positive side, a large majority of the Executive Branch proposals for legislative changes in security assistance policy and procedures was enacted; some of these changes had been sought since as early as 1982, and all are discussed later in this article.[5] Additionally, the Congress itself initiated a number of legislative changes; several of these were viewed within the Administration as helpful, but a few were seen as undesirable. Clearly, however, the most negative feature of the new legislation involves the low levels of program funding authorized and appropriated by the Congress.

In early 1985, the Executive Branch proposed a total funding package for security assistance programs for FY86 amounting to \$10.7 billion. Table 1 below illustrates the FY85 CR funding levels and the FY86 Administration request, plus the levels authorized and appropriated in the new FY86 legislation. The negative figures shown in parentheses under the authorization and appropriations columns represent the reductions (in dollar value and in percentages) from the funding levels requested by the Administration.

TABLE 1
FY 1986 Security Assistance Funding
(Dollars expressed in thousands)

Programs	FY 1985 Continuing Resolution (P.L. 98-473)	FY 1986 Administration Request	FY 1986-87* Authorization Act (P.L. 99-83)	FY 1986 Continuing Resolution (P.L. 99-190)
Foreign Military Sales Financing Program (FMSFP)	\$ 4,939,500	\$ 5,655,000	\$ 5,371,000 (-284,000) (-5%)	\$5,190,000 (-465,000) (-8%)
Military Assistance Program (MAP)	805,100	949,350	805,100 (-144,250) (-15%)	782,000 (-167,350) (-18%)
International Military Education and Training Program (IMET)	56,221	65,650	56,221 (-9,429) (-14%)	54,490 (-11,160) (-17%)
Economic Support Fund (ESF)	3,841,000	4,024,000	3,800,000 (-224,000) (-6%)	3,700,000 (-324,000) (-8%)
Peacekeeping Operations (PKO)	44,000	37,000	37,000	34,000 (-3,000) (-8%)
TOTALS	\$9,685,821	\$10,731,000	\$10,069,321 (-661,679) (-6%)	\$9,760,490 (-970,510) (-9%)

*The Authorization Act froze all of the FY 1987 funding authorizations at the FY 1986 levels, while the CR provides appropriations for only FY 1986.

As indicated above, deep reductions in the Administration's security assistance budget request were enacted in both the Authorization Act and the CR. The considerably greater cuts in the CR reflect the usual Congressional process of providing appropriations below the authorization levels. However, the FY 1986 appropriations represent the most sizeable Congressional reductions in the President's security assistance request in over a decade, and reflect the growing Congressional concern with reducing overall U.S. government spending. The total 9% reduction in appropriations for the five security assistance programs, while sizeable, is overshadowed by the far greater percentage cuts in MAP (18%) and IMET (17%). Moreover, the 8% cuts in both the FMSFP and the ESF programs are equally serious when one recognizes that 60% of the FMSFP

and 55% of the ESF programs were earmarked by Congress for only two countries, Israel and Egypt. Since Congress made no reductions in the Administration's funding request for these two countries, this means that all of the FMSFP and ESF program funding reductions must be absorbed by the other recipient countries whose appropriations were not earmarked.

Such sizeable funding reductions have a direct and obvious impact on the conduct of the FY86 Security Assistance Program. Numerous country programs which were planned for FY86 have had to be considerably reduced to adjust to the lower levels of available funding. Moreover, the problem of allocating available funds has been seriously complicated by the extensive Congressional earmarking (or fencing) of selected country funding for the FMSFP, MAP, and ESF programs. Since these earmarked funds are substantial and are not subject to reductions (other than for compliance with the Gramm-Rudman-Hollings reductions discussed below), this resulted in still lower funding levels which could be made available for allocation among the non-earmarked countries. Finally, and most significantly, still further cuts--possibly as much as four percent--in security assistance funding for FY 1986 may be required as a result of the recently enacted Debt Ceiling Extension Bill (P.L. 99-177) which contains the highly controversial Gramm-Rudman-Hollings compulsory deficit reduction amendment. [For a discussion of the potential impact of this new legislation, see the accompanying article on p. 41.]

Even before the CR and the deficit reduction proposal were enacted, President Reagan highlighted several of the funding problems associated with security assistance. As he prepared to sign the Authorization Act (P.L. 99-83) into law on 8 August 1985, the President recognized that the "enactment of foreign assistance legislation is never easy," and he stated his appreciation of "the tough decisions members [of Congress] made in their support" of the authorization bill; nonetheless, he observed that the bill's "reductions, coupled with legislated earmarkings of numerous programs for individual countries and international organizations, will necessitate severe cuts in other programs that are crucial to U.S. security interests." [6]

FOREIGN MILITARY SALES (FMS)

The most notable features of the FY86 FMS Financing Program involve the increased funding levels for *Israel* and *Egypt*, and the reduced levels for all the remaining countries programmed for credit financing. The total FMSFP earmarked funding for both Israel and Egypt, amounting to \$3.1 billion, represents a 20 percent increase over their FY85 funding, and constitutes 60 percent of the entire FY86 FMSFP appropriation of \$5.190 billion. Thus, only \$2.090 billion was appropriated for allocation among the other 27 recipient countries. Also, as in FY85, the FMSFP funding for Israel and Egypt for FY86 is entirely "forgiven," i.e., both countries are released from "contractual liability to repay the United States Government" for these funds. [7] Such forgiveness is not debt relief, i.e., it does not involve the retroactive alteration of earlier loan terms.

An additional feature of the Israeli credit program involves the continued authorization to use such credits in conjunction with the development of its Lavi jet fighter aircraft program; "up to \$150 million" is available in FY86 for Lavi program research and development in the U.S., and "not less than \$300 million" is available for "the procurement in Israel of defense articles and defense services, including research and development, for the Lavi program, and other activities if requested by Israel." [8] The current legislation, however, differs from previous years in that this year's funds are not required to be obligated for the Lavi program, but rather, are to be made available only "if the government of Israel requests that funds be used for such purposes." [9] This language reflects the possibility that Israel may be shifting a portion of the Lavi development to U.S. manufacturers, given the engineering problems it is encountering in Israel. In discussing this program, the Senate Foreign Relations Committee (SFRC) reported that, "It is the Committee's basic belief that support for the Lavi program, which Israel had made clear it is determined to finish, will help assist the Israeli economy and security." [10]

Apart from these funding considerations, several additional features of the FMS program deserve attention.

Concessional Loans

Authority has been retained for applying a concessional (or reduced) rate of interest for certain FMSFP loans. This authority was enacted on a one-year basis in the FY85 Continuing Appropriations Resolution (P.L. 98-473), and has now been incorporated on a permanent basis in the AECA, with more detailed statutory language, as follows:

(1) The President shall charge interest under this section at such rate as he may determine, except that such rate may not be less than 5 percent per year.

(2) For purposes of financing provided under this section--

(A) the term "concessional rate of interest" means any rate of interest which is less than market rates of interest; and

(B) the term "market rate of interest" means any rate of interest which is equal to or greater than the current average interest rate (as of the last day of the month preceding the financing of the procurement under this section) that the United States Government pays on outstanding marketable obligations of comparable maturity.[11]

In practice, the actual rate of interest charged for these concessional loans is set at 50% of the prevailing "market" (i.e., Treasury) rate, but not less than 5%, at the time of loan acceptance/signature by the foreign government.

The following 15 countries were proposed by the Administration as recipients of concessional loans: Botswana, Colombia, the Dominican Republic, Ecuador, Guatemala, Indonesia, Jordan, Morocco, Panama, Peru, the Philippines, Portugal, Thailand, Tunisia, and Turkey.[12] Although Congress did not delete any countries from the FY86 proposal as in the previous year, it did place restrictions on the use of such financing for Guatemala and the Philippines, and it added Greece to the list of recipients.

In 1984, Congress deleted *Guatemala* from the Administration's FY85 concessional credit proposal, presumably because of human rights considerations. This year, Congress elected to allow financing for Guatemala in FY86, and made credits as well as MAP aid contingent upon compliance with a variety of political/human rights provisions.[13] Congress also prohibited Guatemala from purchasing any weapons or ammunition with FMS credit funds.[14]

In the case of *the Philippines*, Congress reduced substantially the FMSFP funding level requested for this country, from \$50 million to an appropriation of not more than \$15 million.[15] Further, Congress restricted all FMS credits and MAP grants to the Philippines to assistance which "shall be nonlethal in character." [16] Similarly, the MAP grant for the Philippines was limited to no more than \$40 million, while the ESF program was limited to no more than at \$125 million.[17] Congress also included a proviso that it intends to grant future aid to the Philippines "according to the determination of the Congress that United States security interests are enhanced and sufficient progress is made by the Government of the Philippines" in a broad variety of human rights areas; moreover, Congress stated it may defer future military assistance if such progress is not achieved, or if "the Congress finds that such assistance is used to violate the internationally recognized human rights of the Filipino people." [18]

With respect to *Greece* and *Turkey*, as in FY85, Congress indirectly granted concessional FMS loans to Greece by linking the Greek credit program to the program proposed for Turkey. The Administration had proposed a standard, non-concessional FMS financing program for Greece

of \$500 million. Congress placed a ceiling of \$450 million in appropriations on the Greek financing program, but stipulated in the Authorization Act that:

Greece shall receive the same proportion of credits extended at concessional rates of interest as the proportion of credits extended at concessional rates of interest for Turkey . . . , and the average annual rate of interest on the credits extended for Greece at concessional rates of interest, shall be comparable to the average annual rate of interest on the credits extended for Turkey at concessional rates of interest.[19]

In short, Congress required that Greece receive concessional credit financing in an amount proportionally the same and at comparable interest rates as that received by Turkey.

In the case of Turkey, a limit of \$427.852 million in appropriations for FMS funding was imposed by Congress with an additional ceiling of \$215 million for MAP. In setting the funding levels for the two countries, Congress preserved the so-called "7-10 ratio" whereby Greece is assured of receiving military assistance at a level equivalent to 70% of that received by Turkey.[20] Also, in the Authorization Act Congress made the MAP grant to Turkey contingent upon "the understanding that the U.S. Government is acting with urgency and determination to oppose any actions aimed at effecting a permanent bifurcation of Cyprus." [21]

Other earmarks of FMSFP appropriated funds were made for two additional countries. Pakistan is to receive no less than \$325 million, and Tunisia no less than \$27 million, the latter all to be furnished in concessional loans.

