
Military Assistance Legislation for Fiscal Year 1991: A Summary

By

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The following is a summary of the major provisions of P.L. 101-513, the "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991." This act provides funding and legislative direction for FY 1991 security assistance programs. Additionally, a discussion of the significance of P.L. 101-508 (Budget Enforcement Act) for credit financing programs is included.

The President signed P.L. 101-513 on 5 November 1990, the same day he signed the other 12 required appropriations acts which provide funding for other government programs. The delay in completing action on these 13 appropriations acts was tied directly to the well-publicized problems the Administration and Congress encountered in passing a final budget reconciliation act. That Act (P.L. 101-508), which establishes maximum ceiling levels for funding government programs, finally cleared Congress on 28 October 1990 after a series of four short-term continuing joint house appropriations resolutions (CRs) had been passed. Since none of the annual appropriations acts had yet been signed by the President, it was necessary to pass yet a fifth CR which would carry through interim funding until 5 November 1990. These five CRs plus the originally proposed second CR which the President had vetoed, set a new record of six continuing appropriations resolutions presented to a President in a single month.

Although an appropriations bill for foreign operations was finally enacted, such was not the case for a companion authorization bill. Beset once again by internal partisan differences, the Senate proved unable for the fourth consecutive year to pass such an authorization bill. Thus, as in previous years (FY 1984-FY 1985 and FY 1988-FY 1990), U.S. foreign assistance activities will be conducted in FY 1991 in the absence of a formal authorization act; all required authorizations for the obligation and expenditure of FY 1991 foreign assistance funds have necessarily been provided in the Appropriations Act (Section 549, P.L. 101-513).

PROGRAM PROVISIONS IN P.L. 101-513.

A. The Foreign Military Financing Program (FMFP)

1) During the lengthy session in which the Conference Committee completed action on H.R. 5114, it was later learned that a significant error had been made in the mark-up of the Foreign Military Financing Program (FMFP) appropriation. The Committee mark-up included a special earmark of \$403.5 million in concessional FMFP loans; however, this earmark duplicated the unintended inclusion of that identical sum in the grant FMFP appropriation mark-up. Thus, the bill erroneously included an extra \$403.5 million. The error was not identified until after both Houses of Congress had passed the bill. The inclusion of the additional \$403.5M had the unfortunate effect of raising the overall appropriations bill by \$395 million above the ceiling mandated for foreign operations expenditures under the new budget reconciliation act (P.L. 101-508). On 9 November, after the error had been discovered, the Office of Management and Budget was required to announce that under newly revised budget procedures, it would have to place into effect an approximate 1.9 percent reduction to the Foreign Operations Appropriations Act, amounting to \$389,387,000. Since this was essentially an unintended error in legislative drafting,

"congressional and administration experts are confident that the 102nd Congress will rectify the situation in January by restoring budget authority to the intended level." [Doherty, *Congressional Quarterly Weekly Report*, p. 3888.] Accordingly, the figures presented below reflect the appropriations, earmarks, and ceiling levels intended by Congress, and no attempt has been made to convert them to reflect the 1.9 percent reduction. Also, unless otherwise specified, section references appearing in brackets below refer to specific sections in P.L. 101-513.

2) \$4,663,420,800 was been appropriated for the FMFP for FY 1991.

a) \$4,259,920,800 will be provided in grant funding.

b) \$403,500,000 will be provided in concessional (i.e., low interest rate) loans.

3) The FY 1991 FMFP appropriation is \$44,758,766 (or 1%) below the FY 1990 appropriation of \$4,708,179,566; and it is \$353,479,200 (or 7%) below the Administration's request for FY1991 of \$5,016,900,000.

• 4) FY 1991 FMFP earmarks total \$4,008 million and represent almost 86 percent of the total FMFP account. (See earmark data presented below.)

5) "African Biodiversity Earmark." A unique and very unusual earmark of \$15M in FMFP funds has been provided for "countries in Africa for programs which support conservation and biological diversity." [Section 533.]

6) FMFP funds are now authorized to be obligated at the time they are apportioned, rather than when the funds are applied to specific cases. This change means that "grant agreements" are no longer required for those FMFP grant recipient countries which are prohibited from using such grants to finance direct commercial sales (DCS) contracts.

7) A ceiling of \$300M has been set on the amount of FMFP funds which may be used to finance DCS contracts, excluding such contract financing for Israel and Egypt. Countries which are eligible for such DCS financing in FY 1991 include Greece, Jordan, Morocco, Pakistan, Portugal, Tunisia, Turkey, and Yemen, all of which (plus Israel and Egypt) meet the continuing statutory criteria of having been justified by the Administration in the FY 1989 CPD to receive FMFP. [Title III, Military Assistance, FMFP.]

8) FMFP funding for Greece and Turkey (\$350M and \$500M respectively) followed the traditional 7:10 ratio; however, specific language in the House bill requiring application of the ratio was opposed, as in past years, by the Administration, and the terminology was stricken by the Conference Committee. Also as in past years, if any grant FMFP funds are provided to Turkey, Greece must be allocated at least \$30M in such grant funds.

9) No FMFP funding is permitted in FY91 for Liberia, Somalia, The Sudan, or Zaire.

10) Guatemala is authorized up to \$2.88M in FMFP in FY 1991 to be used only for the acquisition of non-lethal defense equipment/services.

11) Any FMFP assistance to be provided to Haiti in FY 1991 is also limited to non-lethal defense equipment/services.

