
Military Assistance Legislation For Fiscal Year 1990

By

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INTRODUCTION

Legislative action on U.S. military assistance activities for FY 1990 began auspiciously on 9 January 1989 with the Administration's submission to Congress of the FY 1990 *Congressional Presentation Document on Security Assistance*, the earliest such submission of this important annual budget-supporting document in over a decade. Shortly thereafter, the House Foreign Affairs Committee released in February the report of its special Task Force on Foreign Assistance which called for the major reform and rejuvenation of U.S. foreign assistance programs.¹ By 29 June, the House had endorsed a foreign assistance authorization bill (H.R. 2655, *International Cooperation Act of 1989*) which represented "the first complete revision of the Foreign Assistance Act of 1961 since the basic act was written."² This House bill also eliminated a variety of obsolete and inconsistent foreign assistance legislative provisions, adopted many of the major changes which the Task Force had recommended, and developed a new Defense Trade and Export Control Act to replace the current Arms Export Control Act. Unfortunately, the momentum produced in the House was not matched by the Senate. Beset once again by serious internal partisan differences, the Senate proved unable for the third consecutive year to pass a companion authorization bill. Thus, as in previous years (e.g., FY 1984, FY 1985, FY 1988, and FY 1989), U.S. foreign assistance activities will be conducted in FY 1990 in the absence of a formal authorization act.³

With the prospect for major changes in foreign assistance authorization legislation having floundered in the Senate, the focus of attention shifted to the Congressional appropriations process. The two appropriations committees proved successful in avoiding the need for an omnibus, multi-program appropriations bill (as in FY 82 through FY 88), and they produced, for the second consecutive year, a free-standing, separate appropriations bill for funding foreign assistance operations in FY 1990. Their original bill, however, did not emerge until almost two months into the new fiscal year, and then it had to be adjusted and repassed to meet the objections of President Bush who vetoed their first effort. (A discussion of these events follows.)

¹ U.S. House of Representatives. *Report of the Task Force on Foreign Assistance to the Committee on Foreign Affairs*. February, 1989, 101st Congress, 1st Session, Report No. 93-740. For an outline of the Task Force recommendations, see "Summary of the Task Force Report on Foreign Assistance," *The DISAM Journal*, Spring, 1989, pp. 58-9.

² U.S. House of Representatives. *Report of the Committee on Foreign Affairs on H.R. 2655*. June 16, 1989, 101st Congress, 1st Session, Report No. 9-145.

³ A special provision dealing with the authorization issue is contained in Section 553, P.L. 101-167, *Foreign Operations, Export Financing, and Related Programs Appropriations Act, FY 1990*, 21 Nov 89 (hereinafter cited as P.L. 101-167). This special provision restricts the obligation and expenditure through 28 February 1990 to only one-third of the funds in the FY 1990 FMFP and ESF accounts, "unless an Act authorizing appropriations for such accounts has been enacted." Exempted from this act are funds designated for Israel and Egypt as well as a new program of economic aid for Poland and Hungary. These restrictions will no longer apply after 28 February. If an authorization act is enacted prior to that time (an unlikely event), it would provide the required obligation and expenditure authority for the two assistance programs.

Apart from certain significant exceptions, including the integration of Military Assistance Program (MAP) and Foreign Military Financing Program (FMFP) appropriations into a single FMFP account, no major structural or substantive reforms were effected in the Foreign Operations Appropriations Act. Rather, the resultant legislation serves essentially to perpetuate the appropriations patterns of the past four years, i.e., continued reductions in program funding accompanied by the substantial earmarking of designated country funding levels. For FY 1990, Congress appropriated a total of \$14.66 billion in overall foreign assistance appropriations, of which \$4,750,804,194 was appropriated for the military assistance programs identified in Table 1 below. Additionally, Section 601, P.L. 101-167, reduced all FY 1990 appropriations by 0.43 percent to raise additional funds for the USG Counter-Narcotics Program.⁴ Coupled with reduced appropriations, this additional reduction resulted in a total overall cut of \$56.78 million (or 1.19%) in total military assistance funding from a FY 1989 appropriations level of \$4,787.15 million to the FY 1990 adjusted appropriations level of \$4,730.36 million. Moreover, the FY 1990 adjusted total is \$391.56 million (or 7.64%) below the Administration's original budget request for military assistance of \$5,121.93 million. Finally, comparing the FY 1990 appropriations with those of FY 1985, the highest year of such appropriations (when FMFP, MAP and IMET levels totalled \$5,800.821 million), the current year's adjusted total (FMFP and IMET) is \$1,070.451 million, (or 18.45%) below the level of six years ago.

TABLE 1
FY 1990 Military Assistance Funding
(Dollars in Millions)

Programs	FY 1989 Appropriations	FY 1990 Budget Request	FY 1990 Appropriations (adjusted:-0.43%)	FY 1990 % Reductions from Request ¹	FY 1990 % Changes From FY 89 ¹
Foreign Military Financing Program (FMFP)	\$4,272.75	\$5,027.00	\$4,703.40 (\$4,683.17)	-7.18% (-7.72%)	-0.77% (-1.19%)
Military Assistance Program (MAP)	467.00	40.43	0	0	0
International Military Education and Training Program (IMET)	47.40	54.50	47.40 (47.20)	-13.02% (-13.39%)	0 (-0.43%)
TOTALS	\$4,787.15	\$5,121.93	\$4,750.80 (\$4,730.37)	-7.25% (-7.64%)	-0.76% (-1.19%)

¹ Note: Comparisons between FY 89 and FY 90 combine FY 89 FMFP and MAP levels since in FY 90 the two programs are integrated into the FMFP.

Although the anticipated major revision of the basic laws governing military assistance failed to occur, the on-going funding issues as well as a variety of both new and altered statutory provisions introduced for FY 1990 present important challenges to the managers of U.S. military assistance programs. As in the past, this article continues DISAM's annual series of legislative analyses designed to furnish the security assistance community with a review of the key features and significance of new military assistance legislation. The study opens with a summary of the legislative process for FY 1990. This is then followed by an examination of new legislative features of the two military assistance program components, i.e., the Foreign Military Financing Program (FMFP) and the International Military Education and Training (IMET) Program. This

⁴ Section 601, P.L. 101-167.

section provides an in-depth analysis of specific funding issues as well as of various new/modified statutory provisions which relate to those program components. Concluding the study is a discussion of a broad variety of additional new legislative requirements for FY 1990. Throughout the study the objective is to provide a clear and comprehensive guide to the variety of new legislative provisions which have been added to the complex statutory framework which governs U.S. military assistance. [Note: a similar analysis of appropriations legislation for the major non-military elements of security assistance, i.e., the Economic Support Fund (ESF) and Peacekeeping Operations (PKO) programs, will be published in the Spring, 1990 issue of *The DISAM Journal*.]

THE LEGISLATIVE PROCESS

The FY 1990 Foreign Assistance Appropriations Act, formally entitled *The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990*, and serially identified as Public Law 101-167, was signed and enacted into law by President Bush on 21 November 1989, after a lengthy period of Congressional activity and a Presidential veto. The House Appropriations Committee (HAC) completed its action on the bill (H.R. 2939) on 18 July 89, and it was quickly passed by the House on 21 July. For its part, the Senate Appropriations Committee (SAC) did not report out its version of H.R. 2939 until 6 September, and Senate passage did not occur until almost three weeks later, on 26 September. Since substantial differences existed in the two bills (as is the norm with foreign assistance legislation), a Conference Committee of selected HAC and SAC members was formed to reconcile the differences. The press of other legislative business, including the need to pass twelve other major appropriations bills, precluded the completion of Conference Committee action on H.R. 2939 (and other appropriations bills) prior to the start of the new fiscal year on 1 October. A series of three interim FY 1990 spending bills (i.e., continuing appropriations joint resolutions—CRs) were subsequently enacted, permitting spending at FY 1989 levels: House Joint Resolution (H.J.R.) 407 was enacted on 30 September, continuing interim appropriations through 29 October; this was followed by H.J.R. 423, enacted on 26 October and continuing interim appropriations through 15 November; and the third and final CR, H.J.R. 435, was enacted on 15 November, providing an additional five days of interim continuing appropriations. By 16 November, when the Conference Committee released its report on H.R. 2939, a total of eight of the annual required 13 appropriations bills remained to be signed by the President.⁵ All of them were so signed on 21 November, except for H.R. 2939 which had been vetoed by the President on 19 November. This represented the very first time that a free-standing foreign assistance appropriations bill had ever been vetoed, and it is useful to examine briefly the factors behind the veto.

The Presidential veto was a consequence of the Administration's objections to two specific provisions in H.R. 2939. The first dealt with a \$15 million earmark in the bill providing funding for the United Nations Population Fund, a family planning agency of the U.N. The President opposed this Senate-sponsored provision since among this U.N. agency's various worldwide activities it conducts operations in the People's Republic of China (PRC) where the government reportedly conducts a coercive program which compels women to have abortions and sterilizations. Despite the Administration's well known opposition to abortion, and its continuing advice to Congress that it would veto the bill if the agency's funding was retained, Congress refused to withdraw the provision.

⁵ The eight appropriations bills which were awaiting Presidential signature on 20 Nov 89 included the following: Agriculture, Rural Development, and Related Agencies; Commerce, Justice, State, and Judiciary; Defense; District of Columbia; Labor, Health, Human Services, and Education; Legislative Branch; Transportation and Related Agencies; and, of course, Foreign Operations. The other five FY 1990 appropriations bills, and the date of their enactment were: Energy and Water Development, 29 September; Interior and Related Agencies, 23 October; Military Construction, 10 November; Treasury, Postal Service, and General Government, 3 November; and Veterans Affairs, Urban Development, and Independent Agencies, 9 November.

The second objection to H.R. 2939 dealt with what has come to be known as the “leveraging” issue. As used in this context, leveraging involved the authorization in 1985 by the Reagan Administration for the “expedited release of economic support funds, expedited delivery of security assistance items, and enhanced CIA support” to *leverage* Honduras and El Salvadoran support for the Nicaraguan resistance (i.e., the Contras).⁶ The House Appropriations Committee reported that documents released during the Oliver North trial revealed that such expedited support had occurred, despite repeated previous denials by USG officials, and that this support had occurred during a period when Congress had barred direct U.S. funding to the Contras.⁷ In an effort to prohibit future administrations from using foreign assistance funds to obtain support from other countries for activities which could not legally receive U.S. aid, Congress included a prohibition—a “leveraging amendment”—in the foreign assistance appropriations bill. The original amendment would have barred the use of U.S. foreign aid to further any military or foreign policy activity that was “contrary to U.S. law;” it would also have prohibited the solicitation of funds from any foreign government, foreign person, or American to further any military or foreign activity that was contrary to U.S. law. The Bush Administration opposed this amendment, arguing that it intervened in the President’s foreign policy authority.⁸ Representative Mickey Edwards (R-OK), as one of several Members of Congress who were involved in attempts to reach a compromise with the Administration, advised the House of his disagreement on this issue with the President, and added: “I would sincerely hope that our friends in the Administration do not have any problems with the concept of following U.S. law, properly determined by the Congress of the U.S., in making their foreign policy determinations and setting their foreign policy actions.”⁹ Despite such individual efforts plus attempts by the Conference Committee to carefully restrict the wording of the leveraging amendment, it remained objectionable to the Administration. Thus, when the U.N. Population Fund appropriation and a somewhat revised leveraging amendment appeared in the bill (H.R. 2939) sent to the President for signature, he vetoed it on 19 November.

Congress recognized its inability to muster the necessary two-thirds majority vote in each House to override the President’s veto of H.R. 2939. Consequently, on 20 November, both the House and Senate passed a new bill (H.R. 3743) which fully duplicated the vetoed bill (including all funding levels and country/program earmarks) except for three provisions. First, the controversial \$15M assistance proposed for the U.N. Population Fund was deleted. Secondly, the leveraging amendment was rewritten; as it appears in its final version, this provision prohibits any foreign assistance funds from being provided to any foreign government or foreign or U.S. person “in exchange for” that government or person “undertaking any action which is, if carried out by the United States Government, a United States official or employee, expressly prohibited by a provision of United States law.”¹⁰ Finally, the escalation of violence in El Salvador in November, particularly with respect to the 16 November murder of six well known Jesuit priests plus their housekeeper and her daughter at the University of Central America in San Salvador, prompted an effort in both Houses to withhold 30 percent of the assistance which Congress had already approved for FY 1990 for El Salvador. The heated debate over this issue was spurred by the general view (later confirmed by President Alfredo Cristiani of El Salvador) that the murders had been conducted by resurgent extremist right-wing “death squads” within the El Salvadoran military. The effort to withhold El Salvador’s funds failed to win approval, but Congress did

⁶ U.S. House of Representatives. *Report of the Committee on Appropriations to Accompany H.R. 2939, Foreign Operations, Export Financing, and Related Programs Appropriation Act, 1989*, 101st Congress, 1st Session, Report No. 101-165, July 18, 1989, p. 29. Hereinafter termed *HAC Report*.