A final and new feature of the concessional loan program involves the establishment by Congress of a *ceiling* on total concessional credits of not more than \$553.9 million for FY86 and also FY87.[22] No such ceiling was applied in FY85 when the concessional loan program was first introduced. The new ceiling does not apply to the forgiven loans for Israel and Egypt, nor for the concessional loans for Greece.[23]

Additional Changes to the FMS Program

Several other significant legislative changes have been made which affect the FMS program. One of these involves the addition of Thailand and Spain to the AECA list of countries eligible to receive *extended loan repayment terms* for non-concessional (i.e., Treasury rate) loans.[24] Commonly termed the "10-20" provision, this authority permits eligible countries to enjoy a thirty-year repayment schedule (vice an average eight-year repayment period), with a grace period on the repayment of principal for the first ten years. Other countries which are eligible to receive these favorable terms include Greece, Korea, the Philippines, Portugal, and Turkey.

Another important change affecting the FMS Program involves a significant modification to the cost basis on which the *FMS Administrative Services Surcharge* is calculated. This surcharge is generally assessed against every FMS case, and is designed to recover the various U.S. government expenses associated with the conduct of the FMS program.[25] Conflicting provisions of the AECA regarding the requirements for recouping these expenses had led to differing interpretations by the Department of Defense (DOD) and the General Accounting Office (GAO) of the specific expenses that were required to be included in the surcharge calculation. Specifically, the question involved whether or not a pro rata share of fixed base operation costs should be so included. Since 1982 DOD had annually requested Congressional clarification of this issue, believing such costs should be exempted. The current legislation finally resolves the issue, per the DOD interpretation. The relevant statutory provision now requires that appropriate charges be collected for:

Administrative services, calculated on an average percentage basis to recover the full estimated costs (*excluding a pro rata share of fixed base operation costs*) of administration of sales made under this Act [AECA] to all purchasers of such articles and services [i.e., defense articles and defense services]. [The new language has been italicized.][26]

It is instructive to review the comments of the House Foreign Affairs Committee on this subject:

The effect of the amendment is to exclude from full-cost recovery certain fixed-base operation costs for such expenses as grasscutting and chapel maintenance. In agreeing to this amendment, the committee fully expects the Department of Defense to recoup all the costs associated with the administration of the FMS program, including the cost of facility rental, utilities, and supervisory, clerical, and other administrative personnel, including part-time personnel.

The committee's action reflects its intent to eliminate subsidy of the FMS program by the U.S. taxpayer while addressing the Department of Defense request to exclude fixed-base operation costs from the definition of full costs that the Arms Export Control Act requires to be recovered. The committee defines fixed-base operations costs to include, among others, costs for the following: alcohol and drug abuse program, fire protection, pest control, laundry and drycleaning, food service, base chaplain, morale, welfare and recreation, and restoration of historical landmarks.

The committee expects this action will fully resolve the ongoing dispute between the Department of Defense and the General Accounting Office on the definition of "full-cost recovery." It is also expected that the Department of Defense will fully comply with the spirit and intent of the law as amended by recouping all the applicable costs associated with the FMS program.[27]

Additional FMS Program changes involve new authority for the President to provide "*contract administration services*" to NATO member countries on an in-kind, reciprocal-exchange, no-charge basis.[28] Similar authority has also been granted regarding the reciprocal, no-charge provision of "*cataloging data and cataloging services*" to NATO and to NATO member countries.[29] Both changes were sought by the Administration to rectify the situation whereby certain NATO countries were making such services available at no charge to the U.S., but were required to purchase similar services from the U.S. It should be noted that reciprocal cost waivers had been previously allowed for quality assurance, inspection, and contract audit services, and the addition of contract administration services was in keeping with the intent of the earlier legislation; as observed by the House Foreign Affairs Committee (HFAC), the inclusion of contract administration services "was approved . . . in order to facilitate NATO cooperation and enhance more equal burden-sharing among NATO allies."[30] Similarly, in explaining its support of the addition of the reciprocal waiver provision for cataloging data and services, the HFAC reported that "such exchanges facilitate logistics support and other rationalization, standardization, and interoperability [objectives] which the committee supports." [31] The Senate Foreign Relations Committee (SFRC) observations on this issue were more explicit:

The Arms Export Control Act permits in-kind reciprocal exchange of some services with NATO countries, but still requires that the United States charge for catalog data and services. In fiscal year 1982 such charges amounted to \$850,000. Other countries are beginning to charge DOD in return, with DOD paying over \$100,000 in fiscal year 1982. In future years, as efforts intensify to increase NATO standardization, there will be increasing requests for cataloging and codification services which DOD performs pursuant to Chapter 145 of title 10 United States Code. [The proposed legislation] . . . would avoid a series of sales cases for relatively minor

transactions with those NATO countries providing similar services free of charge to the United States.[32]

Still other features of the FMS Program were addressed by Congress. Senator John Glenn (Democrat, Ohio) introduced an amendment (subsequently enacted) dealing with the issue of *sensitive technology and enhancements to defense equipment* sold through the FMS program. Specifically, the amendment focuses on changes made to a weapon system after the original sales notification has been furnished to Congress (per Section 36b, AECA), but prior to the delivery of the weapon system to a foreign country. As indicated in the following statutory extract, additional requirements for Presidential reports to Congress of such changes have now been established and will have a significant impact on the Executive Branch agencies responsible for such reporting.

If, before the delivery of any major defense article or major defense equipment, or the furnishing of any defense service or design and construction service, sold pursuant to a letter of offer . . . , the sensitivity of technology or the capability of the article, equipment, or service is enhanced or upgraded from the level of sensitivity or capability described in the numbered certification with respect to an offer to sell such article, equipment, or service, then, at least 45 days before the delivery of such article or equipment or the furnishing of such service, the President shall prepare and transmit to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report--

- (i) describing the manner in which the technology or capability has been enhanced or upgraded and describing the significance of such enhancement or upgrade; and
- (ii) setting forth a detailed justification for such enhancement or upgrade.[33]

The *Congressional Quarterly Weekly Report* observed that, "This provision was spawned by the Reagan Administration's decision to add sensitive radar equipment to F-16 warplanes sold to Pakistan." [34]

These new reporting requirements apply to any items furnished to a foreign country within ten years after Congress has been notified of the original sale. Further, if the costs of the enhancements or upgrades in the sensitivity of the technology or capability of the items meets or exceeds the reporting thresholds (\$14 million for major defense equipment, \$50 million for defense articles/services, or \$200 million for design and construction services), a new numbered certification must be furnished to Congress.[35] Finally, the legislation specifies that "the term 'major defense article' shall be construed to include electronic devices, which if upgraded, would enhance the mission capability of a weapons system." [36]

Congress also adopted an amendment, first introduced in the SFRC by Senator Larry Pressler (Republican, South Dakota), which established a requirement for an annual report of countries which have been approved for *cash flow financing* in excess of \$100 million. As defined in the new legislation,

the term "cash flow financing" means the dollar amount of the difference between the total estimated price of a Letter of Offer and Acceptance or other purchase agreement that has been approved 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.[37]

This form of financing has been used for several years to permit certain countries (such as Israel, Egypt, and others) to annually purchase military equipment and services whose total costs exceed the FMS credits committed for such purposes. The objective, of course, is to permit earlier starts on acquisitions of larger systems for which it would be otherwise necessary to await the accumulation of credits over several years. Congress recognizes that further authorizations may be required to provide the funding necessary to meet the obligations which are outstanding for such acquisitions. The new report will provide Congress with an annual identification of the amount of approved cash flow financing, a description of the administrative ceilings and controls applied by the Executive Branch to manage such financing, and a description of the financial resources available to recipient countries to pay for cash flow financing.[38]

A final FMS-related provision deals with the *Guaranty Reserve Fund (GRF)*. The GRF consists of Congressionally-appropriated monies, and it is drawn upon when countries with loans previously obtained under the Guaranty Loan Program are in arrears in their loan repayments, or have defaulted, or had their loans rescheduled.[39] These guaranteed loans require repayment to the original lenders, i.e., the Federal Financing Bank, administered by the Department of the Treasury, and commercial banking institutions for loans made prior to 1975. The GRF functions as a revolving fund: monies drawn from the GRF are used to repay the lenders, and any subsequent country repayments are used to restore the GRF. In recent years, however, payments out of the GRF have exceeded collections credited, necessitating the Administration to request additional appropriations for the GRF. For FY85, for example, the Administration sought a \$274 million appropriation for this purpose, but Congress appropriated only \$109 million.