**COMPARISON OF SECURITY ASSISTANCE APPROPRIATIONS LEVELS
(DOLLARS IN THOUSANDS)**

	FY 1991 HOUSE ¹ APPROPRIATIONS	FY 1991 SENATE APPROPRIATIONS	P.L. 101-513 FY 1991 APPROPRIATIONS
FMFP	\$4,634,920.0 ²	\$4,692,268.0	\$4,663,420.8 ³
IMET	47,196.0	47,196.0	47,196.0
ESF	3,460,000.0	3,080,000.0	3,141,000.0
PKO	<u>32,800.0</u>	<u>32,800.0</u>	<u>32,800.0</u>
TOTALS:	\$8,174,916.0	\$7,852,264.0	\$7,884,416.8

**COMPARISON OF FMFP EARMARKS AND CEILINGS
(DOLLARS IN MILLIONS)**

A. EARMARKS (MINIMUM SPENDING LEVELS)

	HOUSE	SENATE	P.L. 101-513
1. Israel	\$1,800	\$1,800	\$1,800
2. Egypt	1,300	1,300	1,300
3. Jordan	50	-----	-----
4. Turkey	-----	545	500
5. Greece	-----	381.5	350
6. Morocco	-----	52	43
7. Africa	-----	-----	15

**B. CEILINGS (MAXIMUM SPENDING LEVELS)
(Millions of Dollars)**

	HOUSE ⁴	SENATE	P.L. 101-513
1. Greece	301.0	-----	-----
2. Turkey	430.0	-----	-----
3. Portugal	95.0	-----	100.0
4. Guatemala	2.877	-----	2.877
5. El Salvador	85.0	85.0	85.0
6. Counter-Narcotics	118.0	-----	118.0
7. Admin. Expenses	27.9208	27.9208	27.9208

¹All House levels were proposed to be reduced by 2 percent due to an amendment sponsored by Representative Bob Clement (D-TN). This provision was deleted by the Conference Committee.

²\$405M of the House-proposed FMFP was to be provided in concessional loans; the remainder (\$4,229.92M) was to be provided as grants. The Senate bill provided for all FMFP funding in grant form.

³The final FMFP FY 1991 appropriation includes \$403.5M in concessional loans and \$4,259.92M in grants.

⁴All House levels were to be reduced by 2 percent (Clement amendment) which was subsequently rejected by the Conference Committee.

12) Section 23 of the AECA has been amended to permit FMFP funds to be used to repay prior military assistance *credits* previously extended under the authority of Section 23, or to repay *loans* previously guaranteed under the authority of Section 24. This authority, however, does not apply to the *prepayment* of prior credits or loans. [Section 580 as amends Section 23, AECA.]

13) FMFP funding for counter-narcotics activities in Bolivia, Colombia, and Peru is to be limited in the aggregate to not more than \$118M. Further, this provision explicitly states that such funds may not be made available "to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights." [Section 559(a)(4).]

14) For the first time the FMFP has been given formal deobligation-reobligation authority. Such authority permits the deobligation of unspent obligated funds from a prior fiscal year and their reobligation for a current fiscal year. This authority, often referred to as "De-Ob/Re-Ob," has long been available for the ESF and numerous other government-funded programs. In its application to FMFP, it permits unspent funds appropriated for a prior year for Section 23, AECA grants and concessional loans to be carried over into a current budget year and reallocated to another country. [Section 515.]

15) The Conference Committee rejected a House proposal to limit to 75% the amount of a country's annual FMFP appropriation which could be used for "cash flow" payments on FMS cases. [House-proposed Section 581, H.R. 5114.] Such a provision would have put a heavy burden on both Israel and Egypt whose credit programs currently are fully funded under the cash flow program. The Conference Committee, however, expressed its continuing concern "that the current extent of cash flow financing in the foreign military financing program restricts the flexibility of the Congress to make adjustments in future levels of military assistance." [*Congressional Record*, 27 October 1990, p. H13422.]

16) The Conference Committee also deleted a Senate-initiated proposal which would have set a ceiling of \$265 million on the amount of funds derived from the administrative and logistics support surcharges for the payment of U.S. administrative personnel costs (including salaries) associated with security assistance management. [Senate-proposed Section 590, H.R. 5114.]

B. The International Military and Training Program (IMETP)

1) \$47,196,000 was appropriated by Congress for the FY1991 IMETP. This is \$180,000 less than the FY 1990 appropriation, and also is \$3,304,000 below the Administration's FY1991 request for \$50,500,000.

2) The Congress adopted a Senate-proposed IMET earmark of \$1 million for expanding courses for foreign officers as well as civilian managers and administrators of defense establishments. The focus of these courses is to be on professional level management training, with emphasis on military justice systems, codes of conduct, and the protection of human rights. Section 541, FAA, has been amended to permit non-Ministry of Defense civilian personnel to be eligible for this new program, "if the military education and training would (i) contribute to responsible defense resource management, (ii) foster greater respect for and understanding of the principle of civilian control of the military, or (iii) improve military justice systems and procedures in accordance with internationally recognized human rights." [Title III, Military Assistance, IMET.]

3) Congress also accepted the Senate Appropriation Committee's (SAC's) recommendation to prohibit FY 1991 IMET programs for five countries: Liberia, Somalia, Sudan, Zaire, and Malaysia. [Title III, Military Assistance, IMET.] "Blatant abuse of human rights" by the military establishments of the first four nations was cited by the SAC for denying them IMET funding. For Malaysia, a specific human rights violation was given as the reason for its prohibition: a refusal by the Government of Malaysia to furnish asylum to refugees fleeing Vietnam. In the view of the SAC, "The callous push back policy of forcing boats loaded with refugees back out to sea is a human rights abuse which is intolerable." [U.S. Senate. *Report of the Committee on Appropriations to Accompany H.R. 5114, Foreign Operations, Export Financing, And Related Programs Appropriations Bill, 1991*, Report 1201-519, October 10, 1990, pp. 134-35. Hereinafter termed *SAC Report*.]

4) Up to \$2M of the IMET appropriation may be made available for International Narcotics Control Program-related military training in Bolivia, Colombia, Peru, and Ecuador. [Section 559(a)(5).]

5) Several additional proposals regarding the IMETP were introduced by Sen. Cranston (D-CA), but were subsequently withdrawn and inserted in the record. They are identified below as a means of illustrating some of the thinking that is currently underway in Congress regarding the future of the IMETP. [*Congressional Record*, 22 December 1990, pp. 16358-61.]

a) Change the name of IMET to DMET, i.e., Democratic Military Education and Training.

b) Increase from \$1M to \$2.5M the IMET earmark "to be spent on the new initiatives designed to empower civilians in the oversight of the military." [It should be noted that in its original consideration of this provision, the Senate Appropriations Subcommittee on Foreign Operations (SACFO) had initially proposed a \$4M earmark.]

c) "Explicitly include members of national legislatures and their staffs in the training process."

d) Mandate that after 31 March 1991, all IMET "trainees receive instructions specifically designed to promote adherence to the universal military responsibilities of protecting civilians and prisoners from harm and intimidation, reporting to the proper military and legal authorities all abuses of human rights by military forces, and accepting the authority of elected civilian officials."

e) "Require that nation-building training be offered to foreign military personnel only if the recipient country does not have any civilian agencies or organization that could absorb such training."