⁷ *Ibid.*

⁸ Felton, John, “Foreign Aid Measure Puts Hill Sharply at Odds with Bush,” *Congressional Quarterly Weekly Report*, November 18, 1989, p. 3176.

⁹ As quoted in the *Congressional Record*, No. 159, 15 November 1989, p. H8530.

¹⁰ Section 582, P.L. 101-167.

append an additional provision to H.R. 3743 requiring the President to provide a report on the status of all investigative action and prosecutions by the Government of El Salvador with respect to the recent murders.¹¹

The revised bill (H.R. 3743) was sent to the President on the evening of 20 November, just as the final Continuing Resolution was expiring. The next day, H.R. 3743 was signed into law and the analysts then went to work to try to understand what Congress had wrought.

THE FOREIGN MILITARY FINANCING PROGRAM (FMFP)¹²

Several important legislative provisions will affect the conduct of the Foreign Military Financing Program in FY 1990. These include the aforementioned integration of the MAP grant funding program into the FMFP; the designation (or "earmarking") of specific funding levels (in excess of 90% of the FMFP account) for selected country programs; and the implementation of several new "Fair Pricing" provisions which will substantially reduce the cost to foreign purchasers of U.S. grant-funded FMS acquisitions of defense articles, and, to a lesser degree, the cost of such acquisitions to cash purchasers.

Integration of MAP and FMFP

The FY 1990 integration of Military Assistance Program (MAP) grant funding into the FMFP represents a response to the evolution of the FMFP from a primarily loan program in the 1970s and early 1980s to a predominantly grant assistance program in the late 1980s. As this FMFP transition occurred, "the distinctions between it and [the] all-grant MAP" had receded; moreover, the Administration proposed that funding for the FY 1990 FMFP be provided on an all-grant basis, and the Administration decided that this approach provided an "opportunity to simplify the presentation and budgeting of the financing effort by consolidating it into one program."¹³ Consequently, the only MAP funding the Administration sought for FY 1990 was \$41,432,000 to cover MAP "general costs" (i.e., primarily administrative expenses for the operation of overseas security assistance organizations, plus departmental and headquarters expenses and various logistics expenses).

Although Congress rejected the Administration's request for an all-grant FMFP account for FY 1990 (see discussion which follows), Congress agreed to the proposed integration of all former MAP grant funding into the FMFP. In integrating the programs, Congress also included a ceiling of \$39 million for necessary program "operating expenses" to cover what was formerly identified as MAP general costs. This funding level represents a \$2.432 million reduction from the original budget request. With the termination of MAP grant financing, the FMFP has become the sole source of new USG financing for the purchase by foreign governments of U.S. defense articles. Henceforth, in order to implement their FMFP grants, all recipients of such grants will be required to first execute grant agreements per Chapter 9 of the *Security Assistance Management Manual (SAMM)*.

Notwithstanding the similarities in the MAP and FMFP, one important distinction in the two programs had to be considered in the legislative process. Previously, the recipients of FMFP grants and loans could use their funds to acquire U.S. defense articles, defense services, and

¹¹ Section 599G, P.L. 101-167. See separate discussion of El Salvador later in this paper in the Country-Specific Legislation section.

¹² The term Foreign Military Financing (FMF) has been adopted by the Administration in its FY 1991 budget documents in place of the term FMFP. Throughout this article, the term FMFP is employed since it is used in the FY 1990 legislation.

¹³ Brown, Charles W., Lieutenant General, USA, Director, Defense Security Assistance Agency, "Military Assistance Requirements for FY 1990," *The DISAM Journal*, Spring, 1989, p. 49.

military training through either government-to-government Foreign Military Sales (FMS) or Direct Commercial Sales (DCS) channels. MAP grant recipients, however, were restricted by law to FMS channels for all such acquisitions. In addressing this issue, the Director of the Defense Security Assistance Agency advised Congress that the Administration wished to continue this restriction. Thus, Congress was asked to ensure that the availability of FMFP grants "for financing direct commercial purchases continue to be available only to countries with sufficiently developed acquisition systems and infrastructures to ensure that the funds are utilized in a cost-effective manner."¹⁴ Congress endorsed this request and included the following provision in P.L. 101-167:

Only those countries for which assistance was justified for the "Foreign Military Sales Financing Program" in the fiscal year 1989 Congressional presentation for security assistance programs may utilize funds made available under this heading [i.e., FMFP] for procurement of defense articles, defense services, or design and construction services that are not sold by the United States Government under the Arms Export Control Act [i.e., direct commercial sales]¹⁵

Since FY 1989 MAP recipient countries are not included above, any such countries included in the FY 1990 FMFP account remain restricted from using the funds for commercial acquisitions. (Greece and Turkey are exceptions to this point; although each was a recipient of MAP grants in FY 1989, they both also received FMFP funding during that year.) Thus, for FY 1990, the only countries authorized to use their allocated FMFP funds to finance direct commercial purchases are: Egypt, Greece, Israel, Jordan, Morocco, Pakistan, Portugal, Tunisia, Turkey, and Yemen.

In a related action, Congress also placed a ceiling of not more than \$687,404,194 of the total FMFP appropriation (excluding funds for Israel and Egypt) which can be employed for financing direct commercial sales. This limitation is not thought by the Administration to pose any problems for FY 1990 program management. In FY 1989, when Congress first established such a ceiling (\$409,750,000), the relative level of direct commercial sales funded by the FMFP (other than for Israel and Egypt) amounted to only \$237 million, and no substantial increase in such funding for commercial sales is anticipated for FY 1990.

FMFP Grants vs Loans

The Administration's request that all FMS financing be provided in FY 1990 on a grant basis (as opposed to a combination of grants and direct loans) represented the second consecutive year in which such a proposal had been presented to Congress. As in its FY 1989 request, the Executive Branch again cited the all-grant initiative as being "consistent with the trend advocated by Congress to modify the FMSF Program in order to ease [recipient] countries' debt burdens."¹⁶ And again, as occurred last year, Congress was strongly divided on this issue. Arguing that "since most aid recipients" face "enormous and growing foreign debt burdens," the Senate Appropriations Committee (SAC) concluded that, "it makes little sense for the United States to add to this monumental problem with new loans to purchase military equipment."¹⁷ Thus, the SAC, and the full Senate in turn, approved the Administration's request for an all-grant program. For its part, however, the House Appropriations Committee (HAC) continued to adhere to its FY 1989

¹⁴ Brown, *op. cit.*

¹⁵ Title III, Military Assistance, Foreign Military Financing Program, P.L. 101-167.

¹⁶ *Congressional Presentation [Document] for Security Assistance Programs, Fiscal Year 1990*, p. 12. Hereinafter cited as *FY 1990 CPD*.

¹⁷ U.S. Senate. *Report of the Committee on Appropriations to Accompany H.R. 2939, Foreign Operations, Export Financing, and Related Programs Appropriations*, 101st Congress, 1st Session, Report No. 101-131, September 14, 1989, p. 148. Hereinafter cited as *SAC Report*.

legislative position, when it succeeded in having \$410 million in direct loans included in that year's FMFP appropriation. For FY 1990, HAC advocated, and the full House endorsed, the inclusion of \$450 million in direct loans in the FY 1990 FMFP appropriation.¹⁸ Also as in FY 1989, the FY 1990 loans were proposed by the House to be issued at concessional interest rates, i.e., rates no lower than five percent per annum.

Interestingly enough, both appropriations committees (and thus both Houses) had agreed upon the value of the total FMFP appropriation at \$4,703,404,194 (or \$323,595,806 below the Administration's request).¹⁹ Despite this agreement on the funding level—the first such in recent memory regarding the FMFP account—the issue over the inclusion of direct loans was reportedly “the toughest fight” and “one of the last to be resolved” in the Appropriations Conference Committee.²⁰ Representative David R. Obey (D, Wisconsin), Chairman of the House Appropriations Subcommittee on Foreign Operations, held that “the loan requirement was needed to signal the Administration that Congress opposes shoveling weapons into the Third World.”²¹ Senate members of the Appropriations Conference Committee reportedly reluctantly agreed to incorporate the loan provision, but a “battle” then ensued over the amount to be set.²² Finally, the Senate conferees agreed to accept a \$406 million loan requirement—a cut of \$44 million below the original House proposal. As indicated in Table II below, the \$406 million, representing 8.6 percent of the total FY 1990 FMFP appropriation, has been allocated among two countries, Greece and Turkey.

FMFP Earmarks

Although the Administration, which had endorsed a 100% grant financing program for FY 1990, was obviously displeased by the outcome of the internal Congressional struggle over FMFP grants versus loans, far greater Executive distress resulted from the high level of Congressional earmarking attached to the FMFP appropriation. This practice of designating minimum mandatory funding levels (i.e., earmarks) for selected country/regional programs has long served as a means by which Congress assures its control over the allocation of funds to countries and programs which enjoy special Congressional favor. As shown in Table II, the earmarked levels for most country programs were generally at or near the funding levels originally proposed by the Administration. However, the Administration's budget request was based on an overall funding level for the FMFP of \$5,027 million; this funding level, if approved, would have provided FMS financing for 43 countries and regional programs, most of which formerly had been recipients of MAP grants.²³ Congress, however, appropriated only \$4,703,404,194 for the FY 1990 FMFP, of which \$4,305,500,000 (or 91.5% of the FMFP account)) was earmarked for mandatory allocation. As reflected in Table II, specific earmarks totaling \$4,271.00 million were established for seven countries: Egypt, Greece, Israel, Jordan, Morocco, Pakistan, and Turkey. [In addition to a \$48.00 million FMFP earmark for Jordan in P.L. 101-167, another \$20.00 million is earmarked for Jordan in Section 9108, P.L. 101-165 (*The Department of Defense Appropriations Act, Fiscal Year 1990*) to be used for maintaining previously purchased U.S.-origin defense articles.] Additionally, a \$30.00 million dollar earmark was established for Sub-Sahara Africa, and was allocated among ten African nations, plus the African Civic Action Program. Also, a \$4.50 million earmark was established for miscellaneous narcotics control programs. This heavy earmarking left only \$397,904,194 (adjusted by -0.43% to \$396,193,206) for discretionary allocation to other countries/programs, including funding for FMFP administrative operating

¹⁸ HAC Report, op. cit., p. 125.

¹⁹ SAC Report, op. cit., p. 148 and HAC Report, op. cit., p. 125.

²⁰ Felton, op. cit., p. 3177.

²¹ Ibid.

²² Ibid.

²³ FY 1990 CPD, op. cit., pp. 13-14.

expenses. As a consequence of such limited non-earmarked funds, the Executive Branch could only provide FMFP assistance for 9 non-earmarked countries: El Salvador, Guatemala, Haiti, Honduras, the Philippines, Portugal, Thailand, Tunisia, and Yemen (Sana). A special counter-narcotics appropriation of \$125.00 million (to be discussed later in this article) allowed funding for three additional non-FMFP earmarked countries: Bolivia, Colombia, and Peru. In sum, a total of 29 countries will receive FMFP and related counter-narcotics funds. However, no funds were available for 13 other countries/programs which the Administration had originally proposed as FY 1990 FMFP recipients, and included: Argentina, Belize, Central African Republic, Dominican Republic, Ecuador, Fiji, Indonesia, Jamaica, Nepal, Somalia, Sudan, Uruguay, and the Eastern Caribbean countries.

In addition to its heavy earmarking of the FMFP account, Congress specified funding ceilings on any non-earmarked FMFP funds which might be allocated to El Salvador (\$85 million), Guatemala (\$9 million, limited to non-lethal assistance), and Zaire (\$3 million). Also, while not specifying any funding level or ceiling, P.L. 101-167 limits any FMFP assistance to Haiti to non-lethal items, "such as transportation and communications equipment and uniforms."²⁴ Further, any allocation of FMFP funds for Somalia or Sudan can only be accomplished through a special notification to the Congressional appropriations committees. As Table II reflects, of the six countries specified above, allocations of non-earmarked funds have only been furnished to El Salvador, Guatemala, and Haiti.

TABLE 2
FY 1990 Foreign Military Financing Program
Earmarks and Allocations
(Dollars in Millions)

	<u>Authorized</u> <u>Appropriations</u>	<u>Adjusted (-0.43%)</u> <u>Appropriations</u>
FMFP Grants:	\$4,297.404	\$4,278.925
FMFP Loans:	<u>406.000</u>	<u>404.254</u>
Sub-Totals	\$4,703.404	\$4,683.179
Narcotics Appropriation:	<u>125.000</u>	<u>124.463</u>
TOTAL:	\$4,828.404	\$4,807.642

Country/ Program	FY 1990 Budget Request (All Grants)	Allocated FY 1990 Grants (E=Earmark)	Adjusted FY 1990 Allocations (-0.43%)	% of Total FY 1990 FMFP Appropriation
Bolivia	7.000	39.900 ²	39.728	N/A
Botswana	4.000	1.000 ¹	0.996	0.02%
Chad	10.000	3.000 ¹	2.987	0.06%
Colombia	20.000	49.000 ²	48.789	NA
Costa Rica	1.500	0.000	0.000	.0%
Djibouti	2.000	2.000 ¹	1.991	0.04%

²⁴ Title III, Military Assistance, Foreign Military Financing Program, P.L. 101-167.

