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## COVER FEATURE

# New Security Assistance Legislation for Fiscal Year 1993

By

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### INTRODUCTION

Appropriations for United States foreign assistance programs for FY 1993 reflect significant departures from the legislation of previous years. For example, this year's appropriations total \$26.3 billion—an increase of \$11.1 billion over the \$15.2 billion appropriated for FY 1992. Much of the increase is attributable to several new programs, to include: \$417 million in assistance for Russia and the new independent states of the former Soviet Union (FSU); \$400 million for economic assistance for Eastern Europe and the Baltic States; and new U.S. contributions of \$12.3 billion to the International Monetary Fund designed in large part to support monetary stability in the new states of the FSU. Also, while not directly involving U.S. appropriated funds, the FY 1993 legislation is further noteworthy for its inclusion of authority for the U.S.G. to provide guarantees for \$10 billion in commercial loans sought by Israel to aid in absorbing hundreds of thousands of Jewish immigrants from the FSU, Ethiopia, and elsewhere. While such new funding and new programs tended to be emphasized in the media reporting of this new legislation, less attention was given to various significant program changes and funding reductions which directly affect the more traditional military assistance programs that are the principal subjects of this report.

Funding for military assistance and other FY 1993 U.S. assistance programs is provided in P.L. 102-391, entitled the *Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993*. This legislation was not completed by 1 October—the start of the new fiscal year—and on that date President Bush signed an omnibus continuing appropriations resolution (CR) which provided temporary funding for all foreign assistance programs and for most other government programs through 5 October.<sup>1</sup>

The fact that a stand alone appropriations act for foreign assistance was subsequently enacted on 6 October 1992 came as something of a surprise to many experienced observers of the

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<sup>1</sup>House Joint Resolution 553, P.L.102-376, 1 October 1992. Only one of the thirteen appropriations acts which must be passed annually—the Agriculture and Related Agencies Appropriations Act, 1993—was enacted prior to the start of the new fiscal year. Consequently, the continuing resolution applied to all of the following 11 agencies/activities as well as to Foreign Operations: Commerce, Justice, State, and Judiciary; Defense; District of Columbia; Energy and Water Development; Interior and Related Agencies; Labor, Health, and Human Services, and Education; Legislative Branch; Military Construction; Transportation and Related Agencies; Treasury, Postal Service, General Government; and VA, Housing and Urban Development, and Independent Agencies. By 6 October 1992 all thirteen appropriations acts had been passed by Congress and signed by President Bush.

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legislative process. In May 1992, senior executive branch officials speaking at the USCENTCOM Security Assistance Conference in Tampa, Florida, agreed that with respect to foreign assistance funding the most that could be expected from Congress during a presidential election year would be an extended continuing appropriations resolution. By 18 June, the House Appropriations Committee (HAC) had completed its report on the appropriations bill (H.R. 5368),<sup>2</sup> and on 29 June the House passed the bill (297-194). However, the Senate let the summer pass with no action on H.R. 5368, and it appeared the prognostications were correct. Yet, when Congress reconvened in September following the annual August recess, the Senate Appropriations Committee (SAC), apparently stimulated by events in the FSU and by a new Presidential commitment to support the loan guarantees for the Israelis, took action on the bill and completed its report on 23 September.<sup>3</sup> On 1 October, the Senate passed the bill (87-12), and a conference committee comprised of selected HAC and SAC members subsequently ironed out the various differences between the House and Senate versions of H.R. 5368. Their Conference Report was completed on 4 October,<sup>4</sup> and on 5 October it was passed by the House (312-105) and the Senate (by voice vote). Finally, on 6 October 1992, President Bush signed H.R. 5368, enacting it as P.L. 102-391.

No similar success marked the related efforts of the foreign assistance authorization committees, and none was expected. Once again, for the seventh consecutive year, the House Foreign Affairs Committee and the Senate Foreign Relations Committee proved unable to produce a general foreign assistance authorization act. Since this failure has continued annually since the 1985 enactment of a two-year authorization act,<sup>5</sup> the Executive Branch has not been overly optimistic about the likelihood of obtaining such legislation. Indeed, given the inaction of Congress, the Administration chose not to send a new proposed FY 1993 authorization bill to Capitol Hill, but instead relied on the two-year bill (for FY 1992 and FY 1993) which had been submitted in January 1991. The practical effect of conducting military assistance in the absence of an authorization act is to deny the Departments of State and Defense a legislative vehicle by which to obtain passage of desired legislative initiatives. Thus, the legislative changes described below generally were initiated within the Congress, some to the dismay of the Administration.

The discussion which follows examines each of the military assistance programs in turn. The focus is on FY 1993 funding levels as well as on newly-enacted legislative provisions which impact on each program. Additionally, the article describes a variety of new country-specific legislative provisions, and also summarizes some of the major non-security assistance provisions of P.L. 102-391, identified hereinafter as the *FY 1993 Foreign Operations Appropriations Act*. Finally, selected provisions of other related legislation are examined, to include items in P.L. 102-484, *National Defense Authorization Act for FY 1993*, P.L. 102-511, *FREEDOM Support Act*, and P.L. 102-583, *International Narcotics Control Act of 1992*.

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<sup>2</sup>U.S. House of Representatives. *Report of the Committee on Appropriations to Accompany H.R. 5368, Foreign Operations, Export Financing, and Related Programs Appropriations Bill, 1993*. 102d Congress, 2d Session, Report No. 102-585, June 18, 1982. Hereinafter termed *HAC Report*.

<sup>3</sup>U.S. Senate. *Report of the Committee on Appropriations to Accompany H.R. 5368, Foreign Operations, Export Financing, and Related Programs Appropriations Bill, 1993*. 102d Congress, 2d Session, Report No. 1102-419, September 23, 1992. Hereinafter termed *SAC Report*.

<sup>4</sup>"Conference Report on HR. 5368," *Congressional Record*, October 4, 1992, pp. H11327-H11340.

<sup>5</sup>P.L. 99-83, the *International Security and Development Cooperation Act of 1985*, provided foreign assistance authorizations for FY 1986 and FY 1987.

**TABLE 1**  
**A COMPARISON OF FISCAL YEAR 1993**  
**SECURITY ASSISTANCE APPROPRIATIONS LEVELS**  
**(DOLLARS IN MILLIONS)**

|               | <b>P.L. 102-145<br/>FY 1992<br/>LEVELS</b> | <b>ADMINIS.<br/>REQUEST<br/>JAN 1992</b> | <b>H.R. 5368<br/>HOUSE<br/>LEVELS<br/>29 JUN 1992</b> | <b>H.R. 5368<br/>SENATE<br/>LEVELS<br/>1 OCT 1992</b> | <b>P.L. 102-391<br/>6 OCT 1992</b> |
|---------------|--|--|---|---|------------------------------------|
| <b>FMFP</b>   | <b>\$4,337.30 [1]</b>                      | <b>\$4,457.52 [3]</b>                    | <b>\$4,155.00 [4]</b>                                 | <b>\$4,155.00 [5]</b>                                 | <b>\$4,155.00 [6]</b>              |
| <b>IMET</b>   | <b>44.57 [2]</b>                           | <b>47.50</b>                             | <b>42.50</b>  | <b>42.50</b>  | <b>42.50</b>                       |
| <b>ESF</b>    | <b>3,187.68</b>                            | <b>3,123.00</b>                          | <b>2,739.00</b>                                       | <b>2,526.09</b>                                       | <b>2,670.00</b>                    |
| <b>PKO</b>    | <b><u>27.59</u></b>                        | <b><u>27.17</u></b>                      | <b><u>27.17</u></b>                                   | <b><u>27.17</u></b>                                   | <b><u>27.17</u></b>                |
| <b>TOTALS</b> | <b><u>\$7,597.14</u></b>                   | <b><u>\$7,360.23</u></b>                 | <b><u>\$6,963.67</u></b>                              | <b><u>\$6,750.76</u></b>                              | <b><u>\$6,894.67</u></b>           |

[1] The FY 1992 FMFP account was comprised of \$3,992.30M in grants and \$345M in concessional loans. Also, the account included a rescission of \$47.1M per P.L. 102-298, 4 June 1992.