C. The Special Defense Acquisition Fund (SDAF)

1) Congress authorized a FY1991 obligation authority (OA) level of \$350M for the SDAF. The House had proposed an OA of \$278,796,000 (the FY 1990 level), but receded in Conference to the higher Senate-proposed level. The Administration had requested an OA of \$325M. (See next item.)

2) The Conference Committee rejected an unusual Senate-proposed provision which would have required that \$100 million of the recommended SDAF OA be made available to Israel to finance purchases of equipment from the SDAF. A special "installment" repayment plan would

have been established for this unique program whereby Israel would have been permitted to finance its acquisitions in three equal annual payments, due no later than 30 September 1991, 1992, and 1993. [*SAC Report*, p.1327.] Although the special provision for financing Israeli procurements was dropped, the additional \$100M which was added by the Senate specifically for that purpose was retained in the final OA authorized for the SDAF for FY1991.

D. Section 506, FAA Drawdown Authority. The Conference Committee rejected a House-proposed provision which would have limited the total emergency drawdown authority of Subsections 506(a)(1) and 506(a)(2) of the FAA to \$100 million, rather than \$150 million (\$75M per subsection) as at present. [House proposed Section 547, H.R. 5114.]

E. Excess Defense Articles. Several new provisions of P.L. 101-513 deal with this subject. They include the following:

1) All sales of excess defense equipment accomplished under the authority of the AECA must now be reported to the two Congressional Committees on Appropriations. Such reports must include information on the original acquisition cost of such articles as well as their sale price. Meeting this requirement will prove exceedingly difficult for DOD inasmuch as hundreds of excess equipment sales are accomplished each year through DOD property disposal offices. [Section 548.]

2) An amendment has been enacted to revise Section 516(a), FAA, (the Southern Region Amendment provision). The new amendment permits countries which were providing military forces for Operation Desert Shield as of 1 October 1990, and which also received FMFP assistance during FY 1990, to now receive excess U.S. defense equipment. Thus, this provision extends the EDA authority of the Southern Region Amendment to Morocco, Pakistan, and Senegal. [Section 589.]

3) Section 596, P.L. 101-513, has added a new and substantial Section 519 to the FAA, entitled, "Additional Authorities Relating to the Modernization of Military Capabilities." This new section contains several important provisions, to include:

a) Authorization for the transfer of *nonlethal* excess defense articles to any country for which FMFP assistance was justified in the annual CPD. (Note: FMFP funding need not be *allocated* to such a country; all that is required is that a CPD justification had been made for such funding.) [Section 519(a), FAA, as added by Section 596, P.L. 101-513.]

b) Such transfers of nonlethal excess defense articles will be conducted without any requirement for the reimbursement of DOD expenses as normally required under the provisions of Section 632(d), FAA. [Section 519(d), FAA.]

c) DOD funds may not be expended for the crating, packing, handling, and transportation of nonlethal excess defense articles unless the President directs that such articles be transferred to a country at no charge. The latter can only be done if: (1) the country has a base rights agreement with the U.S.; (2) the country is eligible for assistance from the International Development Association; and (3) the nonlethal excess defense articles are being provided to that country under the authority of Section 519(f), FAA.

d) Excess defense equipment sales which are notified to Congress under the provisions of Section 36(b) will not be included under the \$250 million annual ceiling specified in Section 31(d), AECA.

e) The Greek/Turkish 7:10 ratio applies to all excess equipment furnished to either country under the provisions of either Section 516 or 519, FAA.

4) A new Section 518 has also been added to the FAA, under the heading, "Environment and Global Warming," and it includes yet another provision dealing with EDA. Under this new provision, the transfer to friendly countries, international organizations, and private and voluntary organizations of nonlethal excess defense articles and small arms is authorized for the purpose of protecting the environment. Such transfers are limited to existing defense stocks and may not have an adverse impact on U.S. force readiness. Further, the transportation of such articles to the recipient country may be accomplished free of cost on a space-available basis by DOD. [Section 533, P.L. 101-513, as adds Section 518 to the FAA.]

5) Finally, given the proliferation of new legislation dealing with EDA, it is not surprising that Congress found it necessary to deal with the issue of the priority of delivery of such equipment. A new provision requires that NATO allies and major non-NATO allies on the southern and southeastern flank of NATO "be given priority to the maximum extent feasible over the delivery of such articles to other countries." [Section 599.]

F. MAP Sales. The USG may now permit countries which were recipients in the past of grant MAP equipment (i.e., old MAP) to retain the net proceeds from the sales of any such equipment which they received from the USG prior to 1985. (Countries are still required to obtain USG approval for any such sales and the USG may still elect to have a country transfer the net proceeds to the U.S. Treasury.) Congress had previously passed (in 1985) a similar provision which, until the present legislation was enacted, was limited to equipment received prior to 1975. [Section 123(b), P.L. 99-83, as amends Section 505(f), FAA.] The purpose of these provisions has been to eliminate the administrative burden associated with returning sales proceeds to the USG and to provide an inducement to countries to dispose of obsolete equipment for which continued maintenance represents an uneconomic use of limited national budgetary resources. The new provision essentially covers all of the material furnished under the old MAP Program. [Title III, Military Assistance, FMFP.]

G. Depleted Uranium Shells. While continuing to limit the sale of depleted uranium (DU) anti-tank shells to NATO, NATO member countries, Australia, Japan, Korea, Israel, Egypt, and Pakistan, a new Senate-initiated revision to this provision now provides the President with a waiver authority to permit such sales to other countries. To exercise this waiver authority, the President must determine that to do so "is in the national security interest of the United States." [Section 553.]

H. International Narcotics Control

1) A total of \$59.9 million in ESF funds *may be used* to finance counter-narcotics activities in Bolivia, Ecuador, Jamaica, and Peru. Note: this is not an earmark. [Section 559(a)(1).]

2) An additional total of \$195M in ESF funds *may be made available* to the same four countries for counter-narcotics purposes; however recipients of these designated funds must be making "significant progress" in various specified counter-narcotics activities. Note: this also is not an earmark. [Section 559(a)(2).]