TABLE 2 (continued)
FY 1990 Foreign Military Financing Program
Earmarks and Allocations
(Dollars in Millions)

Country/ Program	FY 1990 Budget Request (All Grants)	Allocated FY 1990 Grants (E=Earmark)	Adjusted FY 1990 Allocations (-0.43%)	% of Total FY 1990 FMFP Appropriation
Egypt	1,300.000	1,300.000E	1,294.410	27.6%
El Salvador	97.000	85.000	84.635	1.8%
Greece	350.000	350.000E ³	348.495 ³	7.4%
Guatemala	9.000	2.900	2.887	0.06%
Haiti	0.000	0.500	0.498	0.01%
Honduras	60.000	20.250	20.163	0.4%
Israel	1,800.000	1,800.000E	1,792.260	38.3%
Jordan	48.000	48.000E	47.794	1.0%
Kenya	15.000	10.000 ¹	9.956	0.2%
Liberia	1.000	1.000 ¹	0.996	0.02%
Madagascar	1.000	0.300 ¹	0.299	0.01%
Malawi	1.200	2.000 ¹	1.991	0.04%
Morocco	40.000	43.000E	42.815	0.9%
Niger	2.000	1.700 ¹	1.693	0.04%
Pakistan	240.000	230.000E	229.011	4.9%
Peru	5.000	36.100 ²	35.945	N/A
Philippines	200.000	140.700	140.095	3.0%
Portugal	125.000	85.000	84.635	1.8%
Senegal	2.000	1.000 ¹	0.996	0.02%
Thailand	45.000	3.051	3.038	0.06%
Tunisia	30.000	30.000	29.871	0.64%
Turkey	550.000	500.000E ⁴	497.850 ⁴	10.6%
Yemen (Sana)	2.000	0.503	0.501	0.01%
Zaire	9.000	3.000 ¹	2.987	0.06%
Africa Civic Action	6.000	5.000 ¹	4.979	0.1%
FMFP Operating Expenses	41.432	30.000	29.870	0.64%
Miscellaneous Narcotics Programs	0.0	4.500E	4.481	0.1%
Other Countries (Non-Funded) ⁵	44.300	0.000	0.000	N/A
TOTALS	\$5,068.432	\$4,828.404	\$4,807.642	100%

¹ Represents allocated portion of \$30 million earmarked for SubSaharan Africa region.

² Represents allocated portion of \$125 million earmarked for Counter-Narcotics Programs ("Andean Drug Strategy"), Section 602, P.L. 101-167.

³ The allocation for Greece included \$320,000 million in concessional loans (adjusted to \$318.624 million).

⁴ The allocation for Turkey includes \$86,000 million in concessional loans (adjusted to \$85.630 million).

⁵ There were 13 countries/programs which were originally proposed for FY 1990 assistance, but which received no funding due to the reductions in the FMFP appropriation. They include: Argentina, Belize, Central Africa Republic, Dominican Republic, Ecuador, Fiji, Indonesia, Jamaica, Nepal, Somalia, Sudan, Uruguay, and the Eastern Caribbean countries.

The earmarking issue has become a serious annual concern for the Administration since FY 1986 when the Congress began to increase the level of FMFP earmarking while at the same time reducing the annual FMFP appropriation. For example, in FY 1985, when the FMFP appropriation was at a record high level (\$4,939.5 million), Congressional earmarking was limited to three countries representing 53 percent of the appropriation (\$2,625.0 million), and a total of 23 countries were funded in that year. By FY 1989, with the FMFP appropriation reduced to \$4,272.75, earmarking was provided for seven countries; this represented 97 percent of the appropriation (\$4,162.75 million), and a total of only nine countries could be funded.

Following the enactment of the FY 1990 foreign assistance appropriations act, the Executive Branch became very concerned about the implications of the FMFP earmarking and the reduced appropriation which would have the cumulative effect of producing a serious funding shortfall for non-earmarked countries. Of particular concern were the "bare minimum programmatic funding requirements" for several non-earmarked countries which totaled \$428 million, or \$31,806,794 more than the non-earmarked FMFP funds (adjusted to \$396,193,206) available to the Administration for discretionary allocation. To make up the difference, the Administration considered implementing the authority of Section 614(a)(2) of the Foreign Assistance Act (FAA) of 1961, to reduce the FMFP earmarks and reallocate the ensuing funds among non-earmarked countries. Under Section 614(a)(2), the President may extend credit "without regard to any provisions of" the Arms Export Control Act (AECA), "and any act authorizing or appropriating funds for use under" the AECA when he notifies Congress "that to do so is vital to the national security interests of the United States."²⁵ A variety of optional "earmark shaving" scenarios were considered by the Administration. However, the effort was abandoned (as had been similar efforts for FYs 1987, 1988, and 1989) in view of anticipated Congressional opposition to this proposed disruption of Congressional prerogatives to earmark appropriated funds. Consequently, notification to Congress of the allocation of the FMFP appropriation (and other security assistance appropriations) was delayed until 1 February, 1990, and, as reflected in Table II, provides funding for a total of only 33 countries and programs.

It is instructive to examine Congressional views on the subject of earmarks. In a lengthy discussion of this issue, the Senate Appropriations Committee report for FY 1990 points out that earmarking "is the means by which the Committee, and Congress as a whole, establishes its priorities in the allocation of limited foreign assistance resources and ensures that those priorities are respected by the Administration." Although the Committee recognized the impact of such earmarks on the Administration's allocation of funds, "the Committee is convinced the real source of concern over earmarking is not reduced Administration flexibility and discretion, but the very real difficult decisions among competing needs caused by the real decline in resources to meet U.S. foreign assistance objectives." Thus, in the view of the SAC, the Administration is guilty of "long-standing clientitis," i.e., of parceling out "the declining resources in ever smaller packets, ensuring that recipient countries continue to receive something." The SAC Report then recommends that the Administration should more appropriately, "set priorities, make hard choices, and ensure that the foreign policy and national security interests of the United States in key countries are met, even if this means reductions or even terminations in assistance levels to second and third tier countries." In concluding its observations on this subject, the SAC Report states that, "The Committee stands ready to engage in a dialog with the Administration on earmarking and alternatives, so long as it is clearly understood that this Committee will protect the constitutional power of the purse and Congress' unfettered right to determine how appropriated monies will be expended."²⁶

²⁵ The President's authority under Section 614 is limited to authorizing the use of no more than \$250 million in any fiscal year of funds made available under the FAA/61 or the AECA.

²⁶ SAC Report, *op. cit.*, p. 25.

Other FMFP Provisions

Several additional features of the FY 1990 FMFP legislation are worthy of comment. For example, as in past years, Congress included a special provision for Israel which permits its use of FMFP funds for financing "advanced fighter aircraft programs or for other advanced weapons systems." To the extent that Israel requests the use of its FMFP grant funds for such purposes, and as agreed by the USG and Israel, P.L. 101-167 allows Israel to use up to \$150 million "for research and development in the United States," and not less than \$400 million "for the procurement in Israel of defense articles and defense services, including research and development."²⁷

The FY 1990 FMFP funds earmarked for Greece and Turkey are also of interest. Since FY 1980, in response to the Cyprus conflict, Congress has required that total military assistance for Greece be provided annually at a level of not less than 70 percent of that furnished annually to Turkey. This allocation procedure, widely known as the "7-10 ratio," is viewed by Congress as a means of helping to maintain a military balance in the Eastern Mediterranean. Despite very substantial asymmetries in the size and structure of the armed forces of the two countries, as well as in their differing armaments requirements, repeated efforts by the Administration to furnish higher assistance levels to Turkey have been consistently constrained by Congressional adherence to the 7-10 allocation ratio. This, indeed, was again the case for FY 1990, as the Administration had proposed furnishing \$350 million for Greece and \$550 million for Turkey—a ratio of 7-11. The Appropriations Conference Committee subsequently adopted the Senate's proposed earmarks of \$350 million and \$500 million respectively for the two countries, representing a continuance of their FY 1989 total military assistance funding levels. The Conference Committee also included a provision to assure that if Turkey receives any of its FMFP funds on a grant basis, then, "not less than \$30 million of the funds provided for Greece . . . [is to] be made available as grants." The Conference Committee, however, did not accept the recommendation of the SAC that the amount of funds furnished to either country could "be reduced by the cumulative amount of uncommitted balances (as of the date of enactment of this Act) of military assistance and military financing funds provided in fiscal year 1988 and earlier for such country by the United States Government."²⁸ Had this provision been enacted, it would have had a devastating affect on the earmarked Greek appropriation of \$350 million for FY 1990: on 21 November 1989, when P.L. 101-167 was enacted, Greece had a total uncommitted balance for FY 1987 and FY 1988 in excess of \$450 million, and thereby would have been ineligible for any FY 1990 funds whatsoever.

Finally, the Conference Committee also rejected the HAC recommendation to include language in P.L. 101-167 specifying that "the total amount of military assistance to Greece and Turkey is to be provided according to a seven to ten ratio."²⁹ Various efforts by Congress over the years to incorporate this policy formally into legislation have all met with considerable and successful resistance from the Executive Branch, as was again the case in the FY 1990 legislative process.

FOREIGN MILITARY SALES (FMS) PROGRAM CHANGES

The Fair Pricing Initiative

FY 1990 will see the implementation of a number of legislative changes which the Executive Branch requested under the general title, "Fair Pricing." Very technical in their application, the fair

²⁷ Title III, Military Assistance, Foreign Military Financing Program, P.L. 101-167.

²⁸ SAC Report, *op. cit.*, pp. 148-9.

²⁹ HAC Report, *op. cit.*, p. 126.

pricing provisions will serve to reduce some of the additional charges attached to FMS cases, particularly for those cases which are financed with FMFP grants, and to a lesser degree for those cases using a country's national funds. As such, the fair pricing legislative initiative developed by the Administration represented a response to the complaints of purchasing governments that U.S. defense items were too expensive, primarily because of certain required FMS add-on charges mandated by law. The changes resulting from the passage of the fair pricing initiative will now reduce significantly the cost to foreign governments of U.S. defense articles.

A similar fair pricing legislative initiative was submitted by the Administration for FY 1989, but due to opposition in the House it failed to be enacted. In its place, Congress chose to grant certain cost reductions for the Israeli and Egyptian F-16 purchases, and to also grant an exemption of all military salary costs (excluding those of the Coast Guard) for all FMS cases funded with FMFP (as well as MAP) grants.³⁰ This year the Senate Appropriations Committee endorsed a revised Fair Pricing package for FY 1990 (as it had also for FY 1989), but the House Appropriations Committee again opposed it. While this would very likely have resulted in the failure of this initiative (since it was not adopted by the Conference Committee for inclusion in the Foreign Assistance Appropriations Bill), the package had the strong support of the American-Israel Public Affairs Committee (AIPAC), the influential pro-Israel lobby organization. Reportedly, AIPAC "persuaded the Senate Appropriations Committee to include the provisions" for fair pricing in the FY 1990 Department of Defense Appropriations Bill (H.R. 3072).³¹ The Appropriations Conference Committee dealing with H.R. 3072 subsequently agreed to the fair pricing package, and it was incorporated in P.L. 101-165, *The Department of Defense Appropriations Act, Fiscal Year 1990*.

P.L. 101-165 makes a series of technical changes to Sections 21 and 43 of the AECA, and to Section 632 of the FAA/1961, all of which have the cumulative effect of substantially altering the pricing system associated with FMS cases. A detailed discussion of these changes and the new procedures which have been established by the Department of Defense to implement "fair pricing" is furnished in the Legislation and Policy section of this issue of *The DISAM Journal*. Accordingly, the following is limited to a summary discussion of those changes, and the reader is referred to the Legislation and Policy section for additional details.

In brief, the following changes have been effected in conjunction with the passage of the fair pricing legislation. The first change deals with nonrecurring cost recoupment charges. After 30 November 1989, billings for deliveries of items purchased through FMS cases which are wholly grant-funded (i.e., wholly financed with FMFP or MAP grants) will no longer include charges for pro rata nonrecurring research and development costs or nonrecurring production costs. This legislative change will have the effect of substantially reducing the cost of applicable FMS cases for recipients of U.S. grant financing. For example, such a recipient would be able to save \$1,018,050.00 in nonrecurring costs for the purchase of a single F-16C aircraft equipped with an F-100-PW-220 engine if the purchase was fully financed with grant FMFP or prior year MAP funds. Pending revision to the *Federal Acquisition Regulation*, a similar exemption of nonrecurring costs will also apply to direct commercial sales (DCS) which are wholly funded with FMFP grants.

³⁰ For FY 1990, Section 586(b), P.L. 100-461 granted Israel waivers of \$70 million in nonrecurring cost recoupment charges and \$20 million in administrative services charges for its F-16 program ("Peace Marble III"). The comparable FY 1990 waivers for Egypt's F-16 program ("Peace Vector III") amounted to \$38 million in nonrecurring charges and \$11.7 million in administrative charges. The MAP military salary waiver authority was enacted for FY 1986 (P.L. 99-83). See Samelson, Louis J., "Fiscal Year 1989 Military Assistance Legislation: An Analysis," *The DISAM Journal*, Winter, 1988-89, p. 28.