In the *FY 1986 Congressional Presentation Document (CPD)*, the Administration advised Congress that, without any additional appropriations for FY86, the GRF was projected to be reduced to \$144 million by 30 September 1986, and to be fully depleted early in FY87.[40] However, instead of requesting a new appropriation for FY86 to replenish the GRF, the Administration developed a new approach to resolve the problem. Congress was asked to eliminate the GRF and to use whatever monies remained to establish a new account, the *Guarantee Reserve (GR)* with a "permanent indefinite appropriation." This proposal would "treat the GR as most of the federal government's guarantee reserve programs are already treated, which is to put it on a permanent authorization basis and fund it as necessary." [41] In Congressional testimony, Lieutenant General Philip C. Gast, USAF, Director, Defense Security Assistance Agency, provided the following explanation of how the proposed GR account would function:

The new account will employ a modified revolving mechanism, but when a required payment exceeds available balances, the GR will be authorized to draw upon a permanent indefinite appropriation. Permanent indefinite appropriation means that no specific sum is appropriated, the appropriation is not constrained by any time limit, and once Congress approves the appropriation, no further approval action is required on an annual basis. In its totality, the concept means that the authority will exist to obligate and expend U.S. government funds in the amount necessary to cover payments out of the GR. This proposed change ensures that appropriated funds will always be available and that the amount drawn upon will be the exact amount required. This approach will smooth the cash flow problems that are likely in FY 1987 and beyond and avoid the possibility of the GR being unable to fulfill its legal obligation to pay defaulted and rescheduled guaranteed loans.[42]

Congress proved unwilling to adopt the Executive Branch proposal. Citing the Administration's testimony "that no replenishment of the Guaranty Reserve Fund will be necessary before Fiscal Year 1987," Congress opted for an innovative, short-term solution for FY86.[43] This solution involves new legislative authority to use FMS Financing Program appropriated funds

to pay any financial claims on debts arising from the Guaranty Loan Program which the GRF is inadequate to meet.[44] The report of the Congressional Conference Committee on the authorization bill makes it clear that this solution "is intended [only] as a contingency authority. . . ."[45] A more permanent solution is anticipated to result from a new requirement for a Presidential report to Congress on this subject which has also now been mandated. The report is to set

forth the history of United States foreign military sales financing . . . [and] include recommendations on replenishing the Guaranty Reserve Fund . . . and recommendations on other matters agreed to in consultation with the chairman and ranking minority member of the Committee on Foreign Relations of the Senate and of the Committee on Foreign Affairs of the House of Representatives.[46]

Presumably, this report and the Executive Branch consultations with Congress will provide the foundation for a future resolution to the issue of the GRF. [Editor's note: a copy of this report, which was furnished to Congress on 15 November 1985, is reprinted on pp. 57-64 of this Journal.]

THE MILITARY ASSISTANCE PROGRAM (MAP)

Unlike the numerous legislative changes made to the FMS Program, the grant Military Assistance Program experienced minimal legislative impact other than the 18% reduction in the Administration's funding request, as previously discussed. Restrictions on appropriated funds were limited to four countries: a ceiling of up to \$215 million was authorized in MAP grants for *Turkey*; a ceiling of \$40 million was placed on *the Philippines*; no less than \$40 million is to be made available to *Tunisia*; and *Zaire*, which was prohibited from receiving any FMS funding, may receive up to \$7 million in MAP funds.[47] Also, Congress restricted both MAP and FMS assistance to *Haiti* to only "necessary transportation, maintenance, communications, and related articles and services to enable the continuation of migrant and narcotics interdiction operations." [48] Apart from these funding considerations, two important new legislative provisions affecting MAP deserve attention.

The first involves the *net proceeds accruing from the recipients' sale of defense articles previously furnished to a foreign country under MAP*. Prior to the new legislation, all such sales proceeds were required to be returned to the U.S. Government. Since 1983, the Administration had sought to obtain authority to permit foreign countries to retain the net proceeds of such sales. In testimony before Congress in support of this legislative initiative, the Administration observed that,

The provision to waive MAP proceeds would relieve recipient countries and ourselves of an unnecessary administrative burden. Currently, countries possessing obsolete MAP grant defense articles of little value, have difficulty getting rid of it because of the elaborate procedures required to send the proceeds of the sale back to the U.S. This practice is neither militarily or financially cost effective. Since equipment is seldom, if ever, sold and few proceeds have been paid to the U.S. Government, the waiver of the requirement in selected cases will not result in any significant loss to the U.S. Treasury. Of course, all legal and policy controls applicable to third country transfers would continue to apply to any sales of this equipment.[49]

Congress has now enacted the desired authority, permitting the President to waive the requirement for returning the net proceeds to the U.S. Government, "if he determines that to do so is in the national interest of the United States." [50] However, Congress placed a limit on this authority. The Administration had asked that it apply to any MAP items delivered "more than five years prior to the President's determination"; thus, under the Administration's proposal, any such determination made in 1985 would apply to items received prior to 1980. Congress chose to limit

the waiver authority to articles delivered prior to 1975. In commenting on this modification to the Administration's proposal, the HFAC reported that, "The committee placed this limitation on the waiver authority to make clear that countries cannot sell new equipment (sophisticated aircraft, tanks, etc.) provided under the MAP program after 1975." [51]

The second important MAP change involves the use of MAP grant appropriations by recipient governments to fund FMS purchases. This year, the Administration requested, and Congress approved, the *exclusion of the costs of salaries* of members of the U.S. Armed Forces from the pricing of any FMS case which is wholly paid with MAP grant funds. [52] Although this new legislative provision applies to all such fully MAP-funded FMS purchases of defense articles, services, and training, the Administration emphasized its application to military training. Specifically, the initiative was "sought to conform the calculation of the costs of training using MAP funds to the calculations of the costs of IMET," since the latter already excludes military salary costs. [53] Similarly, it was stressed that this change "would permit countries to stretch their dollars and train more students," thereby enabling grant aid countries to get "the most for their MAP training money"; further, "it also reduces the cost of some services such as Mobile Training and Technical Assistance Teams . . ." [54]

Military Training

Several important changes have been made in the foreign military training programs conducted by the U.S. The most significant of these, perhaps, is the return to *full costing for FMS-purchased training*. [55] Initiated by Congress, this action rescinds the provisions of the FY85 Continuing Resolution, which established, at the Administration's request, a single price structure for all FMS training. The new legislation reestablishes the former multiple-tier pricing structure employed for such training. Thus, there are now again three separate prices for FMS training, each based on differing cost assessments. First, there is a *basic FMS price* which requires full recovery of all direct and indirect training costs. Secondly, there is a reduced *FMS/NATO price*, which permits U.S. agreements with NATO, Australia, Japan, and New Zealand, whereby all indirect training costs (such as certain base operations costs and the asset use charges) are excluded. Finally, there is a still further reduced *FMS/IMET price* which is charged to countries purchasing FMS training and concurrently receiving grant IMET assistance. This latter price is based on incremental pricing which includes only the additional costs (both direct and indirect) that are incurred by the U.S. in furnishing such assistance. A further pricing consideration affects this pricing structure by virtue of the provision which exempts the costs of military salaries from FMS purchases funded exclusively by MAP grant funds. [56] There is, of course, one additional price--the *IMET price*--for training acquired through the grant IMET program. This price, equal to the FMS/IMET price on sales which are wholly MAP-financed, was unaffected by the FY85 legislation, and again remains unchanged for FY86.

Other training-related changes include two provisions involving the reciprocal, no-cost exchange of U.S. military education and training with foreign governments. The first provision authorizes the:

attendance of foreign military personnel at professional military education [PME] institutions [war colleges and command and staff colleges] in the United States (other than academies) without charge . . . , if such attendance is pursuant to an agreement providing for the exchange of students on a one-for-one, reciprocal basis each fiscal year between those professional military education institutions and comparable institutions of foreign countries and international organizations. [57]

This new provision, sought by the Administration since 1982, now eliminates the disparity whereby several countries which did not charge for U.S. students attending their PME schools were still required to pay tuition for their students at comparable U.S. schools.

In a similar manner, a new chapter to the AECA now authorizes the provision of military training and related support to foreign personnel on a reciprocal, no-cost basis, to include a waiver of charges for transportation, food services, health services, and logistics and the use of facilities and equipment.[58] Although the new legislation may appear to apply to any type of military training, the legislative history of this provision reveals it is clearly intended for (and limited to) unit exchanges. Training made available under this provision must be pursuant to an established agreement or other arrangement between the U.S. and the reciprocating government. Further, the reciprocation must be provided within one year, or the foreign government "shall be required to reimburse the United States for the full costs of the training and related support provided by the United States." [59]

Two additional new legislative provisions involve exemptions from the general prohibitions in Sec. 660, FAA/61, regarding DOD-furnished police training to foreign personnel. The first exempts *maritime training*: the President is now "encouraged to allocate a portion of the" annual IMET appropriation "for use in providing education and training in maritime search and rescue, operation and maintenance of aids to navigation, port security, at-sea law enforcement, international maritime law, and general maritime skills." [60] This legislative change will now "permit the U.S. Coast Guard to provide a more comprehensive training program and facilitate coordination with various maritime-related units within other countries." [61]

The second new feature deals with the provision of direct *assistance for law enforcement agencies*, and involves two specific exemptions from the Sec. 660, FAA/61 prohibitions. The first permits training, advice, or financial support to be provided to such agencies in any country "which has a longstanding democratic tradition, does not have standing armed forces, and does not engage in a consistent pattern of gross violations of internationally recognized human rights." [62] The HFAC reported its intention that assistance be made available under this provision "only when all three of the stated conditions exist." Furthermore, the Committee reported its belief that only the following Eastern Caribbean countries currently qualify for such assistance: Costa Rica, Antigua and Barbuda, Barbados, Dominica, Montserrat, St. Christopher-Nevis, St. Lucia, and St. Vincent and the Grenadines. [63] The second exemption for assistance for law enforcement agencies applies specifically to Honduras and El Salvador. For these countries, such assistance may now also be provided, but in each case the assistance is conditioned upon a notification to Congress of a Presidential determination of significant progress having been made in the respective country in eliminating human rights violations. [64]

A further change in training-related legislation was sought involving a modification to the requirements for *Congressional notification of IMET funding reprogrammings*. The Administration has sought relief since 1982 from the requirement for reporting to Congress all transfers (i.e., reprogrammings) of IMET funds from one country account to another. Since some IMET funds invariably become surplus to the needs of various countries during any given fiscal year, these funds are reprogrammed for use by other countries. The Administration asked Congress to reduce the reporting requirement to only those IMET reprogramming actions involving \$25,000 or more. Both the SFRC and HFAC approved the request and it was subsequently enacted in the Authorization Act. Similar action was required in the Appropriations Act, but both the SAC and HAC opposed any reporting requirement change, and the initiative therefore failed to be enacted. Thus, for FY 1986, all IMET reprogramming actions, regardless of their value, must continue to be reported to Congress.

One additional training initiative also failed to receive Congressional indorsement. The Administration had proposed to exempt IMET from certain statutory prohibitions. This would have permitted grant military training for countries otherwise prohibited from receiving U.S. funded security assistance, by overcoming the restrictions of both the Symington-Glenn Amendments (Secs. 669 and 670, FAA/61) related to nuclear weapons proliferation, and the

Brooke Amendment (Sec. 518, P.L. 99-190) involving indebtedness. Statutory prohibitions related to human rights violations and police training restrictions were not to be exempted in this proposal. The Administration advised Congress that, "Denying foreign recipients' eligibility for the relatively small but highly effective IMET program stifles efforts to establish close military-to-military ties." [66] Although the HFAC disapproved the initiative, the SFRC endorsed it, but limited its applicability to Argentina and Brazil. [67] Subsequently, however, the entire proposal was rejected by the Conference Committee on the Authorization Act, and thus failed enactment.