3) Not more than \$118M in FMFP funds may be made available for counter-narcotics activities in Bolivia, Colombia, and Peru. The Administration had originally requested \$141 million for this purpose. The authorized funds are not to be provided to any country which engages in a consistent pattern of gross violations of internationally recognized human rights.

Note: this provision does not include Jamaica, and it is not an earmark but a ceiling. [Section 559(a)(4).]

4) Notwithstanding the police training restrictions of Section 660, FAA, up to \$2M in IMET funds may be provided to finance DOD-conducted training for civilian police elements in Bolivia, Colombia, Ecuador, and Peru. The units designated to receive the training must be organized specifically to conduct counter-narcotics operations. Note: this provision also represents a ceiling. [Section 559(a)(5).]

5) The Government of Peru has continued to reject offers of U.S. military assistance, calling instead for increased levels of economic assistance. Moreover, the Senate Appropriations Committee has been concerned over reports "that the human rights situation in Peru has deteriorated during the past year," and the SAC "has strongly recommended" that, as "a minimum, no military assistance be provided to Peru until the Peruvian Government commits itself to strong measures to bring the military under civilian control and to enforce respect for basic human rights." [SAC Report, pp. 20-21.] Consequently, it is likely that the bulk of the FY 1991 counter-narcotics military assistance funding will go to Colombia and Bolivia.

6) A Senate-sponsored proposal which would have authorized the transfer of title to a foreign purchaser in any sale of U.S. aircraft for counter-narcotics purposes was rejected by the Conference Committee.

I. War Reserve Stockpiles for Allies (WRSA)

1) Section 514(c) of the FAA has been amended by adding the phrase, "or major non-NATO allies" [i.e., Australia, Japan, Korea, Israel, and Egypt]. This change makes permanent the authority to locate U.S. military stockpiles within the boundaries of major non-NATO allies, and thereby formally adds Israel to the list of countries eligible for WRSA. [Section 573(a).]

2) A total of \$378 million worth of U.S. defense equipment is authorized to be added to the WRSA during FY 1991, of which not less than \$300 million is designated "for stockpiles in Israel." The remainder is to be distributed to Korea (\$68M) and Thailand (\$10M). [Section 573(b).]

J. Future CPDs. Beginning in FY 1992, all future foreign assistance Congressional Presentation Documents (CPDs) must include projected funding levels not only for the new budget year, as at present, but for the following three years as well. Thus, the FY1992 CPD for Security Assistance Programs will be required to include funding projections for FY1992 through FY1995. This change was prompted by the impact of budget constraints on the ability of Congress to fund foreign assistance programs, and the consequent need to assist Congress in making "the difficult policy choices attendant to budget shortfalls." [Section 581.] Although the AIASAs submitted by SAOs have for many years included such out-year projections, greater emphasis can now be expected to be placed on insuring the accuracy of these projections.

K. Limitations on Assistance to Countries in Default. In this annual renewal of the Brooke-Alexander amendment, funded assistance continues to be prohibited for any country in arrears by more than one year on its repayment of any foreign assistance loans. Carried over from last year's legislation is a provision exempting from this restriction any counter-narcotics assistance funding for Bolivia, Colombia, and Peru. Also, in a new addition, any FY 1991 foreign assistance for Nicaragua has also been exempted. These four countries have also been exempted from the default penalty provisions of Section 620(q) of the FAA. [Section 518.] The *Conference*

Committee Report noted that Nicaragua has an external debt of about \$8 billion, with arrearages to international financial institutions totalling over \$2.5 billion; thus, the granting to Nicaragua of an exemption from penalties for defaults on U.S. assistance loans represents "the conferees strong support" for "the democratically-elected government of Violeta Chamorro" and for "her efforts to revitalize Nicaragua's economy." [*Congressional Record*, 27 October 1990, p.H13420.]

L. Human Rights. A new statutory reporting requirement, initiated by the Senate, directs the Secretary of State to provide Congress with an annual listing of countries which "engage in a consistent pattern of gross violations of internationally recognized human rights." This listing is to be submitted no later than 30 days following the annual submission of the Section 502B(b), FAA, annual human rights report, and is to be based on the criteria and findings of that report. The listing must be accompanied by a separate report from the Secretary of State which describes how FMFP assistance "will be conducted to promote and advance human rights and how the United States will avoid identification with activities which are contrary to internationally recognized standards of human rights." The original Senate proposal from which this new provision emerged, also required the new report to include a Secretary of State determination identifying those countries for which U.S. assistance "*should be denied*." [Emphasis added.] This latter provision, which also would have provided for a Presidential waiver authority, was deleted by the Conference Committee. [Section 582.]

M. Special Congressional Notification Requirement. The Committees on Appropriations must be informed by the Administration 15 days prior to the provision of any funded assistance under P.L. 101-513 to Chile, Guatemala, Haiti, Lebanon, Liberia, Pakistan, Somalia, Sudan, Yemen, or Zaire. [Section 541.]

N. Prohibitions on Direct and Indirect Assistance.

1) None of the funds appropriated or otherwise made available pursuant to P.L. 101-513 may be obligated or expended to finance *directly* any assistance or reparations to Angola, Cambodia, Cuba, Iran, Iraq, Libya, Syria, or Vietnam. [Section 512.]

2) Similarly, none of the funds appropriated or otherwise made available pursuant to P.L. 101-513 may be obligated to finance *indirectly* any assistance or reparations to any of the same countries listed above. However, in this case, the President has the authority to grant a waiver if he certifies that the withholding of these funds is contrary to the national interest of the United States. [Section 545.]

3) It should be noted that South Yemen has been removed from these two provisions for FY 1991, inasmuch as South Yemen has now been merged with the Yemen Arab Republic.

O. Presidential Contingency Authority. Section 451(a), FAA, has been amended to increase the President's annual foreign assistance contingency authority from \$10M to not more than \$25M. This provision provides the President with authority to use up to \$25M per fiscal year of any appropriated foreign assistance funds (other than funds designated for development assistance) "for emergency purposes." [Section 588 as amends Section 451(a), FAA.]