[2] The FY 1992 MET account included a rescission of \$1.9M per P.L. 102-298, 4 June 1992.

[3] The Administration's request for FY 1993 FMFP funds included \$4,099.23M in grants and \$358.29M in direct loans furnished at concessional interest rates, for a total program of \$4,457.52M. However, the current methods for accounting for these concessional loans only requires an appropriation for the loan subsidy costs (i.e., the difference in costs between non-concessional loans and government-subsidized concessional loans, plus the inclusion of a relatively small administrative cost). The concessional loan request for FY 1993 carries a subsidy cost of \$63.33M which is included in the overall FMFP appropriation request above. In short, \$63.33M would buy a concessional interest rate loan program of \$358.29M, and when added to the grant request for \$4,099.23M, would produce a program valued at \$4,457.52M. Similarly, in FY 1992 only \$50.148M was provided as a subsidy to fund a \$345M concessional loan program.

[4] The House bill proposed \$3,300M in FMFP grants and an FMFP loan subsidy of \$54.23M to support an \$855M *conventional* loan program at market interest rates.

[5] The Senate bill proposed \$3,840M in FMFP grants and \$55.44M to support a \$315.0M FMFP direct *concessional* loan program.

[6] The FMFP total value of \$4,155M reflected in P.L. 102-391 includes \$3,300M in grants and \$149.2M in loan subsidy funding to support a maximum of \$855M in concessional loans.

## FY 1993 SECURITY ASSISTANCE PROGRAMS

Table 1 above provides a basic reference for the following discussion of security assistance funding levels for FY 1993. The progress of H.R. 5368 through the Congress and the changes in funding levels at each step of the process are illustrated, from initial budget submission by the Executive Branch through passage by each House and final enactment as P.L. 102-391.

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## A. The Foreign Military Financing Program (FMFP)

As reflected in Table 1, the Foreign Military Financing Program for FY 1993 has been financed at a total program level of \$4,155M. Grant assistance constitutes \$3,300M of the total FMFP program; this represents a reduction of 17% (\$692.30M) from the grant component in the FY 1992 FMFP appropriation of \$3,992.30M. The remaining \$855M in the FY 1993 FMFP account represents **concessional loan financing** (i.e., loans issued at reduced interest rates no lower than 5%) for which a separate FMFP appropriation of \$149.2M was made; these latter funds are required to cover the subsidy costs of an \$855M concessional loan program, that is, to cover the difference in costs between non-concessional loans and government-subsidized concessional loans, plus a small administrative cost. This FY 1993 concessional loan funding level of \$855M is 60% above the FY 1992 level (\$345M), but is essentially the result of placing the recipients of such loans—the European base rights countries of Greece, Turkey, and now Portugal—on an all-loan basis as opposed to a combination grant and concessional loan basis as described below.

The continuation in FY 1993 of any concessional loan program for the European base rights countries was in serious doubt earlier this year. The 29 June 1992 House version of the appropriations bill eliminated any grant funding for these countries. (In prior years, their FMFP funding had been comprised of a combination of grants and concessional loans.) The House also eliminated the *concessional* loan element of the FMFP, substituting in its place an \$855M *conventional* loan program at a cost to the U.S.G. of \$54.23M. Under this program, only conventional loans at current market interest rates would be issued to these countries.<sup>6</sup> The House also made substantial reductions to the funding levels requested for each country: Greece was cut from \$345.1M to \$315M; Portugal from \$100M to \$90M; and Turkey from \$543M to \$450M. The broad purpose to be served by these proposed actions, as explained by the House Appropriations Committee (HAC), was to implement a “European Base Rights Graduation Policy.” This policy would reflect a three-step process by which the three countries would:

- (1) Receive loans rather than grants or a mixture of grants and loans [the latter having been the standard method of furnishing assistance to Greece and Turkey since FY 1985];
- (2) Receive loans that have interest rates that reflect the cost of borrowing to the United States Treasury and administrative charges; and,
- (3) Each receive a ten percent cut in the military procurement level which they had in fiscal year 1992.<sup>7</sup>

Such a policy, in the committee’s view, would be “similar to the policy of the World Bank,” whereby developing countries proceed from receiving concessional economic assistance to a blend of “concessional” and “hard” loans [i.e., loans issued at full market interest rates] until they are eventually “graduated” even from the hard loans. The Committee reported that Turkey, Greece, and Portugal all have World Bank “hard” loans in their current debt portfolios, and none has been eligible for concessional assistance for many years. Finally, the Committee reported that, “Many of the loans that each of these countries is currently repaying [to] the [World] Bank carry interest rates that exceed those which they would likely have to pay for foreign military finance programs under the recommendation of the Committee.”<sup>8</sup>

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<sup>6</sup>The phrase “current market interest rates,” as described in H.R. 5368, 29 June 1992, refers to interest rates of “not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturities.”

<sup>7</sup>HAC Report, op. cit., p. 10

<sup>8</sup>Ibid.

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The Administration was resistant to this unexpected change in FMFP funding, believing that a continuation of the originally proposed combination of grants and concessional loans would more satisfactorily meet the current FMFP requirements of the three countries. The Senate Appropriations Committee, which at first was prepared to fully support the House proposal, changed its position on the issue. Recognizing the continuing importance of these countries to U.S. and Western interests, as was amply demonstrated during the Gulf War, the Committee, and subsequently the Senate as a whole, proposed a program of grants (\$3,840.00M) and concessional loans (not to exceed \$315.00M) totaling \$4,155M.<sup>9</sup> Thus, the Senate bill which was passed on 1 October provided \$90M in FMFP grants for Portugal, \$450M in grants for Turkey, and \$315M in concessional loans for Greece.

In a matter directly related to the issue of FMFP funding for Greece, the SAC also noted that the Government of Greece planned to purchase "an integrated electronic warfare suite for the Hellenic Air Force's Block 30 and 50 F-16 aircraft," to be financed primarily by FMFP funds. The Committee expressed its opposition to the use of FMFP for the acquisition of non-U.S. origin products, and the Committee stated that, "Any U.S. financing for [the] procurement of an integrated system for the Greek F-16s should be [for a system] wholly designed, developed, and manufactured in the United States." It should be understood that although the Arms Export Control Act (AECA), §42(c), permits the use of FMFP funds for the acquisition of non-U.S. origin items, the authority for such use is dependent on a special Presidential determination that "such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base. . .which outweigh the economic or other advantages to the United States of less costly procurement outside the United States."<sup>10</sup> In summary, offshore procurement financed by U.S. appropriated funds is essentially an exceptional procedure; and the SAC report reflects the Committee's specific interest in precluding such funding for the offshore procurement of an integrated electronic warfare suite for the Greek F-16 program.