The Economic Support Fund (ESF)

No new procedural changes affecting the management of the grant ESF program were enacted for FY86. As in past years, the bulk of the FY86 funding was earmarked for the Middle East, specifically for Israel (\$1.2 billion) and Egypt (\$815 million). This represents 55 percent of the total \$3.7 billion ESF appropriation. Also, Congress continued the practice of expediting the cash transfer of Israel's total ESF grant, requiring the transfer of all funds to be completed within 30 days of the start of FY86. For Egypt, up to \$115 million of its appropriation is authorized to be provided as a cash transfer "with the understanding that Egypt will undertake economic reforms or development activities which are additional to those which would be undertaken in the absence of the cash transfer." [68] Further, the CR requires that not less than \$200 million of Egypt's ESF grant is to be used to purchase goods from the United States under the Commodity Import Program.

In addition to the above, Congress responded to the serious economic problems of these two countries with *supplemental FY85 ESF appropriations* totalling \$2.008 billion, allocated as follows: Israel, \$1.5 billion; Egypt, \$500 million; and the Middle East Regional Program (i.e., development projects in the West Bank and Gaza), \$8 million. These supplemental appropriations are to remain available for use until 30 September 1986. [69]

Congress also chose to earmark ESF funding for FY86 at no less than the value identified for the following seven specified countries: Cyprus, \$15 million; Ecuador, \$15 million (to be disbursed within 30 days following CR enactment, or by 18 January 1986); Pakistan, \$250 million; the Philippines, a \$125 million ceiling; Portugal, \$80 million; Tunisia, \$20 million; and Uruguay, \$15 million. [70] Other specified ESF earmarks were provided for Southern Africa Regional Programs (\$30 million) and for strengthening the Peruvian judicial system (\$1 million). [71]

Additionally, in actions which received extensive media coverage, Congress authorized ESF grants for several groups confronted by Communist aggression. This includes grants of not less than \$15 million for the provision of food, medicine, or other humanitarian assistance to the *Afghan people*, and not less than \$1.5 million or more than \$5 million for the noncommunist resistance forces in *Cambodia*. [72] Similarly after a long and trying debate, Congress authorized \$27 million "for humanitarian assistance to the *Nicaraguan democratic resistance*" (i.e., the "contras" or counterrevolutionaries who oppose the Sandinista regime); these funds, however, cannot be administered by either DOD or the Central Intelligence Agency. [73] Finally, in a related action, Congress rescinded the 1980 Clark Amendment which prohibited assistance of any kind for military or paramilitary operations in *Angola*. [74] The Administration announced it had no plans for initiating any such assistance, but that it sought repeal of the restrictions in order to have the option of doing so. The Administration viewed the repeal of the Clark Amendment, and the humanitarian aid for peoples in Afghanistan, Cambodia, and Central America, as sending an important diplomatic signal throughout the world of the U.S. commitment to assisting victims of communist aggression.

Peacekeeping Operations (PKO)

The funding reduction for PKO (from \$44 million for FY85 to \$34 million for FY86) reflects the phase-out at the end of FY85 of funding for the Caribbean Peacekeeping Force on Grenada. The FY86 funds have been allocated to the two remaining peacekeeping operations, the United Nations Force in Cyprus (\$9 million) and the Multinational Force and Observers in the Sinai region (\$25 million).

The Administration succeeded in obtaining Congressional approval of a proposal, first requested in 1983, for Presidential drawdown authority to meet the requirements of *peacekeeping emergencies*. Should the President determine that an "unforeseen emergency requires the immediate provision" of peacekeeping assistance, he may now "direct the drawdown of commodities and services from the inventory and resources of any agency of the United States Government of an aggregate value not to exceed \$25,000,000 in any fiscal year." [75] The new legislation also provides authorization for reimbursement, as required, to the applicable appropriation, fund, or account for the commodities and services employed in such peacekeeping emergencies. [76]

Direct Commercial Sales Program

The only legislative change affecting the Direct Commercial Sales Program involves *increased penalties* for criminal and civil violations of the various provisions of the AECA governing the import and export of defense articles and defense services. The Administration had sought, and Congress agreed, to increase the criminal penalties for each violation from \$100,000, or two years imprisonment, or both, to \$1,000,000, or ten years imprisonment, or both. [77] The ceiling for civil penalties for such violations was also raised, from \$100,000 to \$500,000 for each violation. [78]

The Special Defense Acquisition Fund (SDAF)

The Administration sought two legislative changes in the authorization bill affecting the management of the SDAF, but only one was enacted as requested. This involves new authority for the *Defense Logistics Agency (DLA)* to use the SDAF to acquire defense articles to meet unplanned foreign support requirements. Because DLA operates on a revolving stock fund basis, it previously had no authority, beyond that provided by Cooperative Logistics Supply Support Arrangements, to stock additional items in anticipation of future requirements. The Administration projected a requirement for about \$50 million from the SDAF to rectify this issue. [79] As the following new statutory provision illustrates, Congress supported the request, and also did not set any ceiling on the SDAF monies which could be used for this purpose:

The Fund may be used to keep on continuous order such defense articles and defense services as are assigned by the Department of Defense for integrated management by a single agency thereof for the common use of all military departments in anticipation of the transfer of similar defense articles and defense services to foreign countries and international organizations pursuant to this Act, the Foreign Assistance Act of 1961, or other law. [80]

The Administration was less successful in persuading Congress to enact a *procurement-for-payback* initiative. This proposal would have enabled the SDAF to be used to procure for DOD technically advanced, front-line weapon systems. Although such systems would be ineligible for release to foreign governments, the systems would serve to replace items drawn from U.S. service stocks for foreign sales. The SFRC, which endorsed this initiative, cited the following examples of advanced missile systems which might be procured with FMS monies to replace less advanced models: AIM-7M, AIM-9M, IRR Maverick, and Stinger Post. [81]

Although this initiative had first been recommended to Congress by its own auditing agency, the General Accounting Office, Congress nevertheless rejected it.[82]

The Administration also sought an increase in the SDAF capitalization level, from \$900 million to \$1 billion. This increase was requested to support the \$345 million the Administration proposed for SDAF obligational authority for FY86. Congress did authorize an increase in the capitalization level to \$1 billion[83], but limited the obligational authority to \$325 million.[84] Congress also rejected the Administration's request to extend the SDAF obligational authority over a three-year period, limiting it to a one-year period as in the past.[85]

War Reserve Stockpiles for Allied or Other Foreign Forces (WRSA)

Congress has again authorized annual increases in the value of the U.S. War Reserve Stockpile maintained in the Republic of Korea. In 1984 an increase of \$248 million was authorized for FY85, and increases of \$360 million and \$125 million have now been authorized for FY86 and FY87, respectively.[86] The Korean stockpile consists of defense articles which remain under the title and control of the U.S. The authority for annual increases does not represent new appropriations authority, but rather permits the transfer of current U.S. stocks to the Korean stockpile.

Security Assistance Organizations (SAOs)

Since 1982 Congress has been asked to provide security assistance personnel overseas with increased funding authority for *official reception and representation expenses*, i.e., the expenses of social obligations inherent in the professional duties of SAO personnel. For the past several years, the funds available for this purpose have been limited to an annual \$70,000 appropriation in the MAP account. This year, however, Congress supported the Administration by providing, in addition to the regular \$72,500 appropriation (including \$2,500 for non-SAO entertainment expenses), the annual authority to draw a maximum of \$72,500 from the FMS administrative services surcharge fund.[87] Thus, a total of \$145,000 will be available for official reception and representation expenses, thereby reducing the personal expenses that DOD personnel have borne in past years for these purposes.

The Administration also requested and received Congressional authority, per Section 515, FAA/61, to increase *SAO manning* to more than six uniformed personnel in the following four countries: El Salvador, Honduras, Pakistan, and Tunisia.[88] The original proposal also included Sudan and Venezuela, but the requested increases were denied for the SAOs in those two countries. In addition to the four newly authorized countries, previous manning authority for over six military personnel has been retained for SAOs in 12 other countries: Egypt, Greece, Indonesia, Jordan, Korea, Morocco, the Philippines, Portugal, Saudi Arabia, Spain, Thailand, and Turkey. Congress also authorized such manning for all 16 SAOs on a permanent basis, rather than a limited fiscal year authority as in prior years.