P. Military Aid to Democratic Countries. A Senate proposed addition to H.R. 5114 [proposed Section 587], which was dropped from the bill by the Conference Committee, would have limited military assistance to only "democratic governments," or to governments which are making significant progress toward democracy. The proposal would also have included a Presidential waiver authority. Although deleted from the bill, the *Conference Committee Report* emphasizes that "supporting democratic governments is a primary goal of United States foreign policy," and the conferees urged "that no military assistance be made available to any government

that is not democratically elected or making substantial progress towards democratic institutions." The conferees also recognized that in certain cases, such as constitutional monarchies, the legislative branch of a government may be democratically elected while the executive is not; and the conferees indicated they "would consider such a government [to be] democratic if the legislature is freely and fairly elected." [*Congressional Record*, 27 October 1990, p. H13422.]

COUNTRY-SPECIFIC PROVISIONS IN P.L.101-513

A. **Egypt.** In recognition of Egypt's political support of Operation Desert Shield and its contributions to the allied force structure created for that operation, the Administration asked Congress for authority to cancel Egypt's military assistance indebtedness to the USG, estimated at \$6.7 billion of the total \$12 billion owed by Egypt to the U.S. This was clearly the most controversial FY 1991 foreign operations legislative issue to be addressed by Congress. Some members of Congress did not feel that debt forgiveness was an appropriate way to reward Egypt for its courageous stand against Iraq. Many Congressmen, particularly in the House, preferred a restructuring of the payment terms on Egypt's debt, rather than an outright forgiveness of the debt. Others argued that inasmuch as all Americans are expected to pay their debts, a waiver of the Egyptian debt would not sit well with the American public; in this view, such a waiver would be fiscally irresponsible, particularly in a period of scarce USG financial resources and cutbacks in social programs. Also, objections were raised that the President had publicly committed the honor and prestige of the United States to a waiver of Egypt's military assistance debt without any prior Executive Branch consultations with Congress, thereby compelling Congressional acquiescence to back up his commitment. On this point, the Administration reported that the plan had been improperly leaked to the press before consultations with Congress could begin. The Administration argued that rejection of the plan would have grave political and economic implications for President Mubarak at home, and could potentially weaken Egypt's commitment to the U.S.-led efforts against Iraq. [*Congressional Record*, October 24, 1990, pp. S16620-21.] In recent years, similar Congressionally-initiated proposals for canceling Israel's military assistance indebtedness to the USG failed to attain sufficient support for passage. This year's Egyptian proposal, however, proved more successful, although it was substantially moderated by the Conference Committee. As finally enacted, the legislation provides the following:

1) During the period 1 October 1990 to 31 March 1991, the President is authorized to suspend the repayment of any of Egypt's AECA debt. (This has already been put into effect.)

2) No legislative penalties for repayment default status (such as the Brooke-Alexander Amendment) will apply during the moratorium period.

3) The Secretary of Defense is directed to issue notes to the Secretary of the Treasury to consolidate within DOD all Egyptian AECA debt (to include outstanding Federal Financing Bank guarantee loans). In this regard, Congress has authorized DOD to "write down" Egypt's total AECA debt, i.e., to calculate the actual amount of debt remaining from AECA loans made before October 1, 1990, but excluding all outstanding and forecasted interest and penalty payments, and to reflect "realistic payment expectations." After this write down has been accomplished, a special report must be made by the President to Congress on the real value of the Egyptian debt. (This has also been accomplished, with the outstanding debt written down to approximately \$600 million.)

4) After submitting the required Congressional report, the President may reduce the amount owed by Egypt to the "real value" identified in the report. If such action is to be taken, the reduction shall be limited so that it shall not result in a decrease in the principal value of the AECA loans "below the discounted net present value which would result from a restructuring of the

AECA loans according to the terms and conditions which apply to the loans of the International Development Association. . . ." [Section 592(c)(2).]

5) During the repayment moratorium period, the President "shall seek to convene a multilateral conference of the major official creditors of the GOE for the purpose of adjusting Egypt's official debt in a manner which reflects the real collectability of that debt." Egypt's total international debt is estimated at over \$50 billion, the bulk of it owed to the U.S., Saudi Arabia, Japan, Germany, and France. A multilateral conference would serve to identify what actions, if any, such creditor nations would be willing to take to ease Egypt's indebtedness (economic as well as military). The overall objective of such a conference would be to coordinate the actions of all the major creditor nations, and allow the USG to effect debt cancellation for Egypt in proportion to what the other nations do. This is clearly the outcome desired by Congress. [In this regard, the 3 December 1990 issue of *The Wall Street Journal* reported that Saudi Arabia "had agreed to write off \$4.5 billion in Saudi loans to Egypt," and that the United Arab Emirates and Qatar had also agreed to write off an unspecified level of Egyptian debt.]

6) Nevertheless, whatever the outcome of such a conference, after 31 March 1991, the President is further authorized to unilaterally cancel all Egyptian military indebtedness to the USG if he determines that to do so "is essential to the national security interests of the United States." In this regard, the President may also waive repayment by DOD of amounts owed to the Treasury resulting from the aforementioned transfer to DOD of the Egyptian notes. [Section 592.]

B. Israel. Several important new provisions affecting Israel were enacted. These generally represented a Congressional response to increased military costs borne by Israel because of the Iraqi conflict, and were characterized by Sen. Lautenberg (D, NJ) as "a package of provisions to help her address the new threats to her security resulting from the Persian Gulf crisis." [Congressional Record, October 24, 1990, p. S16622.] This new package also served as a means of obtaining Congressional support for (and the muting of Israeli opposition to) the Egyptian debt forgiveness provisions of P.L. 101-513, as well as new, substantial U.S. arms sales to Saudi Arabia in connection with Operation Desert Shield. These new Israeli provisions include:

1) Special authority for the President to drawdown defense articles, defense services, and military education and training from DOD stocks "of an aggregate value of \$700,000,000" to transfer to Israel on a grant basis within nine months of the enactment of P.L. 101-513 (i.e., no later than 4 August 1992). Such drawdowns are to be accomplished "to the maximum extent feasible. . . from units withdrawn or to be withdrawn from Europe." If the timing of the drawdown would have an adverse impact on U.S. force readiness, an extension of the nine month period is authorized, and such an extension may be for as long a period as the President deems appropriate. This special provision has been interpreted as a discretionary authority which does not require that such drawdowns be effected: the *Conference Committee Report* specifies that "It is the intention of the conferees to give the President *the flexibility to provide Israel up to \$700 million* in defense equipment in order to address the circumstances arising from the recent invasion by Iraq of Kuwait." [Emphasis added, *Congressional Record*, 27 Oct 1990, p. H13423; Section 599B, P.L. 101-513.]