Reconciliation in the Conference Committee of the various differences in the House and Senate FMFP proposals resulted in a retention of the House proposed funding reductions for Greece, Portugal, and Turkey, as well as a denial, also per the House proposal, of any grant funding for the three countries. However, the Conference Committee accepted the Senate recommendation to issue FMFP funds to these countries on a concessional rather than market rate loan basis. Thus, P.L. 102-391 establishes the following amounts as funding earmarks for concessional loans for FY 1993: Greece, \$315M; Portugal, \$90M; and Turkey, \$450M, all to be subsidized by the aforementioned \$149.2M FMFP appropriation designated for concessional loans. In addressing the House in support of this new approach to assisting the European base rights countries, Representative David Obey (D-WI), Chairman of the Foreign Operations Subcommittee of the House Appropriations Committee, observed the following regarding the Conference Committee's action:

It is our view that if our NATO allies want to purchase weapons, they ought to do it with their own money, and ought not to do it with ours. With the collapse of the Soviet Union we no longer have any reason to be engaged in what in essence is a welfare program for poorer NATO allies. We feel that is a European responsibility.<sup>11</sup>

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<sup>9</sup>SAC Report, op. cit., p. 149.

<sup>10</sup>Ibid. Also, see §90210, *Security Assistance Management Manual*, DoD 5105.38-M (hereinafter, *SAMM*) for additional information on off-shore procurement policy.

<sup>11</sup>*Congressional Record*, 5 October 1992, H11358.

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The **grant funding** component of the FMFP is dominated by the expected annual Middle East earmarks (i.e., mandatory minimum funding levels) for **Egypt** (\$1,300M) and **Israel** (\$1,800M), which together represent over 74% of the entire FMFP account.<sup>12</sup> As in the past, all of the grant FMFP funds earmarked for Israel are to be disbursed within 30 days of the date of enactment of P.L. 102-391, i.e., no later than 5 November 1992. Also, Israel is again authorized to use not less than \$475M of its funds "for the procurement in Israel of defense articles and defense services," plus up to \$150M "for research and development in the United States" related to advanced weapons systems.<sup>13</sup>

In discussing the continuation of these special provisions for Israel, the House Appropriations Committee (HAC) made the following observations:

The Committee is concerned that Israel's technological military edge is eroding as a result of the escalating arms race in the region, unrestrained sales of advanced military equipment to Israel's potential adversaries by other nations, and the increasing sophistication and cost of advanced weapons systems. . . In the absence of a [regional arms control regime that involves every weapons supplier and every nation in the Middle East]. . .the United States must make every effort to carry out the long-standing policy of ensuring that Israel's technological superiority is maintained.<sup>14</sup>

Noting that this policy is "based on the recognition that Israel faces a hostile military alignment endowed with superior resources, manpower, and numerical strength," and that "Israel's small size makes it particularly vulnerable to surprise attack," the HAC asked the Departments of State, Defense, and Commerce, to provide a new annual report to Congress "articulating steps to maintain Israel's technological superiority in the future." Among other things, this new report should include "a listing of defense articles, services, and technologies, with descriptions, which (1) have been requested but denied to Arab states and (2) have been provided to Israel." Additionally, the report should also include "a listing of items requested by Israel and denied, but approved for other nations, with the rationale for these decisions. . . ." The first such report is due to Congress no later than six months after the enactment of P.L. 102-391, i.e., 5 April 1993.<sup>15</sup>

Several other grant FMFP earmarks are provided in P.L. 102-391, and warrant attention. Congress designated a \$29M grant earmark to be used in the **El Salvador Demobilization and Transition Fund**.<sup>16</sup> This fund was established in FY 1991 to support "reconciliation and reconstruction" in El Salvador; in that year, the fund received an appropriation of \$13M in grant FMFP monies, and an additional \$63.75M was appropriated for FY 1992. P.L. 102-391 also authorizes a separate ceiling of \$11M in FY 1993 FMFP grant funding for El Salvador, but limits the use of these funds to the acquisition of non-lethal items.<sup>17</sup>

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<sup>12</sup>Since FY 1987, these same FMFP funding levels for Egypt and Israel have been furnished annually. In FY 1987, with a substantially higher FMFP appropriation totaling \$5,611M, the two countries accounted for 55% of the total FMFP account.

<sup>13</sup>P.L. 102-391, Title III, Military Assistance, Foreign Military Financing Program.

<sup>14</sup>HAC Report, op. cit., p. 104.

<sup>15</sup>Ibid., pp. 104-105.

<sup>16</sup>P.L. 102-391, §530.

<sup>17</sup>Ibid. This funding may be used only "for maintenance, sustainment, restructuring and reduction and only in strict accordance with the newly-defined mission of the Salvadoran Armed Forces as embodied within the Salvadoran Peace Accords.

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Morocco was earmarked to receive an FMFP grant of \$40M, plus an Economic Support Fund (ESF) grant of \$20M for a total assistance package of \$60M.<sup>18</sup> However, as a result of an amendment originally introduced in the Senate by Nancy L. Kassebaum (R-KA) related to the ongoing conflict in the Western Sahara, no more than \$52M may be granted to Morocco from both funds. The remaining \$8M may be made available to Morocco only if “the President certifies, and so reports to Congress, that the Government of Morocco is fully cooperating with the United Nations in the implementation of the Settlement Plan for self-determination of the people of the Western Sahara.”<sup>19</sup>

An FMFP earmark of \$15M was also provided for “countries in Africa for programs which support conservation and biodiversity.”<sup>20</sup> The *SAC Report* states that “these funds are to be used solely for training and equipment, including aircraft, for antipoaching, wildlife surveillance, conservation, and fishery protection programs,” and are intended “to benefit countries that have an urgent need for assistance to protect their wildlife resources.”<sup>21</sup> This funding was part of an overall environment and energy initiatives package contained in P.L. 102-391, aimed at sustaining economic growth through the proper management of natural resources. For example, funding for this effort was also earmarked in the Development Assistance Fund for the support of such various programs as: renewable energy projects; a Neotropical Bird Conservation Initiative; elephant conservation and preservation; a Forests for the Future Initiative; etc.<sup>22</sup>

Finally, an FMFP earmark of \$1M is provided for landmine clearing and related activities, to include surveys and training.<sup>23</sup> This earmark grew out of the concerns of the Senate Appropriations Committee regarding the devastating effects of landmines in countries which have recently experienced major armed conflict. The SAC was particularly concerned about “the hundreds of thousands of unexploded landmines, some left from years ago, [which] continue to maim and kill innocent people” and which often leave farmers with “the cruel choice of abandoning their farms or risking death or the loss of a limb in order to feed their families.” Although the statute fails to specify any particular countries to receive this assistance, the *SAC Report* states that, “Serious consideration should be given to using a portion of these funds in Cambodia and northern Somalia.” Further, the SAC expects AID [Agency for International Development] and the State Department to consult with the Committee on the use of these funds.<sup>24</sup>

In a related legislative action, the National Defense Authorization Act for FY 1993 establishes a one-year “moratorium on the transfer of anti-personnel landmines.”<sup>25</sup> This legislation is proposed to serve as an interim step in obtaining an international agreement for prohibiting “the sale, transfer, or export” of these weapons and for limiting their “use, production, possession, and deployment . . .” The statute broadly defines these weapons as:

- (1) Any munition placed under, on, or near the ground or other surface area, or delivered by artillery, rocket, mortar, or similar means or dropped from an aircraft and which is designed to be detonated or exploded by the presence, proximity, or contact of a person;

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<sup>18</sup>The Administration had requested \$40M in FMFP grants for Morocco; the Senate, however, proposed a \$4M earmark. The funding level was reconciled in the Conference Committee at \$40M.