The new legislation also provides clarification of the types and numbers of U.S. military and civilian personnel conducting security assistance activities overseas which must be reported to Congress on a quarterly basis. These *quarterly reports* must now provide estimates of the number of all U.S. military personnel, USG civilian personnel, and USG civilian contract personnel serving abroad in support of FMS, commercial sales, MAP, IMET, PKO, and Anti-Terrorism Assistance activities. These estimates are to include the number of such personnel, by category, who were in each foreign country at the end of the reporting quarter, as well as the number who were in each country at any time during that quarter.[89] As the HFAC reported, under these revised requirements, "security assistance teams assigned for temporary periods to perform specific tasks (e.g., mobile training teams)" are now to be included in these quarterly reports.[90]

Anti-Terrorism Assistance

The Anti-Terrorism Assistance Program, managed by the Department of State, received a substantial increase in appropriated funding. In FY85, the program was funded at \$5 million; the appropriation for FY86 reflects an increase of almost 50%, to \$7.42 million. Further, in addition to providing U.S. based anti-terrorism training for foreign government personnel, Congress has now authorized up to \$325,000 of the total annual authorization for the provision of small arms and munitions to eligible countries participating in anti-terrorism training.[91]

Several other anti-terrorism related legislative provisions have been enacted for FY86. One requires the Secretary of State to *coordinate all U.S. anti-terrorism assistance* to foreign countries, and to provide an annual report to Congress of all such assistance.[92] This provision corrects an omission in Section 622, FAA/61. A revised provision places a prohibition on U.S. assistance "to any country which the President determines--(1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or (2) otherwise supports international terrorism." [93] The President is authorized to waive this prohibition if he "determines that national security or humanitarian reasons justify such waiver." [94] Additionally, if such U.S. sanctions are imposed on a country because of its support for international terrorism, "the President should call on other countries to impose similar sanctions on that country." [95]

Another related requirement involves authority for the President to "ban the importation into the U.S. of any goods or services from any country which supports terrorism or terrorist organizations or harbors terrorists or terrorist organizations." [96] Further, a separate provision authorizes the President to specifically prohibit the import into the U.S. of "any article grown, produced, extracted, or manufactured in Libya," and also to prohibit U.S. exports to Libya of "any goods or technology, including technical data or other information. . . ." [97]

The new authorization bill also includes several anti-terrorism provisions dealing with the maintenance of *foreign airport security*. In addition to requiring assessments by the Secretary of Transportation of security measures maintained at foreign airports, the President is now authorized to prohibit U.S. and foreign air carriers from providing air service between the United States and any high risk foreign airport. [98] Furthermore, the Secretary of State is authorized to issue a travel advisory for any airport which "does not maintain and administer effective security measures," and where "a condition exists that threatens the safety or security of passengers, aircraft, or crew travelling to or from a foreign airport. . . ." [99] Finally, the President is now required to suspend all assistance under the FAA/61 and the AECA for any country in which an insecure airport is located, and which the Secretary of State has determined to be "a high terrorist threat country." [100]

Miscellaneous Legislative Provisions

A wide variety of miscellaneous changes in security assistance were effected in the recent legislation and are briefly described below.

One such change expands the definition of defense survey team reports which must be furnished to Congress on a quarterly basis, per Sec. 36(a), AECA. The new term, *security assistance survey* has now replaced the former term, "defense requirement survey" as the collective term for all defense surveys which must be reported. As defined, "security assistance survey" now "means any survey or study conducted in a foreign country by United States Government personnel for the purpose of assessing the needs of that country for security assistance, and includes defense requirement surveys, site surveys, general surveys or studies, and engineering assessment surveys." [101] This amendment not only broadens the reporting requirement, but also modifies Sec 26(c), AECA, by authorizing the Chairman of the House

Committee on Foreign Affairs or the Chairman of the Senate Foreign Relations Committee to be provided copies of such surveys upon request, rather than to simply have access to them as previously authorized.

Another change in AECA terminology involves the replacement of the former term, "significant combat equipment," with the new term, *significant military equipment*.^[102] This language change was made to conform the AECA language to that employed in the recent revision to the *International Traffic in Arms Regulations* (ITAR). As defined in the ITAR, significant military equipment means defense articles "for which special export controls are warranted because of their capacity for substantial military utility or capability."^[103]

Two new legislative provisions affect the U.S. Navy's security assistance activities. The first involves the *valuation of naval vessels*. The SFRC reported that the General Accounting Office had found that the U.S. had sold excess Navy vessels to foreign governments at "a fraction of their value," thereby costing "the U.S. taxpayer millions of dollars."^[104] For such sales in the future, the following valuation guidelines must be met: "the actual value of a naval vessel of 3,000 tons or less and 20 years or more of age shall be considered to be not less than the greater of the scrap value or fair value (including conversion costs) of such vessel, as determined by the Secretary of Defense."^[105]

The Navy also will now be required to change its procedures for the *lease or loan* of its vessels to foreign governments. This change reflects the resolution of a controversy that had persisted since 1981. In that year, Congress added Chapter 6 to the AECA to assure that fair rents are charged for all leased defense equipment, and that such equipment is monitored to assure its proper use. The Navy, however, claimed exemption from these AECA provisions, stating that Sec. 7307 of Title 10, United States Code, under which the Navy leased its ships, did not prohibit rent-free leases nor subject them to oversight. The SFRC, again citing a GAO study, reported that the Navy had "provided over \$65.3 million in U.S. military equipment, including ships valued at over \$62 million, on a rent-free basis," to recipients "capable of paying rent" for such equipment, "including Greece, Italy, and Turkey."^[106] To correct this practice, Congress has now amended Title 10 by requiring that all leases and loans of U.S. vessels be accomplished in accordance with security assistance legislation.^[107]

In other action, Congress has made significant changes in the *President's special waiver authority* under Sec. 614, FAA/61, which permits FMS sales "without regard to any provision" of the FAA, AECA, or related statutes.^[108] Given the complexity of these provisions, the following summarizes the principal features of the special waiver authority prior to the recent changes, and then provides a description of those changes.

The Sec. 614 special waiver authority permits the President to authorize sales of up to \$250 million in any one fiscal year, using FMS credits/MAP grant funds or other foreign assistance funds. To employ this authority, he would have to determine and advise Congress "that to do so is important to the security interests of the United States."^[109] No more than \$50 million can be provided to any one country, unless it is "a victim of active Communist or Communist-supported aggression."^[110] Finally, with certain exceptions, the President can use this authority "to make an unlimited amount of sales on a cash basis."^[111]

The new authorization act introduces additional conditions and establishes new ceilings on the President's authority. First, while retaining the \$250 million ceiling for credits/grants, a new ceiling of \$750 million has been established for the amount of cash sales that can be so authorized in any one fiscal year. Next, for sales under this authority which are financed in part by FMS credits/MAP grants, and in part by cash, the credit/grant financing would apply against the \$250 million ceiling, and the cash against the \$750 million ceiling. Finally, the \$50 million ceiling on any one country is retained, but an overall ceiling of \$500 million has now been established for

victimized countries; this \$500 million ceiling is to be applied against the aggregate ceiling of \$1 billion (i.e., \$250M + \$750M) on all sales under this authority in any one fiscal year.[112]

In another area, several provisions of the new legislation link security assistance with *international narcotics control efforts*. For example, \$1 million in MAP appropriations has been earmarked "to arm, for defensive purposes, aircraft used in narcotic control eradication or interdiction efforts." [113] The HFAC reported that the U.S. has previously provided aircraft to several countries for these purposes, the principal recipients being Burma, Colombia, and Mexico. The use of MAP funds overcomes the limitations of Sec. 482, FAA/61, which prohibits the use of narcotics control assistance funds for the procurement of weapons or ammunition.[114]

Additionally, the provision of assistance to several countries has been tied to narcotics control programs. Thus, in allocating ESF funds for *Jamaica* for FY86, the President is required to:

give major consideration to whether the Government of Jamaica has prepared, presented, and committed itself to a comprehensive plan or strategy for the control and reduction of illicit cultivation, production, processing, transportation, and distribution of marijuana within a specific stated period of time.[115]

Further, under the provisions of Section 537 of the CR (P.L. 99-190), not more than 50% of the funds made available to Jamaica may be obligated unless the President certifies to Congress that the Government of Jamaica is "sufficiently responsive to the United States Government concerns on drug control." Similarly restrictive conditions have been attached to the MAP, ESF, and IMET programs for *Bolivia* regarding that country's production of coca, the source of cocaine. In Bolivia's case, all funding is dependent on Presidential certifications to Congress which will allow the following: up to 50 percent of the aggregate amount of FY86 assistance will be provided only after the President certifies that Bolivia has enacted legislation establishing its legal requirements for coca; the remainder of the FY86 assistance will be provided only after the President certifies that Bolivia has achieved the coca eradication targets for FY85, as specified in a 1983 agreement with the U.S. Comparable conditions also apply to FY87 assistance for Bolivia.[116] In the case of *Peru*, all U.S. assistance for FY86 is dependent on a Presidential report to Congress of Peru's successful development of a plan which will establish "its legal coca requirements, license the number of hectares necessary to produce the legal requirement, and eliminate illicit and unlicensed coca production"; further, FY87 assistance is conditioned on Peru having developed and begun implementing the aforementioned plan, and, as with Jamaica, no more than 50% of all U.S. assistance may be provided unless the President certifies to Congress regarding Peru's responsiveness to U.S. drug control concerns.[117]

The subject of *nuclear weapons proliferation* is also addressed in two new provisions in the authorization act. The first adds to existing nuclear weapons-related prohibitions on assistance by denying assistance to any non-nuclear weapons state which,

exports illegally (or attempts to export illegally) from the United States any material, equipment, or technology which would contribute significantly to the ability of such country to manufacture a nuclear explosive device, if the President determines that the material, equipment, or technology was to be used by such country in the manufacture of a nuclear explosive device.[118]

As noted by the HFAC, this new prohibition was "prompted by the 1984 conviction of a Pakistani national for attempting illegally to export to Pakistan equipment of potential application to nuclear explosives. . . ."[119]

The second nuclear-weapons related provision applies directly to *Pakistan*. In 1981, Congress granted a specific waiver (expiring on 30 September 1987) of the various provisions of Sections 669, FAA/61, regarding nuclear weapons proliferation. However, in the current authorization bill, future assistance (including sales of military equipment and technology) are conditioned on an annual Presidential certification and report to Congress that "Pakistan does not possess a nuclear explosive device and that the proposed United States assistance program will reduce significantly the risk that Pakistan will possess a nuclear explosive device." [120] In its comments on this provision, the SFRC reports it "is deeply concerned by the continued development of military capabilities in Pakistan's unsafeguarded nuclear program which jeopardizes future U.S. economic and military assistance." [121] A similar expression of concern was reported by the HFAC. [122]

The new authorization act also demonstrates considerable Congressional concern with the issue of *internationally recognized human rights*. Various human rights compliance provisions have been attached to the security assistance authorizations for no less than seven countries, including El Salvador, Guatemala, Haiti, Mozambique, Paraguay, Peru, and the Philippines. [123] In related action, the provision of security assistance to Liberia "is based on the expectation of a successful completion of free and fair elections, on a multi-party basis, in October 1985 as proposed by the Government of Liberia, and on a return to full civilian, constitutional rule as a consequence of those elections." [124] A similar provision applies to Sudan, with security assistance provided in "the expectation that the Government of Sudan will make progress toward reaching a political settlement with all parties to the conflict in the south of Sudan." [125] Section 543 of the CR also addresses Sudan, barring assistance to that country if the President determines that the new Government of Sudan (which signed a military aid agreement with Libya in July, 1985) "is acting in a manner that would endanger the stability of the region or the Camp David peace process."