2) An authorization for the pre-positioning during FY 1991 of \$300 million in U.S. defense articles as additions to the U.S. stockpile in Israel. [Section 573.]

3) A unique requirement for \$1.65 billion of Israel's FY 1991 earmarked \$1.8 billion grant FMFP appropriation to be "disbursed" within 30 days of the enactment of P.L. 101-513 (i.e., by no later than 4 December 1990). [Title III, Military Assistance, FMFP.] This requires that the entire \$1.65 billion be apportioned by OMB (i.e., be made available for use for grant-funded FMS cases) by 4 Dec 90, rather than in quarterly increments, as is generally the

practice for such apportionments. Since such funds would normally earn interest for the USG prior to their apportionment, it has been estimated that the cost to the USG of this provision, at 8% interest, will be about \$67.8 million. Meanwhile, Israel may earn interest for itself on these advance funds. Indeed, this was recognized by the Senate Appropriations Committee where this provision originated; the SAC reported that, "It is the Committee's intent that any additional funds that Israel may derive from early disbursement of its FMF be used solely for purposes applicable to funds appropriated under the Foreign Military Financing Program Heading." [SAC Report, p.129.]

4) An increase to \$475 million in the portion of Israel's \$1.8 billion FMFP grant appropriation which may be expended in FY 1991 for the offshore procurement in Israel of defense articles and defense services, including research and development. [Title III, Military Assistance, FMFP.] In FY 1990, this authority had been limited to \$400 million. The increase for FY 1991 had its origin in the Senate Appropriations Committee, which reported "its intention to continue providing this authority for the foreseeable future in order to allow Israeli defense authorities to plan essential procurements in a more cost-effective manner." [SAC Report, p.129.] Also, as in past years, Israel may spend up to \$150 million of its FMFP grant for research and development in the United States.

5) The unique authority to use \$200 million of its FY 1991 \$1.3 billion ESF grant account as FMFP grant funds for the acquisition of defense articles and services. [Title II, Bilateral Economic Assistance, ESF.]

C. El Salvador. A broad variety of legislative provisions are attached to authorized FY 1991 assistance programs for El Salvador.

1) Not more than \$85 million in military assistance funds (FMFP and IMET) may be made available to El Salvador in FY 1991. [Section 531(b).]

2) However, one-half of the total military assistance funds allocated for El Salvador for FY 1991 must be withheld in an effort to get the government to work with the opposition *Farabundo Marti* National Liberation Front (FMLN) rebels in achieving a peace agreement. [Section 531(d)(1).] This provision was initiated by the Senate Appropriations Committee and resulted from continued reports of widespread corruption and human rights violations by the El Salvadoran military and a belief that the Government of El Salvador (GOES) is unwilling to engage in meaningful peace negotiations with the FMLN. The provision proved quite controversial and drew broad opposition from Republican members of Congress; and prior to its moderation, it also evoked a threatened Presidential veto of the entire Foreign Operations Appropriations Act. As enacted, the provision includes specific conditions under which the withheld funds may be released; these require a Presidential determination and report to Congress that:

a) representatives of the FMLN have declined to participate in good faith negotiations with the GOES or with the Secretary General of the U.N. in mediating a settlement; or have rejected a U.N. plan for the settlement of the conflict ; or,

b) the survival of the GOES is being jeopardized by FMLN offensive military actions/operations; or,

c) "proof exists that the FMLN is continuing to acquire or receive significant shipments of lethal military assistance from outside El Salvador, and this proof has been shared with the Congress;" or,

d) "the FMLN is assassinating or abducting civilian non-combatants, is engaging in other acts of violence directed at civilian targets, or is failing to control such activities by elements subject to FMLN control." [Section 531(d)(2).]

3) If the El Salvadoran Government and the FMLN have not entered into a peace agreement by 30 September 1991, the assistance funds which remain withheld are to be transferred to a newly-established U.S. Treasury fund for "Cease-Fire Monitoring, Demobilization, and Transition to Peace." [Section 531(f)(2).]

4) Another provision authorizes up to 10% of the military assistance funds deposited in the new Treasury fund to be used under specified conditions for carrying out judicial reforms in El Salvador. [Section 597.]

5) Additionally, under a variety of conditions, U.S. *military assistance* to El Salvador may be terminated [Section 531(c)]; and if the duly-elected head of government of El Salvador is deposed by military coup or decree, the legislation specifies that *all U.S. assistance* may be terminated. [Section 531(e).]

6) P.L. 101-513 also renews the annual "Harkin Amendment" which withholds \$5M in military assistance until El Salvador pursues all legal avenues to bring to justice the murderers of: land reform personnel in 1981; citizens killed in the El Salvadoran town of San Francisco in 1988; six Jesuit priests and their housekeeper and her daughter in 1989; and ten union leaders, also in 1989. [Section 538.]

D. Chile.

1) Congress has now agreed to an expansion of the types of "safety of flight" equipment which can be furnished by the U.S. to Chile, and has also agreed to an expansion of the types of U.S. aircraft in the Chilean Air Force inventory for which such items can be furnished. In 1985 Congress approved a waiver of the statutory restrictions on foreign military sales to Chile to allow the sale of such equipment; however, this waiver was limited to the sale of only cartridge actuated devices (CADS), propellant actuated devices (PADS), and technical manuals associated with their use for ejection seats on the F-5E/F and the A/T-37 type U.S.-manufactured aircraft which had been previously sold to Chile. [Section 715, P.L. 99-83, as amends Section 726, *International Security and Development Cooperation Act of 1981*, P.L. 97-113.] These lists had remained unchanged since 1985, despite an effort by the Administration in 1989 to have Congress expand them. P.L. 101-513 now provides that expansion, permitting such additional items as, "components, parts, tools, technical manuals, time compliance to technical orders (TCTOs), or TCTO retrofits" to now also be furnished to Chile, and to now also include C-130E/H aircraft, as well as the previously designated F-5E/F and A/T-37 type aircraft. [Section 544(b).]