<sup>19</sup>P.L. 102-391, §599G.

<sup>20</sup>P.L. 102-391, §532(h).

<sup>21</sup>*SAC Report*, op. cit., p. 150.

<sup>22</sup>P.L. 102-391, §532(e).

<sup>23</sup>P.L. 102-391, Title III, Military Assistance, Foreign Military Financing Program.

<sup>24</sup>*SAC Report*, op. cit., pp. 149-50.

<sup>25</sup>P.L. 102-484, §1365(c), 23 October 1993.

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(2) any device or material which is designed, constructed, or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act;

(3) any manually-emplaced munition or device designed to kill, injure, or damage and which is actuated by remote control or automatically after a lapse of time.<sup>26</sup>

The new legislation specifically prohibits sales, the financing of sales, commercial exports, the issuing of licenses for the export of such landmines, or the furnishing of any foreign assistance related to the transfer of such landmines during the period 23 October 1992 through 22 October 1993.<sup>27</sup> Of interest are some of the statistics cited in the statute regarding anti-personnel landmines: over 35 countries are known to manufacture these weapons, and during the past five years, the Department of Defense approved the sale of 13,156 anti-personnel landmines valued at \$841,145; also, during the past ten years, the Department of State approved ten licenses for the commercial export of such landmines valued at a total of \$980,000.<sup>28</sup>

The FMFP account also specifies ceilings for two programs. While such ceilings do not represent *mandatory* spending levels, as is the case with earmarked funding levels, programs with stipulated ceilings can generally be expected to be fully funded at the ceiling level. The \$11M ceiling on El Salvador's FMFP account (which is restricted to the acquisition of non-lethal equipment) has already been mentioned. In addition, a ceiling of \$26M has been placed on the level of FMFP funding that may be obligated for the **general costs of administering military assistance and sales programs**. These monies are used to finance certain security assistance operating expenses of U.S. military departments, the Defense Security Assistance Agency (DSAA), and overseas security assistance organizations. The Administration originally requested \$29M for such purposes, but the HAC recommended a \$3M cut in funding which ultimately was enacted. In explaining its recommendation, the HAC indicated the reduction was a product of two factors: first, there have been significant cuts in appropriations for the FMF Program and the International Military Education and Training (IMET) Program; and second, "the Committee believes that DSAA should withdraw staff from countries that do not have current FMF or IMET programs." The HAC reported it "was surprised to learn that administrative expenses have been used to pay for staff in France and other European countries." The HAC concluded its discussion of this issue by observing that "a full evaluation of the DSAA appropriated operating cost program needs to be undertaken and provided to the Committee at the time of submission of the fiscal year 1994 [budget] request."<sup>29</sup>

All of these ceilings, grant earmarks, and concessional loans total \$4,077M and represent 98% of the total FY 1993 FMF Program of \$4,155M. This left only \$78M of the FMF account available to the Administration for allocation to non-specified countries/programs. On 14 January 1993, the State Department announced its overall security assistance allocations for FY 1993.<sup>30</sup> Table 2 below identifies the FMFP allocations, including Congressionally-designated FMFP earmarks and ceilings; Table 3 also compares these allocation levels to those country and program levels contained in the Administration's original FMFP funding request.

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<sup>26</sup>Ibid., §1365(e).

<sup>27</sup>Ibid., §1365(d).

<sup>28</sup>Ibid., §1365(a)(3).

<sup>29</sup>HAC Report, op. cit., p. 106.

<sup>30</sup>SECSTATE message 140413Z January 1993. This message carries the reminder that "allocation does not constitute authority to obligate funds," since obligation "still requires specific release by OMB at the request of the Under Secretary of State for International Security Affairs." Further, the "release of funds for some countries will be contingent upon the country satisfying certain conditions or meeting certification requirements."

TABLE 2

**FY 1993 FOREIGN MILITARY FINANCING PROGRAM (FMFP)  
REQUEST LEVELS AND ALLOCATION LEVELS  
(Dollars in Millions) (E=Earmark; C=Ceiling)**

| <u>Country/Program</u>       | <u>FY 1993<br/>Budget<br/>Request<br/>Level [1]</u> | <u>Allocated<br/>FY 1993<br/>Funding</u> | <u>Allocation as<br/>% of Total<br/>FY 1993<br/>Appropriation</u> |
|------------------------------|---|--|---|
| Argentina                    | \$1.00  | \$0.00                                   | 0.00%   |
| Bahrain                      | 1.00  | 0.50                                     | 0.01%   |
| Chad                         | 1.00  | 0.00                                     | 0.00%   |
| Costa Rica                   | 1.00  | 0.00                                     | 0.00%   |
| Egypt                        | 1,300.00  | 1,300.00 E                               | 31.29%  |
| El Salvador                  | 40.00   | 40.00 C                                  | 0.96%   |
| [El Salvador Non-Lethal]     | [0.00]  | [11.00]                                  | [0.24%]   |
| [El Salvador Demobilization] | [0.00]  | [29.00]E                                 | [0.70%]   |
| Greece (Total)               | 345.09  | 315.00 E                                 | 7.58%   |
| [Concessional]               | [315.09]  | [315.00]                                 | [7.58%]   |
| [Grant]                      | [30.00]   | [0.00]                                   | [0.00%]   |
| Honduras                     | 8.00  | 1.50                                     | 0.36%   |
| Hungary                      | 0.00  | 0.25                                     | 0.006%  |
| Israel                       | 1,800.00  | 1,800.00 E                               | 43.32%  |
| Jordan                       | 25.00   | 9.00                                     | 0.22%   |
| Morocco                      | 40.00   | 40.00 E                                  | 0.96%   |
| Oman                         | 1.00  | 1.00                                     | 0.02%   |
| Paraguay                     | 0.50  | 0.00                                     | 0.00%   |
| Philippines                  | 45.00   | 15.00                                    | 0.36%   |
| Poland                       | 0.00  | 0.25                                     | 0.006%  |
| Portugal (Total)             | 100.00  | 90.00 E                                  | 2.17%   |
| [Concessional]               | [0.00]  | [90.00]                                  | [2.17%]   |
| [Grant]                      | [100.00]  | [0.00]                                   | [0.00%]   |
| Senegal                      | 0.50  | 0.00                                     | 0.00%   |
| Tunisia                      | 10.00   | 2.00                                     | 0.05%   |
| Turkey (Total)               | 543.00  | 450.00 E                                 | 10.83%  |
| [Concessional]               | [43.00]   | [450.00]                                 | [10.83%]  |
| [Grant]                      | [500.00]  | [0.00]                                   | [0.00%]   |
| Uruguay                      | 0.50  | 0.00                                     | 0.00%   |
| Andean Narcotics Initiative  | 132.00  | 44.00                                    | 1.06%   |
| [Bolivia]                    | [40.00]   | [18.00]                                  | [0.43%]   |
| [Colombia]                   | [58.00]   | [26.00]                                  | [0.63%]   |
| [Peru]                       | [34.00]   | [0.00]                                   | [0.00%]   |
| African Biodiversity         | 0.00  | 15.00 E                                  | 0.36%   |
| African Regional             | 11.23   | 0.00                                     | 0.00%   |
| Landmine Clearing            | 0.00  | 1.00 E                                   | 0.02%   |

[Continued on the following page.]