³¹ Felton, *op. cit.*, p. 3179.

The second change involves another add-on surcharge to FMS cases—the asset use charge. This charge has now been eliminated for *all* FMS cases, regardless of whether the case is financed by the purchaser's national funds or from U.S. financing sources. Thus, after 30 November 1989, the four percent asset use charge formerly added on to FMS cases for tooling rental or facilities use (involving new procurement items, services performed in a USG facility, etc.) will no longer apply, i.e., will not be included in future U.S. Letters of Offer and Acceptance (DD Forms 1513) nor be billed against existing FMS cases. Moreover, after 31 December 1989, the one percent charge added to the price of FMS acquisitions from U.S. stocks will no longer apply. Finally, although attrition factors will continue to be charged (four percent for flying training and one percent for non-flying training), the three percent asset use charge will no longer be included in any FMS training tuition charge for any classes which begin after 30 September 1990; between 1 January 1990 and 30 September 1990, this charge will be excluded only if it totals \$1,000.00 or more. It has been estimated that the elimination of the asset use charge coupled with the elimination of nonrecurring charges for grant-funded FMS cases would “stretch the buying power of grant financing assistance . . . by 4 percent on average.”³²

In addition to the above changes, the fair pricing legislation also eliminates the liability of the Security Assistance Administrative Fund for two relatively fixed DOD administrative overhead costs. As of 1 January 1990, the Administrative Fund (the repository of the three percent administrative services charge added to all FMS cases) will no longer provide reimbursement to DOD for the salaries of U.S. military personnel involved in the administration of U.S. military assistance programs. Similarly, the Administrative Fund will no longer reimburse the Department of the Treasury for unfunded civilian retirement costs.³³ The result of these two changes is to save an estimated total of approximately \$94 million per year in Administrative Fund expenses.³⁴ The need for such savings was critical, because without it, the three percent surcharge would have had to be increased in FY 1991 to five percent to cover the administrative costs for which the military assistance program had been legally liable.

The Fair Pricing changes, of course, involve costs to the Department of Defense. These costs have been estimated at “about \$156 million in a typical year, of which \$60 million represents reduced reimbursements to the Military Personnel accounts and the remaining \$96 million is reduced payments to the Treasury’s miscellaneous receipts account that in turn are credited back to the Defense budget as offsetting receipts.” Despite these added non-reimbursable costs, former Secretaries of Defense Weinberger and Carlucci, as well as Secretary Cheney all endorsed the fair pricing initiative “as a cost-effective reallocation of U.S. defense resources.”³⁵

FMS Debt Reform

A special provision in P.L. 101-167 entitled “Foreign Military Sales Debt Reform” represents an enhancement of the FMS Debt Reform program which Congress first enacted for FY 1988 (P.L. 100-202) and extended unchanged into FY 1989 (P.L. 100-461). This program was designed to ease the debt burdens of countries which resulted from their acceptance in prior years of FMS loans carrying high interest rates (e.g., 12 percent per annum and higher).

³² Brown, *op. cit.*, p. 56.

³³ It should be noted that these provisions apply only to program administration costs. Cash-funded FMS cases will continue to include charges for military salaries associated with case management lines and/or military teams (i.e., mobile training teams, technical assistance teams, etc.). Of course, as a result of prior-year legislation, FMFP and MAP grant-funded cases will continue to exempt these particular military salary charges as well. Unfunded civilian retirement costs are exempt for administrative costs, but will continue to be charged for other civilian services, i.e., training teams, technical services, etc.

³⁴ Brown, *op. cit.*, p. 56.

³⁵ *Ibid.*, p. 56-7.

The original program provides a dual approach to debt relief through procedures for "loan refinancing" or "interest rate reduction," as described below. However, in both cases the only FMS loans that were eligible for relief through either method had to carry an interest rate in excess of ten percent. While several countries have already participated in the "loan refinancing" method, and have thereby saved millions of dollars in interest payments, there had been pressure, particularly from Israel, to apply the FMS debt reform legislation to prior FMS loans carrying interest rates below the established floor of ten percent per annum.³⁶ That is indeed what P.L. 101-167 now permits, with eight percent per annum interest rates now serving as the new floor for eligibility for the refinancing or interest rate reduction of FMS loans.

It is useful to examine briefly the overall statutory provisions and their application in association with the FMS Debt Reform program. Under the "loan refinancing" method, a debtor country is permitted to prepay at par, or face value, the principal amounts (and arrearages) of their FMS loans (including both guaranty and direct loans) which mature after 30 September 1989, and which bear annual interest rates of eight (formerly ten) percent or higher. Such a country may borrow funds from private sector credit markets (e.g., investment, chartered, or national banks) to repay the FMS loans. The new loans, of course, would be at lower interest rates than the original FMS loans due to the lower interest rates which are currently prevailing in capital markets. As an inducement to the private sector to refinance these loans, the President is authorized to provide a guaranty of no more than and no less than 90 percent against the new "private loans." Such guarantees cover 90 percent of the outstanding principal, unpaid accrued interest, and arrearages through the life of the new loans. The remaining ten percent, of course, is not guaranteed, and in practice, U.S. financial institutions, which have been unwilling to accept the risk of the ten percent portion, have required the borrowing countries to collateralize that portion to eliminate the risk.³⁷ The General Accounting Office (GAO) has reported that as of 18 May 1989, under the former ten percent interest rate provision, six countries (Israel, Jordan, Pakistan, Spain, Tunisia, and Turkey) had refinanced almost \$7.5 billion in FMS loans and arrearages; further, the GAO reported that the Defense Security Assistance Agency (DSAA) projected that 13 countries would likely prepay \$9.7 billion during FY 1988-1990, again under the former ten percent interest rate provision.³⁸

The second approach to FMS debt reform involves Presidential authority to reduce, or "buy down," annual interest rates on earlier FMS guaranty loans for which the recipient countries do not employ the refinancing approach. Under this interest rate reduction approach, the annual interest rates of all such loans would be reduced to eight percent (formerly ten percent) for the remaining life of the loans. To make up for the reduction in expected income resulting from these adjusted loans, Congress authorized a new account of no more than \$270 million to be made available after 1 October 1988, contingent upon a Presidential budget request. This authority was carried forward for FY 1989, and has again been provided in P.L. 101-167 for FY 1990. However, this account has never been requested by the President, since the appropriation to cover the account would be drawn from the overall budget authority provided for military assistance. To use such an account to provide for interest rate reductions would thereby further reduce the limited discretionary military assistance funds available for non-earmarked country FMS programs. Consequently, the Administration has concentrated its FMS debt reform efforts on the loan refinancing method, and no interest rate reduction actions have occurred to date.

³⁶ Felton, *op. cit.*, p. 3178.

³⁷ U.S. General Accounting Office, *Foreign Military Sales Debt Refinancing, Report to the Chairman, Subcommittee on Europe and the Middle East, Committee on Foreign Affairs, House of Representatives*, Report No. GAO/NSIAD-89-175, August 1989, p. 1. This GAO report provides an excellent summary of the FMS debt refinancing program.

³⁸ *Ibid.* The 13 countries projected by DSAA include: Egypt, Greece, Honduras, Israel, Jordan, Korea, Morocco, Pakistan, Portugal, Spain, Thailand, Tunisia, and Turkey.

THE INTERNATIONAL MILITARY EDUCATION AND TRAINING PROGRAM (IMET)

Since FY 1987, when Congress appropriated \$56.0 million for the IMET Program, the annual IMET appropriation has remained at a level of \$47.4 million despite annual requests by the Administration for an IMET funding increase. For FY 1990, the Administration proposed an 18 percent increase to \$54.5 million; however, citing "the budgetary outlay squeeze," the HAC reported it could not provide any additional funds above the FY 1989 IMET level.³⁹ The SAC adopted the HAC recommendation, and thus for FY 1990 Congress again approved an appropriation of \$47.4 million for the IMET Program. At this level, grant IMET funds have been allocated among 109 countries, plus the Panama Canal Area Military Schools (PACAMS).

No new statutory provisions were enacted for FY 1990 affecting the IMET Program. However, P.L. 101-167 carries forward into FY 1990 the special provision that was first enacted for FY 1989 in P.L. 100-461 regarding the use of IMET funds by "high income" countries. Under the terms of this provision, "high income" countries (defined as those with an annual per capita gross national product in excess of \$2,349) are limited to the use of IMET funds to cover only the tuition costs of their military students. Such funds are prohibited from being used to finance the transportation and living allowances (TLA) for such students, and since 1 October 1989 these costs have had to be funded by the parent "high income" country. TLA costs, of course, are still authorized to be paid from the IMET account for students from countries whose annual per capita GNP falls at or below the \$2,349 level.

For FY 1990, Congressional consideration of this "burdensharing" provision (as it has been termed by the HAC) led the SAC to reiterate its far more restrictive position of last year, i.e., that no IMET funds whatsoever be furnished for the use of "high income" countries.⁴⁰ Arguing that "the budget situation in the foreign assistance program has become so difficult," the SAC concluded that it could "no longer agree to this subvention" (i.e., financial subsidy) of tuition costs. In the Committee's view, "High income countries can afford to pay the full costs of their officers receiving military training in the United States, and the Committee is convinced many of these countries have their own foreign policy reasons for doing so."⁴¹ Thus, the SAC recommended, and the full Senate approved a change in the FY 1989 provision which for FY 1990 would have prohibited the use of IMET funds to pay for tuition costs as well as for TLA for students from "high income" countries. The HAC, however, did not endorse this change, and the issue was resolved in the Appropriations Conference Committee, which, as it had last year, dropped the proposed restriction on tuition funding.

For its part, the Administration had sought relief from the overall "high income" restriction for countries in the Caribbean and Africa whose GNP per capita figures are frequently distorted by the impact of international tourism and/or of the international oil market. The SAC responded favorably to the Administration's request, recognizing that such countries "have suffered serious declines in revenues and have not been able to cover the travel and living allowances of their perspective trainees." Noting that the "high income" restriction had forced such countries "to cut by as much as two-thirds the number of their officers coming to the United States," the SAC agreed to provide a "limited exemption from the [GNP] threshold for requirements for these countries." The Committee, however, based its recommendation for a "limited exemption" on the understanding that "the countries which would probably be affected by this exemption are Antigua,

³⁹ HAC Report, *op. cit.*, p. 128.

⁴⁰ See Samelson, *op. cit.*, pp. 18-9, for a discussion of the legislative concerns which resulted in the original enactment of the "high income" provisions in P.L. 100-461.

⁴¹ SAC Report, *op. cit.*, p. 161.

Bahamas, Barbados, Trinidad, and Gabon.”⁴² Since the HAC had not endorsed a similar exemption, this issue also had to be resolved in the Appropriations Conference Committee. That Committee, however, failed to endorse the exemption, and thus the “high income” IMET provision was reenacted for FY 1990 without any exemptions as well as without any tightening of the restriction on tuition payments. In sum, the FY 1990 provision remains identical to that passed originally for FY 1989, and this “high income” restriction will affect FY 1990 IMET for the following 17 countries which will be required to pay the transportation and living allowance costs for their IMET-funded (tuition only) students: Algeria, Argentina, Austria, Finland, Gabon, Greece, Iceland, Ireland, Korea, Luxembourg, Malta, Oman, Singapore, Spain, Suriname, Trinidad-Tobago, and Venezuela.

The interest of the Senate Appropriations Committee in the IMET Program extended considerably beyond the issues associated with “high income” countries. For example, the SAC expressed its concerns over what it termed “the multitude of token IMET programs in small impoverished countries which face no discernible military threat, and where the United States has no significant military interest.” On this issue, the Committee expressed its belief that the IMET Program should more appropriately concentrate “on fewer countries of more foreign policy or security significance to the United States.” Further, the SAC suggested that it might be more productive to use some of the funds “going to impoverished minstates with no foreign enemies and only token military forces . . . to support scholarships at American universities to train civilian officials in administrative, financial, or other government skills.”⁴³

Finally, the SAC expressed its concern that “there has never been an objective evaluation of whether IMET training actually changes attitudes about respect for human rights and civilian control.”⁴⁴ These and various other concerns prompted the Committee to request the General Accounting Office (GAO) to conduct “an objective study of the cost effectiveness” of the IMET Program, to include “an evaluation of the value and impact of the courses offered and the program’s specific accomplishments in terms of advancing U.S. foreign policy and national security objectives in the recipient countries.”⁴⁵ Additionally, the SAC directed the Defense Security Assistance Agency, in cooperation with the Department of State, to prepare an independent report on the IMET Program as a “companion to the GAO study.”⁴⁶ The Defense Institute of Security Assistance Management is assisting in the preparation of this latter report which must be submitted to the SAC by 15 February 1990.