Congress also included a human rights related provision in the CR dealing with *military coups*. Originally designed by the House to suspend foreign aid to El Salvador or Guatemala if the elected head of government is deposed by military coup or decree, the provision was then broadened. As finally enacted, Section 513 of the CR calls for the suspension of U.S. assistance to *any* country where the "duly elected" head of government is deposed by a military coup or decree.

Human rights considerations are also included in a new Presidential authority to remove a country from the list in Sec. 620(f), FAA/61, of countries prohibited from receiving grant assistance from the U.S. This listing identifies "Communist countries," and the Administration requested this amendment primarily to delete the People's Republic of China from the list. Although China is not specified in the amendment, the President is now authorized to remove any country from the list and thereby authorize it to receive grant assistance, if he "determines, and reports to Congress that such action is important to the national interest of the United States." The amendment, however, provides additional human rights-related guidance to the President:

It is the sense of the Congress that when consideration is given to authorizing assistance to a country removed from the application of this subsection, one of the factors to be weighed, among others, is whether the country in question is giving evidence of fostering the establishment of a genuinely democratic system, with respect for internationally recognized human rights. [126]

A further new human rights related provision involves the earlier Presidential authority to lift the Sec. 502B, FAA/61 prohibition on furnishing security assistance to any country, "the government of which engages in a consistent pattern of gross violations of internationally recognized human rights." When the lifting of this prohibition is in the national interest of the United States, before making funds available for such assistance, the President must now provide

a report to Congress which specifies "the country involved, the amount and kinds of assistance to be provided, and the justification for providing the assistance, including a description of the significant improvements which have occurred in the country's human rights record." [127]

Several *country-specific provisions* of the new authorization act deserve consideration. For example, the non-binding "sense of Congress" statement regarding arms sales to *Jordan*, which was included in the FY85 Continuing Resolution, has been restated for FY86. This new provision reflects Congress' view that no FMS financing be provided to Jordan for the procurement of:

U.S. advanced aircraft, new air defense weapons systems, or other new advanced military weapons systems . . . unless Jordan is publicly committed to the recognition of Israel and to negotiate promptly and directly with Israel under the basic tenets of United Nations Resolutions 224 and 338.

Furthermore, any notification to Congress of proposed sales of these types of systems must be accompanied by a Presidential certification of Jordan's public commitment to the recognition of Israel and to prompt and direct negotiations with Israel. [128] The Administration had opposed this new certification requirement, and President Reagan termed it an "unnecessary and inappropriate" restriction which, together with other similar restrictions, "seriously constrain my ability to carry out foreign policy. . . ." [129]

Subsequent to the enactment of these Jordanian provisions, the Administration provided advance notification to Congress on 21 October 1985 of its long-awaited proposed \$1.9 billion arms sale to Jordan, consisting of the following: two squadrons of either F-16 or F-20 aircraft; 300 AIM-9P4 air-to-air missiles; 222 Improved Hawk and 72 Basic Stinger air defense missiles; and 32 Bradley M3 cavalry fighting vehicles. Strong bipartisan opposition to the sale was manifest in Congress. On 22 October, a joint resolution opposing the sale was introduced in the Senate under the co-sponsorship of 74 Senators, including 29 Republicans; a similar majority disapproving the sale was lined up in the House. Finally, on 25 November, President Reagan signed a Senate-initiated compromise resolution (S.J. 228) which delays the proposed sale until 1 March 1986 unless direct and meaningful peace negotiations are underway before then between Israel and Jordan. In commenting on this compromise, the HFAC Chairman, Rep. Dante Fascell (Democrat, Florida), observed that it "gives the peace process a chance" while, at the same time, it permits Congress to reject the sale outright at a later date if direct peace talks fail to materialize. [130]

In related action, P.L. 99-83 codifies U.S. policy which *prohibits negotiations with the Palestinian Liberation Organization (PLO)*. Negotiations by any officer or employee of the USG, or any agent or other individual acting on behalf of the USG, with the PLO or any of its representatives are prohibited, "unless and until the Palestinian Liberation Organization recognizes Israel's right to exist, accepts United Nations Security Council Resolutions 242 and 338, and renounces the use of terrorism." [131]

The new authorization act also establishes a requirement for a Presidential certification to Congress related to the delivery of the five E-3A airborne warning and control system (AWACS) aircraft sold to *Saudi Arabia* in 1981. This new requirement involves President Reagan's "1981 AWACS Communication to the Senate," in which the President agreed to certify to the Congress that certain conditions would be met before the first aircraft delivery took place. These conditions relate to security of the aircraft's technology, data sharing, control over third-country participation, Saudi Arabian participation in the Middle East peace process, and so on. The President also advised the Senate that any required changes in the arrangements described in his 1981 AWACS Communication "would be made only with Congressional participation." [132] The new legislation has the effect of codifying these Presidential commitments in law, by *requiring* the President to

make such certifications and conduct any necessary consultations with Congress per his earlier commitments.[133]

Other country specific legislation of interest involves *Chile* and *Mozambique*. The Administration had requested authority to waive statutory restrictions on foreign military sales to Chile to furnish safety-related equipment. Specifically, this equipment would include cartridge actuated devices (CADs) and propellant actuated devices (PADs) for ejection seats on the F-5E/F and the A/T-37 type U.S.-manufactured aircraft which were previously sold to the Chilean Air Force. Congress approved the requested waiver, but limited it to only the specified CAD/PAD items and technical manuals, "so long as the items are provided only for purposes of enhancing the safety of the aircraft crew." [134]

In the case of Mozambique, the Administration had proposed relatively modest grant funding for MAP, IMET, and ESF programs for that country. Congress, however, opposed such support for a Marxist government, and thus no military assistance may be provided to Mozambique unless the President certifies to Congress that the government of Mozambique: (1) is making a concerted and significant effort to comply with internationally recognized human rights; (2) is making progress in implementing essential economic and political reforms; (3) has implemented a plan by 30 September 1986 to reduce the number of foreign military personnel in Mozambique to no more than 55; and (4) is committed to holding free elections by 30 September 1986.[135] Economic assistance for Mozambique is permitted, but is limited to use in the private sector of the economy, with funds to be channeled to non-government entities to the maximum extent practicable.[136]

A final legislative provision of special interest reflects continuing Congressional concern for *restraining the transfer of conventional arms to the less developed countries*. Two new statutory requirements have been established. The first calls for the President, at the earliest possible date, and in consultation with U.S. allies, to "initiate discussions with the Soviet Union and France aimed at beginning multilateral negotiations to limit and control" such arms transfers.[137] The second requires a Presidential report to Congress which (1) specifies the steps taken by the Administration to implement such multilateral negotiations and which (2) "examines and analyzes United States policies concerning the export of conventional arms, especially sophisticated weapons, and possible approaches to developing multilateral limitations on conventional arms sales." [138]

CONCLUSION

As the preceding discussion has illustrated, the FY86 authorization act (P.L. 99-83) provides an especially broad variety of important and often complex changes affecting the conduct of U.S. security assistance activities. Indeed, not since December, 1981, has Congress provided such a comprehensive legislative package for security assistance. Similarly, the Continuing Appropriations Resolution (P.L. 99-190), provides the funding required to carry out security assistance in FY 1986, albeit at levels far below those which the Administration believes essential to an effective global program. Clearly, the numerous statutory provisions discussed herein will require considerable modification to existing management policies and procedures employed within the security assistance community. Executives and managers charged with developing and implementing these changes should be aided by the background analyses provided herein.

NOTES

1. As quoted in Belcher, Mary. "Reagan Signs Foreign Aid, Complains of Limitations," *Washington Times*, 9 August 1985, p. 3.
2. Cf. H.R. 5119, 10 May 1984, and S. 2582, 18 April 1984.

3. Appropriations for security assistance and other foreign assistance programs were provided through a series of such continuing appropriations throughout fiscal years 1980-81 and 1983-85. The last formal appropriations bill for this purpose was enacted for FY82 (P.L. 97-121).

4. As quoted in Felton, John. "Congress Clears Foreign Aid Authorization Bill," *Congressional Quarterly Weekly Report*, 3 August 1985, p. 1540.

5. For a discussion of the fate of these initiatives during the 1984 legislative process, see the author's "Security Assistance Appropriations for Fiscal Year 1985," *The DISAM Journal* (Winter, 1984-1985), pp. 27-31.

6. As quoted in Belcher, op. cit., p. 3.

7. Sec. 101, P.L. 99-83, as amends Sec. 31, Arms Export Control Act (AECA). Until FY85, the financing programs for Israel and Egypt consisted of both guaranteed loans which had to be repaid, and "forgiven credits." In FY85, for the first time, the financing programs for both countries consisted entirely of forgiven credits. The FY86 funding continues this latter practice.

8. Sec. 101, P.L. 99-83, *International Security and Development Cooperation Act of 1985*, 8 August 1985, as amends Sections 31(b)(3)(A) and 31(b)(3)(B), AECA, and P.L. 99-190, 19 December 1985. The Authorization Act specified not less than \$250 million for procurement in Israel of articles and services for the LAVI program; the CR increased this amount to not less than \$300 million, and extended it to cover "other activities."

9. Sec. 101, P.L. 99-83, as amends Sec. 31(b)(3), AECA, and P.L. 99-190.

10. U.S. Senate. *International Security and Development Cooperation Act of 1985*. Report of the Committee on Foreign Relations on S960, 19 April 1985, p. 16. Hereafter cited as SFRC Report.

11. Sec. 102, P.L. 99-83, as amends Sections 23(C)(1) and 23(C)(2), AECA.

12. *Congressional Presentation Document for Security Assistance Programs for FY 1985*, p. 20. Hereafter cited as CPD. Of the 15 countries identified as recipients of concessional credits, the following six were proposed to also receive regular Treasury rate FMS loans: Colombia, Jordan, Portugal, Thailand, Tunisia, and Turkey.