**TABLE 2. CONTINUED**

| <u>Country/Program</u>  | <u>FY 1993<br/>Budget<br/>Request<br/>Level</u> | <u>Allocated<br/>FY 1993<br/>Funding</u> | <u>Allocation as<br/>% of Total<br/>FY 1993<br/>Appropriation</u> |
|---|---|--|---|
| <b>Potential Source and Transit<br/>Counternarcotics Initiative</b> | <b>\$12.50</b>                                  | <b>\$4.50</b>                            | <b>0.13%</b>  |
| [Belize]  | [0.50]  | [0.25]                                   | [0.006%]  |
| [Dominican Republic]  | [0.50]  | [0.25]                                   | [0.006%]  |
| [Eastern Caribbean]   | [3.00]  | [0.25]                                   | [0.006%]  |
| [Ecuador]   | [5.00]  | [0.25]                                   | [0.006%]  |
| [Jamaica]   | [3.00]  | [0.25]                                   | [0.006%]  |
| [Trinidad & Tobago]   | [0.50]  | [0.25]                                   | [0.006%]  |
| [Reserve]   | [0.00]  | [3.00]                                   | [0.07%]   |
| <b>Administrative Costs (Total)</b>                                 | <b>29.20</b>                                    | <b>26.20 C</b>                           | <b>0.62%</b>  |
| [Concessional]  | [0.20]  | [0.20]                                   | [0.005%]  |
| [Grant]   | [29.00]   | [26.00]                                  | [0.625%]  |
| <b>Prior Year Reobligations</b>                                     | <b>10.00</b>                                    | <b>0.00</b>                              | <b>0.00%</b>  |
| <b><u>TOTALS</u></b>  | <b><u>\$4,457.52</u></b>                        | <b><u>\$4,155.20</u></b>                 | <b><u>100.00%</u></b>   |

[1] Other than Greece and Turkey, all other countries listed were originally proposed by the Executive Branch to receive their FMFP assistance entirely in the form of grants. Greece and Turkey are the only countries which were proposed to receive any concessional loan assistance, as shown.

Sources: Budget request levels for FY 1993 may be found in the joint Department of State/Department of Defense annual *Congressional Presentation for Security Assistance Programs, FY 1993*. FMFP allocations for FY 1993 were reported in SECSTATE message, 140413Z January 1993, Subject: FY 1993 Security Assistance Allocations.

### FMFP/FMS-Related Statutory Provisions

A variety of new statutory provisions involving FMFP/FMS programs are included in the new *FY 1993 Foreign Operations Appropriations Act*. These range from prohibitions and restrictions on the use of FMFP funds to the introduction of several new Congressional reporting requirements. These new provisions are summarized below.

a. The following countries are **prohibited from receiving any FMFP funding in FY 1993**: Guatemala, Liberia, Malawi, Peru, Somalia, Sudan, and Zaire,<sup>31</sup> plus Kenya.<sup>32</sup>

b. In addition to the above prohibitions, **prior notifications** to the House and Senate Committees on Appropriations are required before any foreign assistance funds (including FMF, IMET, and ESF) appropriated in P.L. 102-391 may be obligated or expended for any of the

<sup>31</sup>P.L. 102-391, Title III, Military Assistance, Foreign Military Financing Program.

<sup>32</sup>P.L. 102-391, §577. For special conditions applying to Kenya, see discussion in "Country-Specific Provisions" herein.

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following countries: Cambodia, Guatemala, Haiti, Indonesia, Ivory Coast, Lebanon, Liberia, Malawi, Peru, Somalia, Sudan, Uganda, Zaire, or Yemen.<sup>33</sup>

c. For FY 1993, the prohibitions in Section 660, FAA, regarding the provision of police training assistance have been waived to permit **FMFP and IMET funds** to be used for providing equipment and training for **law enforcement agencies** or other units in **Bolivia, Colombia, Ecuador, and Peru** that are organized for the specific purpose of **narcotics enforcement**.<sup>34</sup> Such assistance, however, is expressly prohibited for Peru's Sinchi police. In a related action, the FAA, Section 660 prohibitions have also been exempted for both FY 1993 and FY 1994 in the *International Narcotics Control Act of 1992* to allow transfers of excess defense articles under Section 517, FAA; this provision also permits FMFP and IMET funds to be used in providing assistance for narcotics-related purposes.<sup>35</sup>

d. A new statutory provision requires that **all FMFP country funding allocations** (i.e., all allocations of FMFP grants/concessional loans) that differ from (i.e., exceed or fall below) the allocation levels justified in the *FY 1993 Congressional Presentation Document (CPD)* must be submitted to Congress at least 15 days before any funds may be obligated for expenditure. This new provision changes the prior year requirements which called for such Congressional notifications only for increases in grants or increases and decreases in FMFP loans. The reporting requirement is now extended to also cover any decreases in FMFP grant allocations.<sup>36</sup>

e. In related actions, Congress first rescinded (i.e., canceled) **prior year FMFP budget authority** involving a total of \$45.75M of unspent FY 1991 and prior year appropriated FMFP and MAP funds.<sup>37</sup> Congress did not specify any particular country/program accounts from which these funds were to be rescinded. This rescission action was directly related to the denial by Congress of **"deob-reob" authority** for FY 1993, i.e., the authority to deobligate unused prior year funds in order to reobligate them for a different country (or countries) in the current fiscal year.<sup>38</sup> Such deob-reob authority was first authorized for the FMFP account for FY 1991, but was then prohibited for FY 1992.<sup>39</sup>

f. Congressional concern over the reporting process employed by both the Departments of Defense and State in conjunction with the **cash-flow financing** of a Turkish F-16 FMS case prompted the House Appropriations Committee to recommend more inclusive Congressional notification requirements. These new requirements have now been enacted.<sup>40</sup> Cash flow financing involves the expectation of the use of FMFP funds from *future appropriations* in order to finance expenditures associated with specific, high-cost, long lead-time FMS cases. As such it differs from the more standard practice of assigning the *entire multi-year* estimated costs of an

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<sup>33</sup>P.L. 102-391, §540. A separate provision (§568) applies also to Lebanon requiring that all deliveries to that country of FMFP-funded equipment be subject to the regular advance notification procedures of the Appropriations Committees.

<sup>34</sup>P.L. 102-391, §556(a)(2).

<sup>35</sup>International Narcotics Control Act of 1992, P.L. 102-593, §7. Hereinafter referred to as INCA 92. Such assistance may also be furnished for the development of institutions of democratic governance.

<sup>36</sup>P.L. 102-391, Title III, Military Assistance, Foreign Military Financing Program.

<sup>37</sup>P.L. 102-391, §587. The House had proposed a rescission of \$75M. The Conference Committee accepted the lower level of \$45.75M as proposed by the Senate.

<sup>38</sup>P.L. 101-513, §515.

<sup>39</sup>P.L. 102-361, §515.

<sup>40</sup>P.L. 102-361, §586.