THE SPECIAL DEFENSE ACQUISITION FUND (SDAF)

The Special Defense Acquisition Fund provides a means whereby the DOD may procure defense articles and services in anticipation of future foreign government military requirements. As such, the SDAF reduces procurement lead times, permits improved USG responses to emergency foreign requirements, and reduces the need for drawdowns or diversions of defense equipment from U.S. stocks or new production. The SDAF was first implemented in FY 1982, with capitalization for the fund obtained from various FMS-derived monies, i.e., charges for asset use and nonrecurring research, development, and production costs, plus sales revenues from SDAF-procured items.⁴⁷ Under present law, total SDAF capitalization is limited to \$1,070 million, which applies cumulatively to the total of the amounts in the fund plus the value of defense articles held or

⁴² *Ibid.*

⁴³ *Ibid.*, pp. 161-2.

⁴⁴ *Ibid.*, p. 162.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Section 51(b), AECA.

on order by the SDAF.⁴⁸ Further, the total amount available for SDAF obligation in a given year must be specified in the annual Foreign Operations Appropriations Act.

For FY 1982, the first year of SDAF operation, Congress provided an obligational authority of \$125 million. By FY 1985, the SDAF obligational authority had reached an annual high of \$325 million, and it remained at over \$300 million for each of the next two years.⁴⁹ However, Congress reduced the obligational authority for FY 1988 to \$236,865,000, a level which was retained for FY 1989 despite strong efforts by the Administration to obtain an increase to \$350 million for that year.⁵⁰ For FY 1990, the Administration again proposed an increase in SDAF obligational authority, but this request was somewhat more modest, at \$325 million. In its justification for this increase, the Administration pointed out that \$325 million represented "a program level that can be supported with the capital and pending receipts from expected SDAF sales."⁵¹ Further, the Administration stated that:

A steady annual procurement of \$325 million makes sense: first, it avoids disruptive peaks and valleys over time of procurements and deliveries; second, it enables the acquisition of diversified items to help on a range of programs; and, third, it provides the capability to achieve more economical production rates.⁵²

The Congressional response to the Administration's request for FY 1990 was more favorable than it had been last year. Although an increase to \$325 million was rejected, the Congress agreed to raise the obligation authority to \$280 million, an 18 percent increase over the FY 1988-1989 annual levels of \$236,865,000.

Congress also agreed to allow a three year obligational authority for the SDAF, an authority which Congress first granted for the SDAF for FY 1989. Such an authority enhances the utility of the SDAF by allowing for greater flexibility in contract coordination and negotiation; it also permits the aggregation of DOD and SDAF acquisition requirements, and the consequent larger procurement contracts which result in lower unit prices for both DOD and the SDAF. Thus, the \$280 million in SDAF funds authorized for FY 1990 may be obligated through 30 September 1992.

An additional legislative change affecting the SDAF is included in Section 4 of the *International Narcotics Control Act of 1989*, P.L. 101-231, 13 December 1989. This provision, which amends Section 51(a), AECA, authorizes the use of the SDAF "to acquire defense articles that are particularly suited for use for narcotics control purposes and are appropriate to the needs of recipient countries, such as small boats, planes (including helicopters), and communications equipment." This new provision further requires that the President's annual report to Congress covering SDAF acquisitions include a designation of those defense articles that have been or are programmed to be acquired for narcotics control purposes through the SDAF, and those articles which have been subsequently transferred to foreign governments for their use in narcotics control activities.

⁴⁸ Section 114c, Title 10, United States Code.

⁴⁹ SDAF obligation authority was \$311 million in FY 1986 and \$315 million in FY 1987.

⁵⁰ See Samelson, *op. cit.*, p. 22.

⁵¹ *FY 1990 CPD*, *op. cit.*, p. 35.

⁵² *Ibid.*

WAR RESERVE STOCKPILES FOR ALLIED FORCES OR OTHER FORCES (W RSA)

For FY 1990, the Administration's security assistance budget proposal included a request for authority to increase the value of the War Reserve Stockpile for Allied Forces (W RSA) by a total of \$65 million under the authority of Section 514(b), FAA of 1961.⁵³ At present, only two non-NATO countries—Korea and Thailand—are authorized by the FAA to maintain such stockpiles of U.S. defense articles. The items in these stockpiles remain under the title and control of the USG; and the requested authority for an increase in FY 1990 in stockpile items does not represent a new appropriations authority, but rather a request for permission to transfer current U.S. stocks into the stockpiles at a Congressionally authorized value. Of the \$65 million authority proposed by the Administration for this purpose, \$10 million worth of defense articles was to be set aside for Thailand and \$55 million was designated for the Republic of Korea.

Last year, Congress reduced the Administration's FY 1989 request for such stockpile increases from \$87 million to \$77 million. For FY 1990, however, Congress not only endorsed the \$65 million request for Korea and Thailand, but went much further by adding another \$100 million to the authority for stockpile increases, for a total FY 1990 authority of \$165 million in stockpile additions.⁵⁴ The intent of this additional \$100 million authority is understood by the Administration to facilitate the future establishment of a new U.S. stockpile in Israel.⁵⁵

MISCELLANEOUS LEGISLATIVE PROVISIONS

Defense Equipment Drawdowns

The special authority of the President to drawdown, i.e., withdraw defense equipment from U.S. stocks to meet foreign emergencies has been expanded substantially by P.L. 101-167. Under the original provisions of Section 506(a), FAA/61, this authority permitted the President to drawdown an annual aggregate value of no more than \$75 million in DOD defense articles, services, and military education and training as grant assistance to meet an unforeseen emergency requiring immediate military assistance to a foreign country or international organization.

As a result of varying FY 1990 legislative proposals in the House and Senate dealing with this special authority, the Appropriations Conference Committee agreed to an expansion of Section 506(a) to permit the provision of emergency assistance under several conditions which were not covered by the existing law. Section 506(a) of the FAA/1961 has now been amended to add a new Section 506(a)(2) which authorizes Presidential drawdowns of defense articles, services, and military education to be provided as grant assistance for the purposes of meeting requirements for **international narcotics control, international disaster assistance, and migration and refugee assistance.**⁵⁶ An annual ceiling of \$75 million has also been placed on the aggregate value of the defense articles, services, and military training which may be furnished to meet these new requirements.⁵⁷ Moreover, this ceiling is separate from and in addition to the original authority for the annual drawdown of up to \$75 million in defense equipment and services to respond to emergency military situations.

⁵³ *FY 1990 CPD, op. cit.*, p. 58.

⁵⁴ Section 587, P.L. 101-167.

⁵⁵ DSAA/Plans PAD message, 052336Z December 1989, Subject: FY 1990 Foreign Operations Appropriations Act and Other Legislation as They Affect Military Assistance.

⁵⁶ Section 551, P.L. 101-167 as amends Section 506(a), FAA/1961. Defense articles, however, may not be drawn down for migration and refugee assistance.

⁵⁷ *Ibid.*

Congress also retained for FY 1990 the legislative provision first introduced for FY 1988 and extended for FY 1989 which requires that any drawdowns of defense articles, services, and training under the authority of Section 506(a), FAA/1961 must be delivered to the recipient country or international organization not more than 120 days "from the date on which Congress received notification of the intention to exercise the authority" of Section 506(a).⁵⁸ Under this provision, if delivery is delayed for some reason but is still planned to be made after the 120 day period expires, before such a delayed delivery can be effected, a new formal Congressional notification will be required, to include an explanation for the previous delay in furnishing the items.⁵⁹ These special reporting requirements were originally designed for application to the Section 506(a) authority for responding to military emergencies, but they now also apply to the new narcotics control, disaster relief, and migration and refugee assistance authorities in Section 506(a)(2).

Modernization Capabilities of Certain Countries

The above title for Section 573, P.L. 100-167 represents a significant expansion of the special assistance provisions previously associated exclusively with the "Modernization of Defense Capabilities of Countries of NATO's Southern Flank" (Section 516, FAA/1961), also commonly referred to as the "Southern Region Amendment" (SRA). In Section 573, P.L. 101-167, these special authorities involving the provision of excess U.S. defense articles are now extended, under special conditions, to "major illicit drug producing countries." The following summarizes the overall provisions of this expanded statutory authority.

Section 573 now permits the President to transfer excess defense articles in FY 1990 to three categories of countries: (1) any "NATO southern flank country" (defined as Greece, Italy, Portugal, Spain, and Turkey) which is eligible for U.S. security assistance and which is integrated into NATO's military structure; an understanding between Congress and the Administration limits such assistance to Greece, Portugal, and Turkey; (2) any "major non-NATO ally on the southern and southeastern flank of NATO" (defined as Egypt and Israel); and (3) to any "major illicit drug producing country" which has a democratic government and "whose armed forces do not engage in a consistent pattern of gross violations of internationally recognized human rights." For the NATO southern flank countries and the major non-NATO allies, the transfer of excess defense articles is designed to help modernize their respective defense capabilities. Transfers to major illicit drug producing countries are designed to encourage the military forces of an eligible Latin American or Caribbean country:

to participate with local law enforcement agencies in a comprehensive national anti-narcotics program, conceived and developed by the government of that country, by conducting activities within that country and on the high seas to prevent the production, processing, trafficking, transportation, and consumption of illicit narcotics or psychotropic drugs or other controlled substances.

The items which may be transferred to any eligible country falling into one of the above categories only may be excess defense articles drawn from existing DOD stocks. No DOD defense equipment procurement funds may be expended in connection with such transfers, and the President must determine and so advise Congress that the transfer of such excess defense articles will not have an adverse impact on the military readiness of the United States.

Certain special requirements are attached to particular transfers under this statute. For example, excess defense articles may be furnished to a major illicit drug producing country only if

⁵⁸ Section 558, P.L. 100-202 (FY 1988); Section 553, P.L. 100-461 (FY 1989); and Section 551(a), P.L. 101-167 (FY 1990).

⁵⁹ *Ibid.*

such a country ensures that those items "will be used only in support of anti-narcotics activities."⁶⁰ Secondly, the Secretary of State has statutory responsibility for determining the eligibility of any major illicit drug producing country to receive excess defense articles, and also for insuring that "any transfer is coordinated with other anti-narcotics enforcement programs assisted by the United States Government."⁶¹ Finally, Congress has placed a \$10 million ceiling on the aggregate value of excess defense articles that may be transferred for anti-narcotics enforcement purposes in any fiscal year.⁶²

Although there is no similar statutory limitation on the value of excess defense articles which may be transferred annually to NATO southern flank countries or to major non-NATO allies, there is a special provision governing the valuation of items furnished to Greece and Turkey. Since FY 1988, Congress has required that the annual distribution of excess defense articles to Greece and Turkey be applied to closely approximate the general 7-to-10 ratio used in the provision of military assistance to the two countries.⁶³ This provision has presented a problem for the past two years, given the difficulty of furnishing the two countries the differing types and varying values of the equipment they each wish to acquire. For FY 1990, the Administration sought legislative relief from the 7-to-10 ratio provision. Congress, however, chose to retain the requirement, but to also make it more flexible by permitting the ratio to be achieved on items transferred over a three-year rather than a single-year period. Thus, excess defense articles delivered to Greece and Turkey over the period 1 October 1989 to 30 September 1992 must cumulatively meet the prescribed distribution ratio.⁶⁴ However as described below, current legislative authority for this program expires on 30 September 1991.

The Administration also sought several additional changes to this legislation. These included expanding the pool of available defense articles for such transfers to include those articles "programmed to be excess," rather than to remain limited only to items which have already been designated as excess. Such a change would have meant a return to the initial statutory provision which had been included in the original FY 1987 legislation, but which had been deleted in an amendment for FY 1988.⁶⁵ Congress, however, chose to maintain the more restrictive provision for FY 1990. Congress also denied the Administration's request for rescinding the authority to transfer excess defense articles to the major non-NATO allies. Finally, the Administration's request to establish the overall transfer authority permanently, rather than in annually renewed statutes, was also rejected by Congress.⁶⁶ Instead, as in past years, Congress only extended the authority for one year in the Foreign Operations Appropriations Act (P.L. 101-167), but curiously provided for a two-year authority in the Defense Authorization Act (P.L. 101-189). This variation in statutory authorities has the legal effect of requiring that the three-year obligation granted for meeting the 7-to-10 ratio for items furnished to Greece and Turkey must be accomplished in two rather than three years.

Export-Import Bank Loans

The Export-Import Bank (EXIMBANK) of the United States serves to assist American exporters in their sales of goods and services to foreign purchasers. This is accomplished through a system of medium-and long-term direct and guaranteed loans to such purchasers, and such loans provide up to 85 percent financing/guarantees. The EXIMBANK has been prohibited by law since

⁶⁰ Section 573(f)(2), P.L. 101-167.

⁶¹ Section 573(f)(3), P.L. 101-167.

⁶² Section 573(f)(4), P.L. 101-167.

⁶³ Section 582, P.L. 100-202 (FY 1988); and Section 569(b), P.L. 100-461 (FY 1989).

⁶⁴ Section 573(e)(2), P.L. 101-167.

⁶⁵ Brown, *op. cit.*, p. 57.

⁶⁶ *Ibid.*

1968 from making loans to economically less developed countries to finance armaments acquisitions.⁶⁷ Similarly, it has long practiced a policy of not issuing loans for arms purchases by other countries.