13. Under the provisions of Sec. 703(a), P.L. 99-83, such assistance may only be provided to Guatemala if the U.S. President certifies to Congress that:

(1) For fiscal year 1986, an elected civilian government is in power in Guatemala and has submitted a formal written request to the United States for the assistance, sales, or financing to be provided.

(2) For both fiscal years 1986 and 1987, the Government of Guatemala made demonstrated progress during the preceding year--

(A) in achieving control over its military and security forces,

(B) toward eliminating kidnappings and disappearances, forced recruitment into the civil defense patrols, and other abuses by such forces of internationally recognized human rights, and

(C) in respecting the internationally recognized human rights of its indigenous Indian population.

Furthermore, Sec. 703(C) provides that all assistance for Guatemala "shall be suspended if the elected government of that country is deposed by military coup or decree."

Additionally, the CR (P.L. 99-190) provides that none of the FMSFP funds shall be made available to Guatemala unless the President makes the following certifications to Congress:

(1) For Fiscal Year 1986, an elected civilian government is in power in Guatemala and has submitted a formal written request to the United States for the assistance, sales, or financing to be provided.

(2) For Fiscal Year 1986, the Government of Guatemala made demonstrated progress during the preceding year (a) in achieving control over its military and security forces, (b) toward eliminating kidnappings and disappearances, forced recruitment into the civil defense patrols, and other abuses by such forces of internationally recognized human rights, and (c) in respecting the internationally recognized human rights of its indigenous Indian population.

14. Sec. 703(c), P.L. 99-83.

15. CPD, op. cit., and P.L. 99-190.

16. Sec. 901(e), P.L. 99-83.

17. P.L. 99-190.

18. Sec. 901(a) and Sec. 901(c), P.L. 99-83. The following extract of Sec. 901(a) identifies the human rights areas in which the Congress looks for progress by the Government of the Philippines:

(1) guaranteeing free, fair, and honest elections in 1987, or sooner should any such elections occur;

(2) ensuring the full, fair, and open prosecution of those responsible for the murder of Benigno Aquino, including those involved in the cover-up;

(3) ensuring freedom of speech and freedom of the press, and unrestricted access to the media on the part of all candidates for public office in the local and provincial elections of 1986 and the Presidential election of 1987;

(4) establishing the writ of habeas corpus and the termination of the Presidential Detention Action and all other forms of detention without charge or trial;

- (5) releasing all individuals detained or imprisoned for peaceful political activities;
 - (6) making substantial progress in terminating extrajudicial killings by the Philippine military and security forces, and the prosecution of those responsible for such killings in the past;
 - (7) implementing structural economic reforms and a strengthening of the private sector, including elimination of corruption and monopolies; and
 - (8) enhancing the professional capability of the Philippine armed forces and security forces (including the Philippine Constabulary and the Civilian House Defense Forces).
19. Sec. 101(e)(2), P.L. 99-83.
 20. The \$450 million in military assistance for Greece, and the total \$642.852 million for Turkey (FMSFP + MAP), equates to an almost perfect 7-10 ratio. Although this distribution ratio has been applied for several years, it has never been enacted into law. An attempt to do so this year was made in the HAC mark-up of the appropriations bill [H.R. 3228, 1 August 1985]. The Administration strongly opposed the inclusion of this provision in law, and it was subsequently eliminated from the final statutory language of the bill by the Appropriations Conference Committee; however, that Committee's report on the bill includes the statement that "the Conferees direct that military assistance for Greece and Turkey be provided only in accordance with a seven-to-ten ratio." [*Congressional Record*, 19 December 1985, p. H12969.]
 21. Sec. 101(f), P.L. 99-83.
 22. Sec. 101(b), P.L. 99-83, as amends Sec. 31(b)(2), AECA, and P.L. 99-190.
 23. Sec. 101(b) and Sec. 101(e)(2), P.L. 99-83, as amends Sec. 31, AECA.
 24. Sec. 101(b), P.L. 99-83, as amends Sec. 31(c), AECA.
 25. Expenses recovered through the FMS Administrative Services Surcharge include those associated with sales negotiations, case implementations, procurements, Reports of Discrepancy, corrections to deficiencies or damages of items furnished, program control, computer programming, accounting and budgeting, and the administration of the FMS Program at command headquarters and higher levels.
 26. Sec. 109, P.L. 99-83, as amends Sec. 21(e)(1)(A), AECA.
 27. U.S. House, *International Security and Development Cooperation Act of 1985*. Report of the Committee on Foreign Affairs on H.R. 1555, 11 April 1985, p. 20. Hereafter cited as HFAC Report.
 28. Sec. 110, P.L. 99-83, as amends Sec. 21(h), AECA.
 29. Sec. 111, P.L. 99-83, as amends Sec. 21(h), AECA.
 30. HFAC Report, p. 20.
 31. Op. cit.
 32. SFRC Report, pp. 17-18.
 33. Sec. 118, P.L. 99-83, as amends Sec. 36(b), AECA.
 34. Felton, op. cit., p. 1541.
 35. Sec. 118, P.L. 99-83, as amends Sec. 36(b), AECA.
 36. Ibid.
 37. Sec. 112, P.L. 99-83, as amends Sec. 25(a)(5), AECA.
 38. Ibid.
 39. The Guaranty Loan Program has not been employed since the start of FY85. Since then, the funds for all FMS loans have been drawn from direct Congressional appropriations. These "direct loans" are not backed by the Guaranty Reserve Fund.
 40. *FY 1985 CPD*, p. 47.
 41. Schneider, William, Jr., Under Secretary of State for Security Assistance, Science, and Technology. Statement before the subcommittee on Arms Control, International Security, and Science of the House Foreign Affairs Committee, 28 February 1985. Reprinted in *The DISAM Journal*, Spring, 1985, p. 37.
 42. Gast, Philip, C., Lieutenant General, USAF, Director, Defense Security Assistance Agency. Statement before the Subcommittee on Arms Control of the House Foreign Affairs Committee, 28 February 1985. Reprinted in *The DISAM Journal*, Spring, 1985, p. 48.
 43. "Conference Report on S960," *Congressional Record*, 30 July 1985, p. H6732.
 44. Sec. 106(b), P.L. 99-83.
 45. "Conference Report on S960," op. cit.
 46. Sec. 106(a), P.L. 99-83.
 47. Sections 101(f), 901, 805, and 804, respectively, P.L. 99-83, and P.L. 99-190.
 48. Sec. 705(e), P.L. 99-83. In Sec. 705(b) Congress has also required a Presidential determination for Haiti before IMET, ESF, or development assistance funds may be obligated for that country. The President must determine that the Government of Haiti:
 - (1) is continuing to cooperate with the United States in halting illegal emigration to the United States from Haiti;

- (2) is cooperating fully in implementing United States development, food, and other assistance programs in Haiti (including programs for prior years); and
- (3) is making progress toward improving the human rights situation in Haiti and progress toward implementing political reforms which are essential to the development of democracy in Haiti, such as progress toward the establishment of political parties, free elections, free labor unions, and freedom of the press.
49. Gast, op. cit., p. 47.
 50. Sec. 123(b), P.L. 99-83, as amends Sec. 505(f), FAA.
 51. HFAC Report, op. cit., pp. 22-23.
 52. Sec. 123(a), P.L. 99-83, as amends Sec. 503(a), FAA/61.
 53. Schneider, op. cit., p. 37.
 54. Gast, op. cit., p. 46.
 55. Sec. 108, P.L. 99-83, as amends Sec. 21(a)(1)(C), AECA.
 56. Sec. 123, P.L. 99-83, as amends Sec. 503(a), FAA/1961. Cf. earlier discussion of the Military Assistance Program.
 57. Sec. 126, P.L. 99-83, as amends Chap. 5, Part II, FAA/61.
 58. Sec. 116, P.L. 99-83, adding Chapter 2C to the AECA.
 59. Ibid. See also "Legislative Amendments Regarding Reciprocal Military Training," *The DISAM Journal*, Fall, 1985, pp. 14-15.
 60. Sec. 127, P.L. 99-83, as amends Chapter 5, Part II, and Sec. 660(b), FAA/61.
 61. Gast, op. cit., p. 45.
 62. Sec. 711, P.L. 99-83, adding Sec. 660(c) to the FAA/61.
 63. HFAC Report, op. cit., p. 78.
 64. Sec. 711, P.L. 99-83, adding Sec. 660(d) to the FAA/61.
 65. Sec. 1209, P.L. 99-83, as amends Sec. 634A, FAA/61.
 66. Gast, op. cit., p. 46.
 67. SFRC Report, op. cit., p. 46.
 68. Sec. 202(b)(3), P.L. 99-83.
 69. Sec. 208, P.L. 99-83.
 70. Secs. 203(a), 901(d)(3), 204, 805(b)(2), and 720, P.L. 99-83, and P.L. 99-190.
 71. Secs. 802(a) and 707(b), respectively, P.L. 99-83, and P.L. 99-190.
 72. Secs. 904(b) and 905, respectively, P.L. 99-83, and Secs. 542 and 544, respectively, P.L. 99-190. In the case of Cambodia, the \$5 million may be drawn from either the ESF or MAP account. Also, Sec. 906(a), P.L. 99-83, specifies that none of the Cambodian funds may be used to assist "the Khmer Rouge or any of its members [in their ability] to conduct military or paramilitary operations in Cambodia or elsewhere in Indochina."
 73. Sec. 722(g)(1), P.L. 99-83.
 74. Sec. 811, P.L. 99-83, as repeals Sec. 118, P.L. 96-533, *International Security and Development Cooperation Act of 1980*. The repealed amendment was named for former Senator Dick Clark, Democrat, Iowa, and was originally enacted in 1976.
 75. Sec. 105(b), as amends Sec. 552, FAA/61.
 76. Ibid.
 77. Sec. 119(a), P.L. 99-83, as amends Sec. 38(c), AECA.
 78. Sec. 119(b), P.L. 99-83, as amends Sec. 38(e), AECA.
 79. Gast, op. cit., p. 50.
 80. Sec. 121(a), P.L. 99-83, as amends Sec. 51(a), AECA.
 81. SFRC Report, op. cit., p. 20.
 82. U.S. General Accounting Office, "Design and Operation of Special Defense Acquisition Fund Can Be Improved." Report GAO/NSIAD-85-18, 15 January 1985, pp. 4-6.
 83. Sec. 1403, DOD Authorization Act, 1986, P.L. 99-145.
 84. P.L. 99-190.
 85. Ibid. Also, a clerical error in Sec. 121(b), P.L. 99-83, affecting SDAF revenue sources, was corrected with the passage of P.L. 99-139, 30 October 1985.
 86. Sec. 124, P.L. 99-83, as amends Sec. 515(c)(1), FAA/161.
 87. Sec. 120, P.L. 99-83, as amends Sec. 43, AECA.
 88. Sec. 125, P.L. 99-83, as amends Sec. 515(c)(1), FAA/61.
 89. Sec. 117, P.L. 99-83, as amends Sec. 36(a)(7), AECA.
 90. HFAC Report, op. cit., p. 21.
 91. Sec. 501, P.L. 99-83, as amends Sec. 575, FAA/61.