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FMS case for a particular country against FMFP funds already allocated to that country.<sup>41</sup> The new reporting procedures for cash flow financing require notifying the two appropriation committees 15 days prior to the issuance to any country of any Letter of Offer and Acceptance (LOA), LOA Amendment, or other purchase agreement for a procurement valued in excess of \$100M which has been approved in whole or in part for FMFP cash flow financing.<sup>42</sup> In addition to their application to FMS cases, these reporting requirements also apply to any direct commercial contracts for the sale of defense articles/services/military training which are valued at over \$100M and which have similarly been approved in whole or in part for FMFP cash flow financing.

g. Congress has established a \$300M ceiling on the level of DoD obligations that can be made in FY 1993 using those funds which are derived from the **administrative surcharges** which accompany FMS cases.<sup>43</sup> These funds are used for the payment of U.S. administrative operating costs (including civilian salaries) associated with the management of security assistance programs. The House had originally proposed a \$287M ceiling, but the Senate set a \$310M level; the Conference Committee reached a compromise on a \$300M ceiling.<sup>44</sup> This limitation may be exceeded, subject to a 15-day advance notification to the two Appropriations Committee.<sup>45</sup> The HAC reported that it believed that "more review of the use of these funds is needed." Noting that the salaries of more than 4,500 people are provided from these funds, the HAC called for the inclusion of operating cost "funding estimates. . .in the fiscal year 1994 budget submission from the President."<sup>46</sup> This represents the first time in the history of FMS financing that such a ceiling has been placed on the use of FMS-derived administrative funds. A 1990 Senate-initiated proposal to establish a \$265M ceiling on FY 1991 administrative expenditures was rejected by that year's Foreign Operations Appropriations Conference Committee.<sup>47</sup>

h. In a related action, P.L. 102-391, §556(c) amends the FAA, §515, to require that administrative funds derived from FMS cases be used to fund **U.S. Coast Guard personnel** who serve abroad in Security Assistance Organizations (SAOs). This responds to an issue which first arose in FY 1989 when the AECA was amended to exclude the salaries of all military personnel serving in SAOs from being funded by FMS derived administrative funds. The current change, however, applies only to Coast Guard personnel assigned to overseas SAOs; the Coast Guard must still fund all Coast Guard personnel serving in security assistance positions within the CONUS or in a Unified Command.

i. A total of \$52,000 of FMFP funds has been made available for **entertainment and representation** expenses (\$2,000 and \$50,000 respectively) for use by the Defense Security Assistance Agency and overseas Security Assistance Organizations during FY 1993.<sup>48</sup> The Administration originally requested a total of \$77,875 for these purposes.

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<sup>41</sup>The term "cash flow financing" is defined in the AECA, §25(d), as, "the dollar amount of the difference between the total estimated price of a Letter of Offer and Acceptance or other purchase agreement that has been approved for financing under this Act or under section 503(a)(3) of the Foreign Assistance Act of 1961, and the amount of the financing that has been approved therefor."

<sup>42</sup>P.L. 102-391, §586.

<sup>43</sup>P.L. 102-391, Title III, Military Assistance, Foreign Military Financing Program.

<sup>44</sup>"*Conference Report on H.R. 5368*," *Congressional Record*, October 4, 1992, p. H11337.

<sup>45</sup>P.L. 102-391, Title III, Military Assistance, Foreign Military Financing Program.

<sup>46</sup>*HAC Report*, op.cit., p. 106.

<sup>47</sup>Senate-proposed Section 590, H.R. 5114, 101st Congress, 2nd Session.

<sup>48</sup>P.L. 102-391, §509.

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## B. The International Military Education and Training (IMET) Program

At \$42.5M, the FY 1993 IMET appropriation is \$5M below the Administration's requested level of \$47.5M and about \$2M below the FY 1992 appropriated level of \$44.573M. Several new provisions of law will impact on IMET Programs in FY 1993.

The first such provision involves the funding of "high income countries." Since FY 1989, Congress has prohibited countries which have an annual per capita gross national product (GNP) exceeding \$2,349 from using IMET funds for student travel and living allowances.<sup>49</sup> This provision has been retained for FY 1993, but now has been expanded by a HAC-initiated provision which limits to not more than \$300,000 the amount of IMET funding that annually may be provided to any such high income country for student tuition assistance. Executive Branch proposals for exceptions to this limitation are to be submitted through the regular notification procedures of the two appropriations committees.<sup>50</sup>

In a second action, Congress made a total of \$50,000 available in IMET funding for student entertainment expenses. This funding level represents a cut of 60% (or \$75,000) to the Administration's request of \$125,000 for these expenses.<sup>51</sup>

Most significantly, Congress established an earmark of \$3.66M in the IMET account for the support of **Expanded IMET programs**.<sup>52</sup> These programs were initiated in FY 1991 to provide professional level management training to foreign officers as well as civilian managers and administrators of defense establishments. Such training must emphasize military justice systems, codes of conduct, civilian control of the military, and the protection of human rights. Earmarks of \$1M previously were established for FY 1991 and FY 1992 in support of these expanded IMET programs. In addition to this year's increased earmark, Congress has now also opened the program for participation by "national legislators who are responsible for the oversight and the management of the military."<sup>53</sup>

Congress appears to be generally pleased with the implementation by DoD of the Expanded IMET initiative, as is evident in the *SAC Report* which includes two pages of favorably described examples of Expanded IMET activities (e.g., the use of mobile education teams [METs] to provide 2-week overseas courses in defense resources management, new military justice METs, new seminars for international military students officers (IMSOs), etc.). The SAC reported that it "welcomes the progress made by IMET managers in implementing the expanded IMET Program and expects to see a substantial expansion in the future."<sup>54</sup> In this regard, the Senate Appropriations Committee has called upon DSAA to "actively and continuously review its traditional IMET programs for opportunities to shift funds more rapidly into expanded IMET initiative courses and training;" and DSAA is requested "to provide a report no later than May 1, 1993, on the anticipated implementation and costs of this initiative in fiscal years 1993 and 1994 . . . including an evaluation of the program's effectiveness to date."<sup>55</sup>

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<sup>49</sup>The 1988 *World Development Report* produced by the International Bank for Reconstruction and Development (i.e., the World Bank) provides the GNP source data used in identifying "high income countries."

<sup>50</sup>P.L. 102-391, Title III, Military Assistance, International Military Education and Training.

<sup>51</sup>P.L. 102-391, §509.

<sup>52</sup>P.L. 102-391, Title III, Military Assistance, International Military Education and Training.

<sup>53</sup>*Ibid.*

<sup>54</sup>*SAC Report*, op. cit., pp. 145-46.

<sup>55</sup>*Ibid.*, p. 1146.