2) ESF funds have been authorized to be used in Chile in FY 1991 for a specific purpose: "to develop a national consensus on the importance of an independent judiciary and the administration of justice generally in a democratic society." [Section 544(a).]

3) The above legislation represented Congressional waivers of the provisions of the Kennedy-Harkin amendment [Section 726, *International Security and Development Cooperation Act of 1981*, P.L. 97-113] which bans the provision of security assistance and U.S. arms sales to Chile due to its record of violations of internationally recognized human rights.. However, the new FY 1991 provisions were superseded on 1 December 1990 when the White House announced that the President had lifted the Kennedy-Harkin prohibitions on assistance to Chile by finding and reporting to Congress that the new democratic government of Chile under President Patricio Aylwin had made significant progress in ending human rights abuses. The ban on such assistance

had actually been in effect since 1976. [The original prohibition was contained in Section 406 of the *International Security Assistance and Arms Control Act of 1976*.; this was subsequently replaced by a revised prohibition in P.L. 97-113, as cited above.] The prohibition was prompted by the car bomb assassination in Washington, D.C., of former Chilean Ambassador to the U.S. Orlando Letelier and his American secretary, Ronni Moffit. Letelier had been a senior advisor to Marxist President Salvador Allende until Allende was killed in the 1973 military coup which brought General Augusto Pinochet to power. Despite efforts by the U.S. since 1976 to get the Pinochet government to prosecute those responsible for the assassination (widely believed to have been planned by members of Chile's secret police in order to silence Letelier, a vocal critic of Pinochet), no such prosecution has yet been conducted. In December, 1989, Pinochet was defeated in a general election which gave the Presidency to Aylwin. The recent action by President Aylwin in supporting legislation transferring the jurisdiction for the prosecution of the Letelier case from military to civilian courts is reported to have been a key factor in the Bush Administration's decision to lift the sanctions. [*Philadelphia Inquirer*, 5 December 1990, p. 7.]

E. Afghanistan.

1) Up to \$70M may be made available to Afghanistan for the the provision of food, medicine, or other humanitarian assistance to the Afghan people. The funds for these purposes are to be derived in equal parts from the Development Assistance and the ESF accounts. [Section 536.]

2) None of the above-cited funds, or any other U.S. assistance funds, may be provided for assistance inside Afghanistan if that assistance would be provided through the Soviet-controlled government of Afghanistan. [Section 565.]

F. Qatar. A two-year U.S. embargo on arms sales/transfers to Qatar has now been lifted due to Qatar's support of the allied effort in Operation Desert Shield. Qatar has reportedly opened its airfields to United States transport aircraft and to U.S. personnel, and has strongly supported the economic embargo against Iraq. [*SAC Report*, pp. 130-31.] The ban had been imposed on Qatar originally in the FY 1989 appropriations bill because of Qatar's illegal possession of U.S. Stinger missiles. [See FY 89/90 legislative articles in *The DISAM Journal*.] The SAC, which introduced the current provision lifting the embargo, nevertheless remains very concerned about the missiles, and reported that it "expects these Stingers to be returned to the United States and expects the State and Defense Departments to continue their discussions with the Government of Qatar about the return of these Stingers, and report to the Committee on progress in these discussions no later than April 1, 1991. [*SAC Report*, pp. 130-31.]

G. Pakistan. The Presidential waiver authority permitting U.S. assistance to be provided to Pakistan [Section 620E(d), FAA] has been extended from 1 April 1991 to 1 April 1992. If such a waiver is to be granted to allow any ESF, FMFP, or IMET assistance, specific conditions must be met by the GOP, e.g., the holding of free elections, the convening of the National Assembly, the lifting of the state of emergency, etc. Of course, the failure of President Bush to issue the nuclear-related certification for Pakistan for FY 1991 has meant the cutting off of all aid to Pakistan for the present. [Section 574.]

H. Nicaragua. None of the funds appropriated for foreign assistance to Nicaragua for FY 1991 "shall be provided for any member of the Nicaraguan resistance who has not disarmed and is not abiding by the terms of the cease-fire agreement and the addenda to the Toncontin Agreements signed on April 19, 1990." [Section 577.]

I. Jordan. The Senate Appropriations Committee reported that although for the past several years it had regularly earmarked FMFP and ESF funds for Jordan, it could not do so for

payments that foreign countries will make on the loans. The objectives of credit reform is to display more accurately the cost to the U.S. Treasury of Federal Credit transactions.

To illustrate how the new scoring would work, assume that the United States will offer \$500 million of direct loans to a foreign country at 5 percent annual interest with five years of grace on the repayment of principal and seven additional years to amortize the loan. Prior to credit reform, the full \$500 million would have been appropriated and shown (eventually) as outlays. Under credit reform, the cost of money to the Federal government at the time the loan was disbursed (roughly 7.5 percent) would be taken into account and the net present value of the loan would be calculated. At these terms, the loan would result in a subsidy of roughly 12.5 percent or \$62.5 million (\$500 million x 12.5 percent = \$62.5 million). This cost is what would be now shown in the budget instead of \$500 million. Factors that can affect the subsidy include: the creditworthiness of the borrower, various fees paid by the borrower, the cost of money to the U.S. Treasury, and the interest rate that the foreign government pays to the United States.

Government guarantees of commercial loans would also be scored in this way, showing the subsidy amounts in the budget. This is a major departure for guarantee programs that formerly showed no budget cost for guaranteed loans unless defaults or loan reschedulings occurred, at which time, the amount paid for guarantee claims of principal and interest would have been shown in the budget.

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FY 1991 in view of "the refusal of Jordan to join with the United States and the Arab League in the defense of Saudi Arabia against Iraqi aggression and in its unwillingness to comply fully with the embargo ordered by the U.N. Security Council." [*SAC Report*, p. 34.] The House, however, whose original legislative actions occurred prior to the invasion of Kuwait, had earmarked \$50M in FMFP and \$35M in ESF for Jordan. The Conference Committee rejected the \$50 million FMFP earmark, but retained the \$35M ESF earmark.