For FY 1989, Congress authorized the EXIMBANK to guaranty military sales which were designed primarily to serve anti-narcotics purposes.⁶⁸ Subsequently, in July, 1989, the EXIMBANK announced it would help finance a \$200 million FMS sale of military equipment to Colombia. This was the first such EXIMBANK financed FMS-related program, and it involved the guaranty of a \$170 million commercial loan (i.e., 85% of \$200 million) for the sale of UH-1 helicopters, Blackhawk helicopters, river patrol boats, radar command and control equipment, and various other military items.⁶⁹

A new provision in P.L. 101-167, may further expand the EXIMBANK role in financing military sales. For FY 1990, Congress has permitted the EXIMBANK to use its loan guaranty authority "to participate in the financing of commercial sales of defense articles and services destined for Greece and Turkey," provided that this authority will "not be used for the procurement of defense articles or services for use on Cyprus."⁷⁰ The SAC bill had originally proposed this authority to help finance commercial sales of defense equipment to unspecified NATO countries; the provision was amended in the Conference Committee to make the provision specific to Greece and Turkey. The Conference Committee observed that it agreed to this new Export-Import authority "on a one-time basis only, for a period of one year only," and that "the conferees agree that future such proposals shall be resolved through the appropriate authorization bill."⁷¹ This unique provision was sponsored by Senator Christopher J. Dodd, (D-CT), and is designed to provide loan financing for the Government of Turkey for its planned FY 1990 commercial acquisition of Sikorsky helicopters.

Base Rights Countries and U.S. Assistance

As in previous years, Congress this year again examined the controversial issue of "the practice by several nations of linking U.S. military assistance (and other types of assistance) to agreements to permit the maintenance of U.S. military bases on their national territory."⁷² In the view of the Senate Appropriations Committee, such agreements "must be based on a shared sense of responsibility for mutual security," which precludes the "unacceptable practice" of the "payment of rent" in the form of U.S. military and economic assistance for the use of military bases.⁷³ The Committee stated further that such countries have come to expect "certain levels of assistance as a *quid pro quo* for U.S. bases," and that such an expectation has often been "fostered by the Executive Branch in its dealings with the host countries."⁷⁴ The SAC, in an explicit message to the Administration and the foreign governments, advised them that "there is no right to U.S. assistance of any kind and for any reason . . ." In the SAC's view, assistance levels are not to be determined in negotiations with host nations, but rather are to be a product of multiple factors considered by Congress in "exercising its constitutional responsibility to appropriate funds."⁷⁵

⁶⁷ Section 32, AECA; 22 U.S.C 2772.

⁶⁸ The Anti-Drug Abuse Act of 1988, P.L. 100-690.

⁶⁹ Isikoff, Michael, "Export-Import Bank to Help Finance Arms Sales to Colombia," *Washington Post*, 21 July 1989, p. 24.

⁷⁰ Title IV, Export Assistance, Export-Import Bank of the United States, Limitation on Program Activity, P.L. 101-167.

⁷¹ *Congressional Record*, *op. cit.*, p. 8506.

⁷² *SAC Report*, *op. cit.*, p. 148.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

One such factor of increasing importance in the view of the SAC involves "the necessity to reduce the Federal Budget deficit and the requirement to restrain Federal expenditures."⁷⁶ Observing that "such restraint must apply to military assistance as well as to other types of Federal spending," the SAC concluded its comments on this subject by advising the Administration and foreign governments involved in base rights negotiations that evidence of such restraint was apparent in the Committee's recommendations of a cut of nearly \$350 million in the Administration's FMFP budget request for FY 1990.⁷⁷

Although this continued concern over the base rights issue did not result in any new legislation for FY 1990, Congress extended for another year the legislative provisions it first enacted for FY 1989 which authorize the reprogramming of earmarked funds, for a "base rights country."⁷⁸ Thus, if "the President determines that the [base rights country] recipient for which funds are earmarked has significantly reduced [since 1 October 1988] its military or economic cooperation with the United States," that country's funds may be reprogrammed for use by another country.⁷⁹

Missile Related Legislation

Several legislative changes pertaining to the sale of U.S. missiles became effective with the passage of the FY 1990 Foreign Operations Appropriations Act. The first such change involves the **Stinger anti-aircraft missile**. Since FY 1988, Congress has prohibited the U.S. from selling or otherwise making available the Stinger to any country "in the Persian Gulf region," except Bahrain.⁸⁰ The Administration proposed that this prohibition be lifted for FY 1990 and that sales to any country in the Persian Gulf region be allowed, subject to a Presidential certification to Congress regarding the designated recipient country's need for the missile system, the unavailability of a suitable alternative system, and the country's agreement to safeguard the Stingers. Congress, however, rejected the request, and the original prohibition remains in effect, albeit with certain changes in the statutory provisions.

First, a slight change in terminology has been effected for FY 1990, establishing the prohibition for any country other than Bahrain, "bordering the Persian Gulf."⁸¹ A more significant change involves the deletion of a special reporting provision relating to the Stinger missile. First enacted for FY 1988, this provision required an advance Presidential notification to Congress of any proposed sale or transfer of Stinger missiles to any country, *regardless of the value of the transfer*.⁸² A similar provision for such advance reporting was first enacted for FY 1989 involving any sale of **Air-to-Ground or Ground-to-Air missiles**, again without regard to the amount of the sale.⁸³ This special reporting requirement was also deleted for FY 1990. However, although these requirements no longer apply, there is yet another related special reporting requirement that continues in effect. In last year's FY 1989 Foreign Operations Appropriations Act, Congress included an amendment to Section 28 of the Arms Export Control Act. This amendment, which is a permanent change in the law and does not require annual renewal, applies to quarterly reports to Congress of the price and availability (P&A) estimates which are furnished to foreign countries in connection with proposed sales of U.S. defense articles and services. The

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ Section 562, P.L. 100-461 (FY 1989), and Section 559, P.L. 101-167 (FY 1990).

⁷⁹ See Samelson, *op. cit.*, pp. 25-6, for an amplified discussion of the reprogramming provision and for a review of Congressional concerns over the base rights issue associated with the legislative process for FY 1989.

⁸⁰ Section 573, P.L. 100-202 (FY 1988), and Section 566, P.L. 100-461 (FY 1990).

⁸¹ Section 580, P.L. 101-167.

⁸² Section 573, P.L. 100-202, emphasis added.

⁸³ Section 588(b), P.L. 100-461.

FY 1989 AECA amendment requires that such quarterly reports include listings of P&As issued for "any Ground-to-Air or Air-to-Ground missiles, or associated launchers (without regard to the amount of the proposed sale)."⁸⁴ Accordingly, reports of proposed sales of Stingers and other such missiles, regardless of their sales value, must continue to be reported to Congress in the quarterly P&A reports. Of course, if the sales value is \$14 million or more, such sales will also be reported to Congress in accordance with the requirements of either Section 36(b) or Section 36(c), AECA, involving FMS or DCS sales, respectively.

Other important legislative changes are related to the statutory conditions attached to the sale of Stinger missiles to Bahrain. When Congress first enacted the Stinger missile sales prohibition for FY 1988, the exception granted for sales to Bahrain included a variety of conditions upon which such sales were contingent (and which are discussed later in this section). The single most significant of these conditions involved the requirement that Bahrain agree to a U.S. "buyback of all remaining missiles and components which had not been destroyed or fired," and that this buyback be effected no later than 22 June 1989.⁸⁵ For FY 1990, a similar provision has been included in P.L. 101-167 with a requirement that the remaining Stingers "be returned to the possession and control of the U.S. not later than 30 September, 1991."⁸⁶ However, P.L. 101-167 contains a new provision which was not included in prior year legislation and which provides relief from this requirement for return of the missiles. Under this new provision, the President may notify Congress "that the United States intends to waive the requirement that the Stingers be returned to the U.S. by the date specified."⁸⁷ The President is also required to determine that each of the four conditions specified in P.L. 101-167 governing the authority for the original sale to Bahrain continues to apply. These conditions include the following: (1) "the Stingers are needed by Bahrain to counter an immediate air threat or to contribute to the protection of United States personnel, facilities, equipment, or operations;" (2) the U.S. has no other appropriate system available to meet Bahrain's requirements; (3) "Bahrain has agreed in writing to employ U.S. required safeguards to protect against the diversion of the Stingers;" and, (4) "Bahrain has agreed in writing to return to the possession and control of the United States" all of the Stingers made available to Bahrain other than those "which have been fired or otherwise destroyed." The Presidential notification to Congress of the intention to waive the return provision is required no later than 15 September 1991.⁸⁸

An additional new Stinger provision in P.L. 101-167 authorizes the sale of replacement Stingers to Bahrain on a one-for-one basis for those Stingers which have been fired or otherwise destroyed. Such replacement sales require a Presidential determination and certification to Congress that the four conditions which had to be met for the original Stinger sales (as well as for a waiver of the return requirement, as discussed above) continue to apply. This Congressional notification must be made at least 30 days prior to making any replacement Stingers available to Bahrain, and it is required regardless of the value of the Stingers to be made available as replacements.⁸⁹

International Narcotics Control Program

As in FY 1989, Congress has provided a complex funding arrangement for FY 1990 for the International Narcotics Control Program. Two laws, the FY 1990 Foreign Operations Appropriations Act (P.L. 101-167) and the International Narcotics Control Act of 1989 (P.L. 101-

⁸⁴ Section 588(a), P.L. 100-461.

⁸⁵ Section 573, P.L. 100-202, emphasis added.

⁸⁶ Section 581(c), P.L. 101-167, emphasis added.

⁸⁷ Section 581(c)(2), P.L. 101-167.

⁸⁸ Sections 581(a)(1)-581(a)(4), P.L. 101-167.

⁸⁹ Section 581(b), P.L. 101-167.

231), provide appropriations authorities as well as a number of funding earmarks and ceilings involving military and economic assistance programs. The following provides a summary of the various relevant provisions of these two laws.

The appropriations act, P.L. 101-167, provides two separate and additive appropriations for narcotics control. First, \$115 million is provided to carry out the provisions of Section 481, FAA, i.e., the International Narcotics Control Program.⁹⁰ Secondly, a special appropriation of \$125 million was added to P.L. 101-167 for use in "counter-narcotics programs."⁹¹ This additional appropriation had originally been included in the Defense Appropriations Bill (H.R. 3072), but was transferred to the the Foreign Operations Appropriations Bill and then enacted in P.L. 101-167.

The authorization act, P.L. 101-231, contains several authorizing provisions related to the expenditure of the special \$125 million appropriation. First, the statute designates the total \$125 million to be used for providing military and law enforcement assistance to Bolivia, Colombia, and Peru, the three Andean countries which are the major sources of cocaine consumed in the United States.⁹² The funds may be use to acquire defense articles, services, and military training under the FMFP and IMET statutory authorities for programs aimed at controlling illicit narcotics production in those countries. Further, this \$125 million appropriation is separate from, and in addition to, the FMFP funds (totaling \$4.5 million) which are earmarked in P.L. 101-167 for narcotics control programs and which are discussed later in this section. Allocation of this \$125 million special appropriation among the three countries is identified in Table II above.

P.L. 101-231 also places a ceiling of \$6.5 million on the amount of funding that can be provided for law enforcement training for Bolivia, Colombia, and Peru; additionally, P.L. 101-231 includes a \$12.5 million funding ceiling on the amount of counter-narcotics equipment that can be furnished to the three countries.⁹³

In addition to the basic authorities provided for in the International Narcotics Control Act, the Foreign Operations Appropriations Act (P.L. 101-167) includes various funding authorities, earmarks, and ceilings of its own. As an example, P.L. 101-167 authorizes \$69 million to be made available from the Economic Support Fund appropriation for Bolivia, Ecuador, Jamaica, and Peru.⁹⁴ An additional \$35 million may be made available from the FMFP appropriations for Bolivia, Colombia, Ecuador, and Jamaica.⁹⁵ Furthermore, a ceiling of up to \$2.0 million from the IMET appropriation has been authorized to be expended for Bolivia, Colombia, Ecuador, and Peru for "education and training in the operation and maintenance of equipment used in narcotics control interdiction and eradication efforts," to include the use of DOD mobile training teams to conduct training in those countries. The police training prohibitions of Section 660, FAA/1961 are waived for the use of IMET monies for such counter-narcotics training, and all such training is limited to foreign law enforcement agencies, or other units organized for the specific purpose of narcotics enforcement.⁹⁶

The authorized funding levels and the funding ceiling discussed above with respect to ESF, FMFP, and IMET programs for Bolivia, Colombia, Ecuador, Jamaica, and Peru, represent permissive spending authorities and, as such, need not be expended for the designated purposes.

⁹⁰ Title II, Bilateral Economic Assistance, Department of State, International Narcotics Control, P.L. 101-167.

⁹¹ Section 602, P.L. 101-167.

⁹² Section 3(b), P.L. 101-231.

⁹³ Sections 3(c)(1) and 3(d)(1), P.L. 101-231.

⁹⁴ Section 569(a)(1), P.L. 101-167.

⁹⁵ Section 569(a)(2), P.L. 101-167.