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Both appropriations committees expressed interest in expanding the human rights element in IMET programs for all participating countries, "including information on international human rights conventions, human rights law in the recipient's country, American human rights law and policy, and appropriate [human rights] behavior by military personnel."<sup>56</sup> The appropriations committees expect DSAA to also provide a report on this subject, with the HAC directing "DoD and DSAA to submit this report no later than 1 December 1992." The report sought by the HAC should suggest "ways that such a human rights component could be included in all IMET training;" also, this report should analyze "the feasibility of including a substantial number of civilian employees of foreign governments in IMET programs and of conducting IMET field seminars that bring together elements of the military and indigenous human rights groups to educate the military on issues related to human rights."<sup>57</sup>

For its part, the SAC emphasized still other human rights areas to be examined by DSAA. The requested report should "describe the conditions necessary in recipient countries for the effective implementation of human rights training programs and the criteria to be applied for the initiation and termination of such programs." In the view of the SAC, "such criteria should include indicators of respect for civilian authority, the incidence of human rights abuses, and the Government's response to such abuses." Moreover, the report "should also describe the criteria for evaluating human rights training programs." Additionally, in a direct policy statement, the *SAC Report* states that "in order to ensure that the United States is not associated with the armed forces of countries that are responsible for a consistent pattern of gross violation of human rights, no human rights training should be provided to governments that do not meet the requirements of section 502B of the Foreign Assistance Act of 1961, or which have not themselves demonstrated a commitment to protecting human rights."<sup>58</sup>

These reporting requirements are in addition to the detailed annual human rights report which is required of the Department of State by the FAA, §116(d). Requirements for this latter report have also been expanded in the FY 1993 Foreign Operations Appropriations Act, to include coverage of the following three topics, the second of which is directly related to security assistance:

- (1) a review of each country's commitment to children's rights and welfare as called for by the Declaration of the World Summit for Children;
- (2) A description of the military expenditures of each country receiving United States foreign assistance, and the efforts each country is making to reduce those expenditures;
- (3) [a description of] the extent to which indigenous people are able to participate in decisions affecting their lands, cultures, traditions and the allocation of natural resources, and [an assessment of] the extent of protection of their civil and political rights.<sup>59</sup>

With respect to specific country IMET programs, Congress chose to prohibit IMET funding during FY 1993 for two countries which have been involved in significant human rights violations—Zaire<sup>60</sup> and Indonesia.<sup>61</sup> The cutoff of Indonesia was directly related to the widely

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<sup>56</sup>*HAC Report*, op. cit. p. 103.

<sup>57</sup>*Ibid*

<sup>58</sup>*SAC Report*, op. cit., p. 147. Section 502B, FAA, states that "no security assistance may be provided to any country the government of which engages in a consistent practice of gross violations of internationally recognized human rights."

<sup>59</sup>P.L. 102-391, §511(b).

<sup>60</sup>P.L. 102-391, Title III, Military Assistance, International Military Education and Training.

<sup>61</sup>P.L. 102-391, §599H.

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reported 1991 massacre by Indonesian military forces of up to 100 civilians on the Indonesian island of East Timor.

Finally, Congress placed a ceiling of \$1.4M on the level of IMET funding that can be provided to El Salvador in FY 1993.<sup>62</sup> Also, a special stipulation was attached to this funding provision, which requires that 75% of the IMET funding allocated for El Salvador be used for Expanded IMET programs, i.e., “for training military and civilian personnel in administration and management, and in creating and maintaining an effective military judicial system and military code of conduct, including observance of internationally recognized human rights.”<sup>63</sup>

### C. The Economic Support Fund (ESF)

For FY 1993 the Economic Support Fund—the economic component of the U.S. Security Assistance Program—has been funded at \$2,670M, a reduction of 14.5% (or \$453M) below the Administration’s ESF budget request of \$3,123M. These funds are all provided on a grant basis, and, as has been the case since FY 1987, the bulk of the ESF appropriation—64.5%—was earmarked for two countries: Israel received \$1,200M and Egypt received \$815M. Table 3, which follows, illustrates the ESF country/program allocations for FY 1993, including Congressionally stipulated ESF earmarks and ceilings; per SECSTATE message 140413Z January 1993. Table 3 also compares the FY 1993 allocation levels to the country and program levels which were submitted to Congress in the Administration’s original budget report.

As with Israel’s FMFP earmark, its entire ESF allocation of \$1,200M is also to be disbursed via cash transfer within 30 days of the enactment of the FY 1993 Foreign Operations Appropriations Act, i.e., no later than 5 November 1992.<sup>64</sup> Similarly, cash transfer assistance to Egypt is also authorized for FY 1993; not less than \$200M of Egypt’s allocation of \$815M may be provided on a cash transfer basis, “provided that Egypt will undertake significant economic reforms which are additional to those which were undertaken in previous fiscal years.” Also, not less than the equivalent of \$15M “of local currencies generated by [ESF] programs. . . shall be made available for projects and programs which promote the preservation and restoration of Egyptian antiquities.”<sup>65</sup>

Various other earmarks in the ESF appropriation include the following: \$20M for Morocco; \$125M for Turkey; \$4M for Lebanon; \$14M for the South Pacific Tuna Treaty, provided that the extension to the treaty is signed by 30 September 1993; \$7M for Middle East regional cooperative programs, including Israeli-Arab scholarships; \$25M for the West Bank and Gaza Program, to be furnished through the Near East regional program; \$15M for Cyprus to be used “only for scholarships, bicomunal projects, and measures aimed at the reunification of the island and designed to reduce tensions and promote peace and cooperation between the two communities on Cyprus;” \$5M for Haiti, “notwithstanding any other provision of law. . . [to be used] for emergency relief and humanitarian assistance through private and voluntary organizations;” and \$1M for assistance to Burmese, including students, who have been displaced as a result of civil conflict and who are living in Burma or Thailand.

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<sup>62</sup>P.L. 102-391, 530(d)(2).

<sup>63</sup>*Ibid.*

<sup>64</sup>P.L. 102-391, Title II, Bilateral Economic Assistance, Economic Support Fund.

<sup>65</sup>*Ibid.*

**TABLE 3**  
**FY 1993 ECONOMIC SUPPORT FUND (ESF)**  
(Dollars in Millions) (E=Earmark; C=Ceiling)

| <u>Country/Program</u>    | <u>FY 1993<br/>Budget<br/>Request<br/>Level [1]</u> | <u>Allocated<br/>FY 1993<br/>Funding</u> | <u>Allocation as<br/>% of Total<br/>FY 1993<br/>Appropriation</u> |
|---------------------------|---|--|---|
| Costa Rica                | \$10.00   | \$0.00                                   | 0.00%   |
| Cyprus                    | 3.00  | 15.00 E                                  | 0.56%   |
| Djibouti                  | 2.00  | 2.00                                     | 0.07%   |
| Dominican Republic        | 5.00  | 0.00                                     | 0.00%   |
| Egypt                     | 815.00  | 815.00 E                                 | 30.52%  |
| El Salvador               | 160.00  | 110.00                                   | 4.12%   |
| Fiji                      | 0.30  | 0.00                                     | 0.00%   |
| Guatemala                 | 10.00   | 0.00                                     | 0.00%   |
| Haiti                     | 15.00   | 5.00 E                                   | 0.19%   |
| Honduras                  | 30.00   | 9.70                                     | 0.36%   |
| Israel                    | 1,200.00  | 1,200.00 E                               | 44.94%  |
| Jamaica                   | 15.00   | 5.00                                     | 0.19%   |
| Jordan                    | 30.00   | 15.00                                    | 0.56%   |
| Lebanon                   | 5.00  | 4.00 E                                   | 0.15%   |
| Mongolia                  | 15.00   | 8.00                                     | 0.30%   |
| Morocco                   | 12.00   | 20.00E                                   | 0.75%   |
| Nicaragua                 | 125.00  | 50.00                                    | 1.89%   |
| Oman                      | 15.00   | 5.00                                     | 0.19%   |
| Panama                    | 10.00   | 6.00                                     | 0.22%   |
| Philippines               | 45.00   | 25.00                                    | 0.94%   |
| Seychelles                | 3.30  | 1.30                                     | 0.05%   |
| Tunisia                   | 10.00   | 3.00                                     | 0.11%   |
| Turkey                    | 75.00   | 125.00 E                                 | 4.68%   |
| Afghanistan Humanitarian  | 25.00   | 10.00                                    | 0.37%   |
| Africa Democratic Support | 14.00   | 7.00                                     | 0.26%   |
| Andean Narcotics          | 250.00  | 130.00                                   | 4.86%   |
| [Bolivia]                 |   | [70.00]                                  | [2.62%]   |
| [Colombia]                |   | [20.00]                                  | [0.75%]   |
| [Peru]                    |   | [40.00]                                  | [1.50%]   |
| Displaced Burmese         | 0.00  | 1.00 E                                   | 0.04%   |
| Cambodian Democracy       | 0.00  | 10.00                                    | 0.37%   |
| Eastern Caribbean         | 4.40  | 2.00                                     | 0.07%   |
| Former Soviet Republics   | 100.00  | 0.00                                     | 0.00%   |
| Middle East Regional      | 6.00  | 7.00 E                                   | 0.26%   |
| Latin America Regional    | 17.00   | 15.00                                    | 0.56%   |
| South Pacific Tuna Treaty | 10.00   | 14.00 E                                  | 0.52%   |
| Southeast Asia Regional   | 50.00   | 25.00                                    | 0.94%   |
| West Bank/Gaza            | 25.00   | 25.00 E                                  | 0.94%   |
| Prior Year Reobligations  | 11.00   | 0.00                                     | 0.00%   |
| <b><u>TOTALS</u></b>      | <b><u>\$3,123.00</u></b>                            | <b><u>\$2,670.00</u></b>                 | <b><u>100.00%</u></b>   |