92. Sec. 502, P.L. 99-83. The new report must be furnished to Congress not later than 1 February each year.
93. Sec. 503(a), P.L. 99-83, as amends Sec. 620A, FAA/161. The assistance to be denied includes any assistance under the FAA, the Agricultural Trade Development and Assistance Act of 1954, the Peace Corps Act, and the AECA.
94. Ibid.
95. Ibid.
96. Sec. 505(a), P.L. 99-83. Presidential consultations with Congress, and reports to Congress of actions taken under this authority, are specifically required by Sec. 505(b) and Sec. 505(c).
97. Sec. 504(a) and Sec. 504(b), P.L. 99-83.
98. Sec. 551, P.L. 99-83, as amends Sec. 115, Federal Aviation Act of 1958.
99. Sec. 552(a), P.L. 99-83.
100. Sec. 552(b), P.L. 99-83. These Sec. 552 sanctions may be lifted upon a determination by the Secretary of Transportation, in consultation with the Secretary of State, that effective security measures are maintained and administered at the applicable airport.
101. Sec. 114, P.L. 99-83, as amends Sec. 26, AECA.
102. Sec. 1211, P.L. 99-83, as amends Sec. 47(6), AECA.
103. Sec. 120.19(a), *International Traffic in Arms Regulations*, as published in the *Federal Register*, 6 December 1984, p. 47685.
104. SFRC Report, op. cit., p. 17. The GAO reported that each of 11 U.S. Navy vessels sold to foreign countries in FY81 and FY82 was underpriced, for a total loss of \$31.2 million. These losses were a product of: (1) sales prices based on scrap value rather than the higher fair value; (2) failure, in some cases, to charge for conversion and overhaul costs; and, (3) providing, at no charge, many spare parts and supplies which were left aboard the ships when they were transferred to the purchasers. See U.S. General Accounting Office, "Excess Navy Ships Sold to Foreign Countries at Understated Prices." Report GAO/NSIAD-84-7, 12 April 1984.
105. Sec. 107(a), P.L. 99-83, as amends Sec. 21(a), AECA. It should be noted that since 9 September 1983, DOD 7290.3-M, p. 702-20, has required that the price computation for the sale of excess ships include the same criteria which have now been enacted, i.e., overhaul costs, as well as the previously required valuation based on the higher of market value as operating vessel or as scrap, or the fair value.
106. SFRC Report, op. cit., p. 24. Cf., U.S. General Accounting Office, "Defense Department's Management of Property Leased to Foreign Governments Is Still Inadequate." Report GAO/ID-83-6, 23 November 1982.
107. Sec. 122, P.L. 99-83, as amends Sec. 7307(b)(1) of Title 10, U.S.C.
108. Sec. 614(a)(1), FAA/61.
109. Ibid.
110. Sec 614(a)(4), FAA/61.
111. HFAC Report, op. cit., p. 24.
112. Sec. 128, P.L. 99-83, as amends Sec. 614(a)(4), AECA.
113. Sec. 607, P.L. 99-83.
114. HFAC, op. cit., p. 54.
115. Sec. 610, P.L. 99-83.
116. Sec. 611, P.L. 99-83.
117. Sec. 612, P.L. 99-83, and Sec. 537, P.L. 99-190.
118. Sec. 1204, P.L. 99-83, as amends Sec. 670(a)(1), FAA/61. This new provision also provides that "an export (or attempted export) by a person who is an agent of, or is otherwise acting on behalf of or in the interests of, a country shall be considered an export (or attempted export) by that country." Also, the HFAC reported that "the term 'person' is not limited to individuals, but includes corporations and associations. . . ." HFAC Report, op. cit., p. 99.
119. HFAC Report, op. cit., p. 99.
120. Sec. 902, P.L. 99-83, as amends Sec. 620E, FAA/61. The FY1986 report was made to Congress on 25 November 1985.
121. SFRC Report, op. cit., p. 45.
122. HFAC Report, op. cit., p. 99.
123. For specific human rights provisions applying to each country, see P.L. 99-83: Sec. 702(b) and 702(d), El Salvador; Sec. 703(a), Guatemala; Sec. 705(b)(3), Haiti; Sec. 813(b), Mozambique; Sec. 706, Paraguay; Sec. 707(a), Peru; and Sec. 901(a), the Philippines.
124. Sec. 807, P.L. 99-83.
125. Sec. 806(b), P.L. 99-83.
126. Sec. 1202, P.L. 99-83, as amends Sec. 620(f), FAA/61.
127. Sec. 1201, P.L. 99-83, as amends Sec. 502B, FAA/61.

128. Sec. 130(b) and Sec. 130(c), P.L. 99-83; see also Secs. 545 and 549, P.L. 99-190. In its original mark-up of the authorization bill, the HFAC called for an outright *prohibition* on such sales unless the President certified to Congress that Jordan met the required conditions; however, this was altered in the Conference Committee to a "sense of Congress" statement, while retaining the certification requirement. HFAC Report, op. cit., pp. 25-26, and *Congressional Record*, op. cit., p. H6733.
129. U.S. Department of Defense, *Selected Statements*, 85-4, August, 1985, p. 55.
130. "Conditional Arms Sales OK'd," *Dayton Daily News*, 13 November 1985, p. 2.
131. Sec. 1302(b), P.L. 99-83; see also Sec. 531, P.L. 99-190.
132. Sec. 131(a)(2), P.L. 99-83.
133. Sec. 131(b) and Sec. 131(c), P.L. 99-83.
134. Sec. 715, P.L. 99-83, as amends Sec. 726, *International Security and Development Cooperation Act of 1981*, P.L. 97-113.
135. Sec. 813(b), P.L. 99-83.
136. Sec. 813(a), P.L. 99-83.
137. Sec. 129(a), P.L. 99-83.
138. Sec. 129(b), P.L. 99-83. The following items are required to be examined and analyzed in this new report:
 - (1) the lessons of earlier efforts to negotiate restraints on the export of conventional arms;
 - (2) the evolution of supplier practices and policies;
 - (3) the evolution of recipient country attitudes regarding conventional arms transfers;
 - (4) the effect upon regional stability and security of conventional arms transfers by the United States and its allies and the Soviet Union and its allies;
 - (5) the relationship between arms imports and the external debt of recipient countries, the allocation of their internal resources, and their economic well-being;
 - (6) the relationship between arms exports by Western European countries and the needs of those countries to support their domestic military procurement programs;
 - (7) the prospects for engaging the Soviet Union in serious discussions concerning arms transfers, both globally and as they relate to regional security problems;
 - (8) possible measures by the United States and Western European suppliers to control levels of sophisticated weapons sales, both regionally and globally; and
 - (9) the timing and phasing of international conventional arms control negotiations.

ABOUT THE AUTHOR

Dr. Louis J. Samelson has served on the DISAM faculty for four years as the Deputy for Research and Editor of *The DISAM Journal*. A specialist in foreign policy and legislation, and a retired Air Force lieutenant colonel, he holds a Ph.D. in Political Science from the University of Illinois.

Deficit Reductions and FY 1986 Security Assistance

[The following is an extract of joint Department of State/USAID message 270729Z Dec 85, Subject: "FY 1986 Continuing Resolution." The extract discusses the implications of the Gramm-Rudman-Hollings deficit reduction plan for the FY 1986 Security Assistance Program.]

On December 11, the President signed the debt ceiling extension bill, which included the Gramm-Rudman-Hollings deficit reduction proposal. Under the new law, the President must submit annual budgets which, by FY 1991, would show a zero deficit. If the projected deficit in a fiscal year exceeds the target established under Gramm-Rudman for that year, automatic across-the-board spending reductions would be triggered. For FY 1986, the measure will have the effect of reducing by an as-yet-unspecified percentage virtually every "program, project, and activity" in the foreign aid area. The term "program, project, and activity" (PPA) is defined in the CR conference report to mean A.I.D.'s functional OA accounts as well as its centrally-funded program. For ESF, MAP, and FMS, PPA is defined as the country, regional, and central program level based on the *Congressional Presentation Document* (CPD) or the allocations submitted to Congress pursuant to Section 653(a) of the Foreign Assistance Act, whichever is the more recent. Earmarks and ceilings are not exempt. The exact cut (or "sequester") is still being calculated, based on the total amount of non-exempt programs appropriated for FY 1986, and could range from 1.5 to 4.0 percent. The first official estimate will be made in January, the order to sequester funds is due on February 1, and the actual reductions are to take place on March 1.

Thus, with few exceptions (housing guaranties, foreign service retirement), Gramm-Rudman will reduce further the amounts made available under the CR [P.L. 99-190] for FY 1986. The allocation process, already underway, will thus include a new element in FY 1986, in that each country and program allocation will include a set-aside portion to allow for the Gramm-Rudman reduction on March 1. We will transmit these allocations once they are finalized.

For FY 1987, the size of the Gramm-Rudman cut will depend on the projected FY 1987 deficit as estimated in mid-1986. The extent to which reductions are required will depend on the degree to which the deficit projected at that time exceeds the Gramm-Rudman target (\$144 billion for FY 1987).