⁹⁶ Sections 569(a)(6)(A) and 569 (a)(6)(B), P.L. 101-167.

Earmarked funding levels, on the other hand, must be expended, and P.L. 101-167 includes several such earmarks, including the previously mentioned total of \$4.5 million in FY 1990 FMFP funding. Of this total, \$3.5 million has been earmarked "for the procurement of weapons or ammunition for foreign law enforcement agencies and paramilitary units organized for the specific purposes of narcotics enforcement, for use in narcotics control, eradication, and interdiction efforts."⁹⁷ These funds are also restricted for use by Bolivia, Colombia, Ecuador, and Peru.⁹⁸ The other \$1.0 million earmarked for FMFP is available only "to arm for defensive purposes, aircraft used in narcotics control, eradication, or interdiction efforts;" a special proviso attached to this earmark requires that these funds be used "only to arm aircraft already in the inventory of the recipient country and may not be used for the purchase of new aircraft."⁹⁹ Finally, an earmark of \$500,000 has been attached to the general appropriation for International Narcotics Control to be available "to finance the testing and use of safe and effective herbicides for use in the aerial eradication of coca."¹⁰⁰

Of additional interest are provisions in P.L. 101-167 which state that up to \$10 million of the appropriations for the Agency for International Development "should be made available for narcotics education and awareness programs," and another \$40 million from the funds appropriated for Bilateral Economic Assistance "should be made available for narcotics related economic assistance levels."¹⁰¹

Section 10, P.L. 101-231 also contains a so-called "debt for drugs" provision whereby the USG would release Bolivia, Colombia, and/or Peru from their respective obligations to repay the principal and interest on any prior U.S. foreign assistance loans, to include military assistance direct loans. Several conditions are attached to such forgiveness. First, to release any of these countries from their debts, the President must first determine and report to Congress that the country "is implementing programs to reduce the flow of cocaine to the United States, in accordance with a formal bilateral or multilateral agreement, to which the United States is a party, that contains specific, quantitative and qualitative, performance criteria with respect to those programs." Secondly, the debt forgiveness authority must "be exercised in coordination with multilateral debt relief efforts (i.e., the loan rescheduling and interest rate reduction programs of the so-called Paris Club and the International Monetary Fund). Additionally, these debt forgiveness provisions do not enter into effect until 1 October 1990. Also, although not a specified condition for debt forgiveness, Section 2(c)(4), P.L. 101-231 indicates that the intent of this new program is to get the three Andean governments "to use the savings in debt service for anti-drug programs, pursuant to agreements negotiated under Section 481(h)(2)(B), FAA/1961 [i.e., bilateral agreements to reduce drug production, and drug trafficking, to increase drug interdiction and enforcement, etc.] and other international agreements and initiatives."

Finally, added to all of these provisions are the various new statutory authorities involving the Special Defense Acquisition Fund (SDAF), the special drawdown authority (Section 506(a), FAA/1961), and the furnishing of excess defense articles to major illicit drug producing countries, all of which have now been applied to international narcotics control programs and which are discussed earlier in this paper.

⁹⁷ Section 569(a)(3), P.L. 101-167.

⁹⁸ *Ibid.*

⁹⁹ Section 569(a)(5), P.L. 101-167.

¹⁰⁰ Section 569(a)(4), P.L. 101-167.

¹⁰¹ Section 569(e), P.L. 101-167.

Limitation on Assistance to Countries in Default

The above title serves to identify an annually renewed provision in the Foreign Operations Appropriations Act which is commonly referred to as the Brooke Amendment, so named after the original sponsor, former Senator Edwin Brooke (R-MA). This provision calls for the termination of U.S. funded assistance to any country "which is in default during a period in excess of one calendar year to the United States of principal or interest on any loan made to such country by the United States" pursuant to a funded foreign military assistance program.¹⁰²

Last year, the Administration asked Congress to exempt the IMET program from the provisions of the Brooke Amendment. The request was based on the disruptive effects to this important military training program which occur when assistance must be suspended per the Brooke amendment provisions. Unpersuaded by the Administration's arguments, Congress rejected the request for IMET relief in FY 1989 from the default provisions. A renewed Executive Branch request for an IMET legislative exemption for FY 1990 was also denied. However, Congress chose to grant an exemption from the Brooke Amendment penalties for "funds made available . . . for any narcotics-related activities in Colombia, Bolivia, and Peru" which are authorized by the FAA/1961 or the AECA.¹⁰³ Thus, should any of these three countries experience default conditions which would normally trigger the Brooke Amendment, there would be no termination of U.S. funding for their narcotics control programs. It should be understood, of course, that this exemption is limited only to narcotics-related activities, and that the Brooke Amendment penalties will continue to apply to other U.S.-funded assistance programs in the three countries.

United Nations Voting Record

A significant change has been made to the statutory provision associated with the United Nations voting records of countries which are recipients of funded U.S. assistance. Originally introduced for FY 1984 [Section 101(b)(1), P.L. 98-151], and extended in annual appropriations acts through FY 1989, this provision established a prohibition on the obligation or expenditure of any foreign assistance appropriations for "a country which the President finds . . . is engaged in a consistent pattern of opposition to the foreign policy of the United States." As provided in the statute, such a Presidential determination was to be based on a special annual report "consisting of a comparison of the overall voting practice [of each member country] in the principal bodies of the United Nations . . . and the United States, with special note of the voting and speaking records of such countries on issues of major importance to the United States in the General Assembly and the Security Council. . . ." These reports have been produced annually by the Department of State for submission to Congress since 1984. However, despite comparative voting data which frequently reflected fairly low levels of coincidence between U.S. voting records and those of many recipients of funded U.S. assistance, no country has had its assistance programs suspended or terminated because of its U.N. voting record.

The FY 1990 Foreign Operations Appropriations Act (Section 527, P.L. 101-167) has now repealed all prior year provisions (FY 1984-FY 1989) which require the termination of a country's funded assistance for its consistent opposition to U.S. foreign policy as measured by its voting practice in the U.N. As presently written, the statute continues to require the submission of an annual detailed report on United Nations voting practices, but the former penalty clause (i.e., termination of U.S. assistance) has now been eliminated.

¹⁰² Section 518, P.L. 101-167.

¹⁰³ *Ibid.*

Country-Specific Legislation

Several important statutory provisions have been enacted for FY 1990 with respect to military assistance programs for particular countries. These are discussed below.

Since FY 1982, Pakistan has been granted a special Congressional waiver of the nuclear non-proliferation provisions of Section 669, FAA/ 1961, the "Symington Amendment" (named after its original legislative sponsor, former Senator Stuart Symington, D-MO). The Section 669 provisions essentially deny any U.S. funded military or economic assistance to any country involved in the transfer or receipt of nuclear enrichment equipment, materials, or technology, unless an agreement exists whereby any such transfers are conducted under multilateral auspices and management, when available, and the recipient country agrees to participate in the nuclear safeguards system established by the International Atomic Energy Agency.

Despite widespread concern in Congress and elsewhere regarding Pakistan's involvement in an ongoing nuclear weapons development program, U.S. strategic interests in Pakistan have prompted Congressional waivers for Pakistan of the Section 669 provisions. The first such waiver was enacted for a six-year period, from 1 October 1981 to 30 September 1987.¹⁰⁴ This waiver was subsequently reenacted in 1987, extending it for approximately two years to 1 April 1990.¹⁰⁵ The Administration asked Congress in 1989 to further extend the waiver to 30 September 1994.

In its consideration of the proposed FY 1990 authorization bill (which failed to be enacted), the Senate Foreign Affairs Committee accepted the Administration's proposal, although the House Foreign Affairs Committee would have reduced it by one year to 1 October 1993. The appropriations committees, however, were more restrictive, agreeing on only a limited one-year extension of the waiver authority to 1 April 1991.¹⁰⁶ Thus, Pakistan may be furnished military and economic assistance in FY 1990 as earmarked in P.L. 101-167 (i.e., \$230 million in FMFP and \$230 million in ESF). Nevertheless, this subject will have to be examined again during the current session of Congress to address the issue of furnishing assistance to Pakistan throughout FY 1991.

U.S. assistance for Afghanistan and Cambodia, two nations which continue to be confronted with internal conflict, is also specified in P.L. 101-167. Section 536 earmarks not less than \$70 million to be made available to Afghanistan "for the provision of food, medicine, or other humanitarian assistance to the Afghan people . . ." These funds are to be derived in equal parts from the Development Assistance and Economic Support Fund accounts. Also, an additional \$13.5 million has been earmarked to be transferred from the "Private Sector, Environment, and Energy, Development Assistance" appropriation for FY 1990 to the "International Organizations and Programs" account to be made available only for the U.N. Afghanistan Emergency Trust Fund. A restriction on the use of these funds is contained in Section 577, P.L. 101-167, which prohibits their expenditure inside Afghanistan if such assistance "would be provided through the Soviet-controlled government of Afghanistan." Finally, it should be noted that these funds are separate from and in addition to the military assistance provided to the *mujahadeen* rebels in Afghanistan who, under the FY 1990 Defense Appropriations Act (P.L. 101-165), are reportedly programmed to receive \$280 million in covert assistance this year.¹⁰⁷

With respect to Cambodia, Section 572, P.L. 101-167, provides that "if the President makes available funds [which have been] appropriated . . . for the Cambodian non-Communist

¹⁰⁴ Section 736, P.L. 97-113, 95 Stat 1561, which added Section 620E to the FAA/1961.

¹⁰⁵ Section 557, P.L. 100-202, as it amended Section 620E(d), FAA/1961.

¹⁰⁶ Section 591, P.L. 101-167.

¹⁰⁷ Felton, *op. cit.*, p. 3183.

resistance forces," a total of not more than \$7.0 million may be made available in FY 1990 for such assistance. The funding is to be derived from the FMFP and ESF appropriations, but no proportional funding ratio is specified as is the case for humanitarian assistance for Afghanistan. The FMFP and ESF monies are to be obligated per the restrictions of Section 906, P.L. 99-83 (the International Security and Development Cooperation Act of 1985) which prohibits the use of such funds "for the purpose or with the effect of promoting, sustaining, or augmenting, directly or indirectly, the capacity of the *Khmer Rouge* or any of its members to conduct military or paramilitary operations in Cambodia or elsewhere in Indochina." Further, Section 572, P.L. 101-167, requires that, "to the maximum extent possible," all funding for Cambodia "be administered directly by the United States Government."

Congressional interest in U.S. assistance for **El Salvador** for FY 1990 is evident throughout P.L. 101-167. In addition to a specified FMFP funding ceiling of \$85 million, and two special provisions governing the allocation of ESF monies, no less than five additional sections of P.L. 101-167, including three separate Presidential reports to Congress, apply to El Salvador. These are all summarized below.

The most publicized provision involves Section 599(G) which, among other things, requires the Presidential report discussed earlier in this paper regarding the 16 November 89 murders of six Jesuit priests and two others. In its totality, the Section 599(G) Presidential reporting requirement is much broader, and is tied to the conditional provision of police training to El Salvador. Such training may be furnished notwithstanding the general statutory prohibitions on police training (Section 660, FAA/61), and is to be designed "to promote the professional development of the security forces of El Salvador and to encourage the separation of law enforcement forces from the armed forces." However, this training may only be provided if the following conditions are met: (1) the training must be furnished by U.S. civilian law enforcement personnel; (2) the training is to be provided for the professional development and training of El Salvador's security forces "in such areas as human rights, civil law, investigative and civilian enforcement techniques, and urban law enforcement;" (3) equipment acquisitions associated with this training assistance may include communications devices, transportation equipment, forensic equipment, and personal protection gear, but U.S. assistance funds may not be used for the purchase of any lethal equipment other than ammunition for small arms and rifles to be used "solely for training purposes;" (4) finally, a detailed Presidential certification to Congress is required no less than thirty days before such assistance funds may be obligated, to include the following findings:

The Government of El Salvador has made significant progress during the preceding 6 months in eliminating any human rights violations, including torture, incommunicado detention, detention of persons solely for their political views, or prolonged detention without trial. Any such certification shall include a full description of the assistance which is proposed to be provided and of the purposes to which it is to be directed. Any such certification shall also include a report on the status of all investigative action and prosecutions with respect to those responsible for the 1980 murders of Archbishop Oscar Romero and the four American churchwomen, the recent murder of Ana Casanova, the recent bombings of the headquarters of the FENASTRAS union and the office of COMADRES, a human rights organization, and the recent murder of six Jesuit priests and their associates.

Section 599(G)(c) also places a ceiling of \$5.0 million on the amount of U.S. assistance funds that may be used in FY 1990 for police training in El Salvador. (This section also establishes a separate earmark of \$7.0 million of the ESF account which may be used in FY 1990 for the general Administration of Justice Program in Latin America and the Caribbean [Section 534(b)(3), FAA/1961].)