J. Iraq Sanctions Act of 1990. [Sections 586 through 586J, P.L. 101-513.]

1) Among the many provisions of this very detailed Act is a ban on U.S. funded assistance "to any country that is not in compliance with the United Nations Security Council sanctions against Iraq." This provision, however, provides authority for the issuing of a Presidential waiver. The aid ban was reportedly targeted principally against Jordan. [Section 586D(a).]

2) The President is also empowered to prohibit the importation into the U.S. of any or all products of any foreign country that has not prohibited (1) the importation of products of Iraq into its customs territory, and (2) the export of its products to Iraq. [Section 586D(b).]

K. Eastern Caribbean. Police training may now be provided to the Regional Security System of the Eastern Caribbean states (i.e., Antigua-Barbuda and Barbados). [Section 598.]

L. Kenya. A new provision prohibits funded FMFP and ESF assistance to Kenya unless the President certifies to Congress that the Government of Kenya is taking steps to release political prisoners, to halt physical abuse, to restore independence to the Kenyan judiciary, and to restore freedom of expression in Kenya. IMET assistance is still authorized for Kenya without the requirement for such a certification. [Section 593.]

M. Yugoslavia. No U.S. assistance may be provided to Yugoslavia after six months following the enactment of P.L. 101-513 (i.e., 4 May 1991) unless: (1) free and fair multi-party elections have been held in all six of the individual republics of Yugoslavia and [they] are not engaged in a pattern of systematic gross violations of human rights; (2) or the Secretary of State certifies that "Yugoslavia is making significant strides toward complying with the obligations of the Helsinki Accords [requiring the protection of human rights] and is encouraging any Republic which has not held free and fair elections to do so." [Section 599A.]

N. The Philippines. Under the provisions of a House proposal, the Government of The Philippines would have forfeited any of its uncommitted FMFP concessional loan credits from prior years which it did not use by 1 January 1991. The House Appropriations Committee reported that such repayable credits amounted to approximately \$29M in June 1990, and that it was time to resolve the issue of what to do about these funds which the Committee had repeatedly refused to convert into non-repayable grants. [U.S. House of Representatives, *Report of the Committee on Appropriations to Accompany HR 5114, Foreign Operations, Export Financing, and Related Programs Appropriations Bill, 1991*, Report 101-553, June 21, 1990, pp.122-23.] This provision, however, was deleted by the Conference Committee.

EFFECTS OF CREDIT REFORM ON MILITARY ASSISTANCE

Credit Reform is the term used to describe the new method of scoring federal credit transactions that was mandated by certain provisions of the Budget Enforcement Act (BEA) of 1990 (P.L. 101-508). The BEA changed the budget presentation of all federally financed or guaranteed loans. Briefly, the BEA requires that the cost of new loan programs be shown as the net present value of the difference between the cost of money to the U.S. government and the

The following table lists the FY 1991 FMFP allocations by country, compares the allocated amounts to the amounts requested in the FY 1991 budget, and shows their relationship to the total FMFP appropriation. This information was released by the Department of State in a cable on 25 January, just prior to going to press with this issue of the *Journal*.

**FY 1991 Foreign Military Financing Program
Earmarks and Allocations
(Dollars in Millions)**

Country/ Program	FY 1991 Budget Request (All Grants)	Allocated FY 1991 Grants (E=Earmark)	% of Total FY 1991 FMFP Appropriation
Argentina	1.000	1.000	0.02%
Belize	0.500	0.500	0.01%
Bolivia	40.000	35.000	0.75%
Botswana	1.000	0.000	0.00%
Central African Rep.	0.250	0.000	0.00%
Chad	2.000	0.000	0.00%
Chile	0.500	0.000	0.00%
Colombia	58.000	27.055	0.58%
Djibouti	2.000	1.000	0.02%
Dominican Republic	1.000	0.500	0.01%
Eastern Caribbean	4.500 ¹	3.000 ²	0.06%
Ecuador	2.000	0.000	0.00%
Egypt	1,300.000	1,300.000E	27.88%
El Salvador	90.000	83.945	1.80%
Fiji	0.300	0.000	0.00%
Greece	345.000	350.000E ³	7.50%
Guatemala	5.000	2.000	0.04%
Haiti	0.600	1.000	0.02%
Honduras	40.000	21.850	0.47%
Indonesia	1.000	0.000	0.00%
Israel	1,800.000	1,800.000E	38.60%
Jamaica	1.000	0.500	0.01%
Jordan	50.000	20.000	0.40%
Kenya	8.000	0.000	0.00%
Liberia	1.000	0.000	0.00%
Madagascar	0.500	0.000	0.00%
Malawi	2.000	0.000	0.00%
Morocco	40.000	43.000E	0.92%
Niger	1.250	0.500	0.01%
Pakistan	228.000	91.900 ^{3,4}	1.97%
Peru	39.000	34.000	0.73%
Philippines	200.000	200.000	4.29%
Portugal	125.000	100.000	2.15%
Oman	0.000	0.500	0.01%
Senegal	1.000	0.000	0.00%
Thailand	15.000	0.000	0.00%

Trinidad/Tobago	0.000	0.250	0.00%
Tunisia	30.000	0.000	0.00%
Turkey	545.000	500.000E	10.72%
Yemen (Sanaa)	0.500	0.000	0.00%
Zaire	3.000	0.000	0.00%
Africa Biodiversity	0.000	15.000E	0.32%
Africa Civic Action	4.000	3.000	0.06%
FMFP General Costs	<u>28.000</u>	<u>27.921</u>	<u>0.60%</u>
TOTALS	\$5,068.432	\$4,828.404	100.00%

¹ Specific Eastern Caribbean countries requested to receive FY 1991 FMFP assistance include: Antigua, 0.780; Barbados, 0.620; Dominica, 0.700; Grenada, 0.600; St. Christ-Nevis, 0.500; St. Lucia, 0.500; and St. Vincent, 0.500.

² Specific Eastern Caribbean countries FY 1991 FMFP allocations include: Antigua, 0.500; Barbados, 0.500; Dominica, 0.400; Grenada, 0.400; St. Christ-Nevis, 0.400; St. Lucia, 0.400; and St. Vincent, 0.400.

³ Allocations to Greece and Pakistan include 320.000 and 83.500 respectively in concessional loans.

⁴ Funds allocated to Pakistan will remain unobligated pending presidential certification pursuant to FAA, Section 620E.