A related but separate Presidential notification to Congress on El Salvador is required by Section 554, P.L. 101-167. This report must be submitted semiannually, on 1 April and 30 September 1990, and must address the extent to which five specified objectives, which Congress expects to be met and which are described below, are in fact being met:

- (1) The Government of El Salvador and the armed opposition forces and their political representatives will be willing to pursue a dialog for the purposes of achieving an equitable political settlement of the conflict, including free and fair elections;
- (2) the elected civilian government will be in control of the Salvadoran military and security forces, and those forces will comply with applicable rules of international law and with [El Salvadoran] Presidential directives pertaining to the protection of civilians during combat operations, including Presidential directive C-111-03-984 (relating to aerial fire support);
- (3) the Government of El Salvador will make demonstrated progress, during the period covered by each report . . . in ending the activities of the death squads;
- (4) the Government of El Salvador will make demonstrated progress, during the period covered by each report . . . in establishing an effective judicial system; and
- (5) the Government of El Salvador will make demonstrated progress, during the period covered by each report . . . in implementing the land reform program.

With respect to the fourth-listed objective above, Congress requires that the Presidential notification also "specify the status of all cases presented to the Salvadoran courts involving human rights violations against civilians by members of the Salvadoran security forces, including military officers and other military personnel and civil patrolmen."

Another section of P.L. 101-167 directs specified action be taken by the Executive Branch regarding an internal El Salvadoran political settlement. Section 595 reflects Congressional encouragement for the negotiating process that was set in motion on 13 September 1989 in Mexico City between representatives of the Government of El Salvador and of the *Farabundo Marti* National Liberation Front. In support of continuing these negotiations to achieve "a cessation of hostilities" and "an overall political settlement," Section 595 "calls upon the Secretary of State to consult frequently with the Congress on the status of the Salvadoran negotiations and on the efforts being undertaken by the President to support these negotiations."

Finally, the provision of Economic Support Fund (ESF) assistance to El Salvador is the subject of two separate numbered sections of P.L. 101-167, as well as of two additional provisions in the general ESF appropriations section. Section 599I(a) reflects Congress' belief that "the success and continuation of land reform in El Salvador is vital to United States policy and to political stability, economic development, and [the] maintenance of democratic institutions in that country." Accordingly, Section 599I(b) calls upon the President to "take into consideration progress in the Salvadoran Land Reform Program" when establishing the ESF funding allocation for El Salvador. The actual use of the ESF allocation is the subject of Section 578 which requires that no less than 25 percent of El Salvador's ESF allocation be used for development assistance programs and activities per the provisions of Chapter 1 of Part I, FAA/1961. Additionally, the general provision for the ESF appropriation authorizes up to \$1.5 million of El Salvador's ESF appropriation be made available "to assist the Government of El Salvador's Special Investigative Unit, including [assistance] for the purpose of bringing to justice those responsible for the murders of United States citizens in El Salvador,"¹⁰⁸ And, finally, before any of El Salvador's ESF monies may be obligated, the President is required to submit yet another report to Congress, the purpose of which is to identify "the extent to which the Government of El Salvador has made

¹⁰⁸ Title II, Bilateral Economic Assistance, Economic Support Fund, P.L. 101-167.

demonstrable progress in settling outstanding expropriation claims of American citizens in compliance with the judgment of the Supreme Court of El Salvador.”¹⁰⁹

Elsewhere in Latin America, the Administration failed to receive Congressional passage of a request to expand the category of safety-of-flight equipment which may be furnished to Chile. 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 the Chilean Air Force.¹¹⁰ In its FY 1990 legislative proposal, the Administration sought to expand the category of such flight safety items to include sales to Chile (as well as licensing) of components, parts, tools, technical manuals, technical changes to technical orders (TCTOs), and TCTO retrofit items. Also, the proposal would have included equipment for U.S. C-130E/H transport aircraft which had been commercially purchased by Chile and which are used for cargo transport, humanitarian and disaster relief projects, and scientific research. The Administration reported that the current prohibitions against the sale of such items place the safety of Chilean pilots and population at risk. The House proceeded to provide authority for such sales in its passage of the FY 1990 authorization bill. That bill, of course, failed to be enacted, and both of the appropriations committees subsequently failed to endorse the proposal.

The appropriations committees, however, did support the Administration's request to allocate IMET funds to Chile, albeit with several attached conditions. No IMET funds have been provided to Chile since FY 1975 when Chile received \$624,000 and obtained U.S. training for 565 students. Since FY 1976, Congress has prohibited all military assistance to Chile (other than the CAD/PAD exception noted above).¹¹¹ For FY 1990, Congress approved a waiver of those restrictions to permit an IMET program for Chile of up to \$50,000, the level requested by the Administration. The implementation of this authority, however, is subject to the following conditions:

- (A) A civilian, democratically elected President is in power in Chile and has requested such funds;
- (B) internationally recognized human rights are being respected and the civilian government is exercising independent and effective authority; and
- (C) the Government of Chile is making good-faith efforts in attempting to resolve the murders of Orlando Letelier and Ronni Moffitt. [Note: Mr. Letelier was a former Ambassador to the U.S. for the Allende government, and he and his associate, Ms Moffitt, an American citizen, were murdered in Washington, DC in 1975.]¹¹²

The Administration subsequently allocated the authorized \$50,000 to Chile for an FY 1990 IMET program.

Military and economic assistance for FY 1990 to the West African country of Liberia was also specifically addressed by Congress. Section 549, P.L. 101-167, requires that in determining

¹⁰⁹ *Ibid.*

¹¹⁰ Section 715, P.L. 99-83, amending Section 726, *International Security and Development Cooperation Act of 1981*, P.L. 97-113.

¹¹¹ 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 Section 726(b) of the *International Security and Development Cooperation Act of 1981*, P.L. 97-113.

¹¹² Section 545(c)(2), P.L. 101-167.

whether to furnish FMFP or ESF aid to Liberia under the FAA/61, the President should take into account the degree to which the economically and politically troubled Government of Liberia:

(1) Has demonstrated its commitment to economic reform, including taking steps to fundamentally change the current financial practice of making extra-budgetary expenditures, including steps to channel the revenues from such major sources as the Liberia Petroleum Refinery Corporation and the Forestry Development Authority through the normal budgetary process; and

(2) has taken significant steps to increase respect for internationally recognized human rights including—

(a) the removal of all restrictions on the right of political parties to operate freely;

(b) the lifting of restrictions on freedom of the press; and

(c) the restoration of an independent judiciary.

Major prohibitions on U.S. assistance to Haiti and Panama are also included in P.L. 101-167. For **Haiti**, most military and economic assistance is denied for FY 1990 unless the Government of Haiti “has embarked upon a credible transition to democracy,” as measured by: (1) a restoration of its 1987 Constitution; (2) the appointment of “a genuinely independent electoral commission to conduct free, fair, and open elections as soon as possible at all levels, and by giving that commission adequate support; and (3) the implementation of “adequate steps to provide electoral security.” Notwithstanding these restrictions, U.S. assistance may be furnished to Haiti “if the President determines that it is in the national interest of the U.S. to do so.”¹¹³

This marks the third consecutive year of such restrictions on assistance to Haiti. These restrictions were originally enacted for FY 1988 as a Congressional response to the failure of the Government of Haiti to hold a scheduled national election in 1987, and to its acts of political suppression and voter intimidation. However, the prohibitions on assistance have never been absolute, and for FY 1990 Haiti may receive certain specified types of limited assistance, to include: humanitarian and development aid furnished through non-governmental agencies; disaster relief and refugee assistance; assistance under the Inter-American Foundation Act and through the Overseas Private Investment Corporation; education assistance for Haitians studying in the United States; migrant and narcotics interdiction operations; electoral commission assistance; AIDS prevention and control assistance; and assistance for the control and eradication of swine flu.¹¹⁴

The FY 1990 prohibitions on the furnishing of U.S. assistance to **Panama**, as contained in P.L. 101-167, remain unchanged from FY 1988 when aid to Panama was first suspended. Of course, P.L. 101-167 was enacted on 21 November 1989, just one month prior to the 20 December U.S. invasion of Panama and the overturning of the Noriega regime. Since the Administration is now planning a resumption of aid to Panama, it is useful to review the breadth of the prohibitions in P.L. 101-167 as well as the conditions established by Congress for resuming U.S. assistance to Panama.

As stated in section 561(c), P.L. 101-167, the prohibition on assistance to Panama includes “assistance of any kind which is provided by grant, sale, loan, lease, credit, guaranty, or insurance.” Further, Section 561(c) specifies that this prohibition includes all assistance programs covered by the FAA/1961 and the AECA, as well as the “Food for Peace” program (involving concessional sales and donations), the financing programs of the Commodity Credit Corporation

¹¹³ Section 560(a), P.L. 101-167.

¹¹⁴ Section 560(b), P.L. 101-167.

and of the Export-Import Bank, and all assistance furnished by the Central Intelligence Agency other than "activities undertaken solely to collect necessary intelligence." Most importantly, Section 561(a) links the prohibitions directly to the Noriega regime, stating that no U.S. assistance "shall be obligated or expended for programs, projects, or activities which assist or lend support for the Noriega regime, or ministries of government under control of the Noriega regime, or any successor regime that does not meet" the four criteria discussed below which must be met before the prohibitions may be lifted. Additionally, Section 561(a) specifies that no U.S. appropriated funds "shall be used to finance any participation of the United States in joint military exercises conducted in Panama during fiscal year 1990."

Certain exemptions from the prohibitions on assistance are provided for Panama, and are similar to, but less extensive than the exemptions extended to Haiti, as previously discussed. Section 561(c) permits humanitarian and developmental non-governmental assistance, donations of food or medicine, disaster relief, refuge assistance, assistance under the Inter-American Foundation Act, training program assistance for programs underway prior to the FY 1988 imposition of the prohibitions on Panama, or any "assistance made available for termination costs arising from the requirements" of the prohibition on assistance.

A resumption of U.S. assistance to Panama is contingent upon a Presidential certification to Congress that the following four criteria have been met:

- (1) The Government of Panama has demonstrated substantial progress in assuring civilian control of the armed forces and that the Panama Defense Forces and its leaders have been removed from non-military activities and institutions;
- (2) an impartial investigation into allegations of illegal actions by members of the Panama Defense Force is being conducted;
- (3) a satisfactory agreement has been reached between the governing authorities and representatives of the opposition forces on conditions for free and fair elections; and,
- (4) freedom of the press and other constitutional guarantees, including due process of law, are being restored to the Panamanian people.

CONCLUSION

As this analysis has revealed, the appropriations for U.S. military assistance for FY 1990 represent a continuation of the pattern of recent annual funding reductions that began in FY 1986. This year's cut of \$56.78 million (or 1.19 percent) from FY 1989 appropriation levels for military assistance contributes to the overall reduction in such funding since FY 1985 of \$1,070.451 million, or 18.45 percent. Moreover, these figures are based on current year dollar values; if they were to be adjusted for the annual inflation levels of the past six years, the reductions in real purchasing power of the military assistance dollar would be significantly greater. Most significantly, the FY 1990 funding fell more than 7.6 percent below the budget level requested by the Administration to meet essential military assistance requirements. This reduction in funding resources, plus the continued Congressional mandating of earmarked funding for a small number of countries and programs, once again forced the Executive Branch to make some very difficult choices in optimizing the allocation of the very limited non-earmarked funds available for FY 1990. The result, of course, involved substantial cuts in assistance for several countries, and the total elimination of certain assistance programs for other countries.

This report has also highlighted the critical role of Congress in the governance of military assistance. Such new and important provisions for FY 1990 as the integration of the Military Assistance Program with the Foreign Military Financing Program, and the enactment of the Fair Pricing provisions, both of which were proposed by the Administration, have now come into being. Several other Executive Branch initiatives, of course, were rejected by Congress, such as proposals to convert the FMFP to an all-grant program, to alter several provisions of the Southern Region Amendment, and to ease the restrictions on Stinger sales to the Persian Gulf region. Thus, from the Administration's perspective, the legislative outcome for FY 1990 serves to enhance certain aspects of military assistance management while, at the same time, maintains statutory authorities which are seen as barriers to effective program administration. Executive Branch legislative proposals for FY 1991, which are scheduled to be presented to Congress in February, 1990, will likely reflect renewed efforts to effect some of the initiatives that proved unacceptable for FY 1990, as well as to include several other new initiatives—all designed to provide a more efficient and effective legislative base for conducting U.S. military assistance activities. Moreover, if the Senate can break through the obstacles it has encountered during the past three years in producing an authorization bill, many of the important major reforms of military assistance legislation recommended by the House for FY 1990 may yet come into being for FY 1991.

The varying new legislative provisions, plus the ongoing funding problems examined herein, present important new and challenging management tasks to the security assistance community for FY 1990. Recently enacted statutory provisions mandate the development of new operating directives and procedures for the proper and effective implementation of the FY 1990 legislation. This is clearly evident in the following section of this issue of *The DISAM Journal* which reprints a series of recent messages issued to the security assistance community regarding the FY 1990 Fair Pricing legislative provisions. The means for achieving maximum benefits from the reduced military assistance program funding appropriated for FY 1990 will be even more challenging. This article, it is hoped, will prove useful in comprehending these new legislative provisions and the variety of issues they present, and should assist the security assistance community in addressing the many new management requirements which are necessitated by these numerous statutory changes.

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