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In addition to these earmarks, Congress placed a ceiling of \$50M on the amount of ESF funds that may be made available for Peru; \$40M was allocated to Peru for FY 1993 under the Andean Narcotics Program. Also, while neither specifying an earmark nor a ceiling for the Dominican Republic, Congress directed that of the ESF funds allocated to that country,

\$1M shall be withheld from expenditure until the President reports to the Committees on Appropriations on the steps taken by the Government of the Dominican Republic to improve respect for [the] internationally recognized human rights of Haitian laborers engaged in the sugar cane harvesting industry in the Dominican Republic, including the enforcement of the provisions mandated by President Balaguer's decree of October 14, 1990.<sup>66</sup>

Special conditions also apply to the ESF assistance to be furnished to El Salvador in FY 1993. Congress established a \$150M ceiling on such assistance, and also required that \$20M of El Salvador's ESF funding:

be withheld from expenditure until 15 days after receipt by the Committees on Appropriations of a report from the Secretary of State which describes and assesses the efforts being made by the Government of El Salvador to collect on loans made by the Banco Agrícola Commercial which were the subject of indictments issued during 1991.<sup>67</sup>

Finally, Congress specifically prohibited the provision of any ESF assistance to Zaire<sup>68</sup> and Kenya in FY 1993.<sup>69</sup>

All of the FY 1993 ESF funding earmarks and ceilings total \$2,406M, and represent 90% of the total ESF appropriation of \$2,670M. Thus, only \$264M was available to the Administration for allocation to non-Congressionally-stipulated countries/programs.

#### **D. Peacekeeping Operations (PKO)**

For FY 1993, Congress appropriated \$27.166M for the support of peacekeeping operations in the Sinai and on Cyprus.<sup>70</sup> The *SAC Report* indicated the funds were to be disbursed as follows: \$18.166M for the Multinational Force and Observers (MFO) in the Sinai, and \$9M for the United Nations Force in Cyprus (UNFICYP).<sup>71</sup> This funding division is the same as that requested by the Administration which sought funding for the MFO at the FY 1992 level; however, for the UNFICYP the Administration requested (and received) a \$500,000 increase in funding. The *SAC Report* included the following observation regarding peacekeeping operations:

With the rapidly increasing demands on U.N. peacekeeping forces, the Committee reiterates its strong belief that the capacity of the United Nations to mobilize

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<sup>66</sup>P.L. 102-391, Title II, Bilateral Economic Assistance, Economic Support Fund specifies all of the earmarks (except Lebanon and Middle East Regional), ceilings, and the Dominican Republic provisions. The earmark for Lebanon is specified in §568(a); and the earmark for Middle East Regional Cooperation is in §549.

<sup>67</sup>P.L. 102-391, §530(e)(2).

<sup>68</sup>P.L. 102-391, Title II, Bilateral Economic Assistance, Economic Support Fund.

<sup>69</sup>P.L. 102-391, §577. For special conditions applying to Kenya, see discussion in "Country-Specific Provisions" herein.

<sup>70</sup>P.L. 102-391, Title III, Military Assistance, Peacekeeping Operations.

<sup>71</sup>*SAC Report*, op. cit., p. 155.

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peacekeeping forces should be enhanced and that the administration's budget requests for peacekeeping should anticipate these needs.<sup>72</sup>

### **E. Special Defense Acquisition Fund (SDAF)**

The SDAF 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 U.S.G. responses to emergency foreign requirements, and reduces the need for drawdowns or diversions of defense equipment from U.S. stocks or new production. For FY 1992, the SDAF was initially authorized an obligational authority (OA) of \$275M, but a subsequent Budget Rescission Act reduced this to \$235M.<sup>73</sup> The Administration sought an increase for FY 1993 to an OA level of \$280.9M. However, the House recommended a substantial reduction to the request, proposing an OA of only \$150M,<sup>74</sup> while the Senate endorsed a \$250M OA level.<sup>75</sup> The difference in recommendations was resolved in the Conference Committee which settled upon \$225M.<sup>76</sup>

The House had also proposed restricting the SDAF OA availability to FY 1993 only. The Senate, however, approved a three-year authority (FY 1993 through FY 1995) and the Senate position was upheld in the Conference Committee.<sup>77</sup>

Finally, the SDAF may now "be reimbursed for the value of any transfers of defense articles and defense services acquired under chapter 5 of the Arms Export Control Act."<sup>78</sup>

### **F. War Reserve Stockpiles for Allies (WRSA)**

Section 514(b)(2) of the Foreign Assistance Act of 1961 has been amended to authorize a total of \$389M worth of U.S. defense equipment to be transferred to the WRSA in FY 1993. Of the total amount, "not less than \$200,000,000 shall be available for stockpiles in Israel, and up to \$189,000,000 may be available for stockpiles in the Republic of Korea."<sup>79</sup>

### **G. Changes to Statutes Governing Excess Defense Articles**

Several new legislative provisions impact directly on the Excess Defense Articles (EDA) program. First, the International Narcotics Control Act of 1992, Section 9(b), modifies the Foreign Assistance Act, Section 644(g) definition of Excess Defense Articles to exclude "Construction Equipment." The amended definition (with changes shown in italics) now reads:

"Excess defense articles" means the quantity of defense articles (*other than construction equipment, including tractors, scrapers, loaders, graders, bulldozers, dump trucks, generators, and compressors*) owned by the United States Government, and not procured in anticipation of military assistance or sales requirements, or pursuant to a military assistance or sales order, which is in excess of the Approved Force Acquisition Objective and Approved Force Retention

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<sup>72</sup>Ibid.

<sup>73</sup>P.L. 102-298, 106 Stat. 217, approved 4 June 1992.

<sup>74</sup>HAC Report, op. cit., p. 107.

<sup>75</sup>SAC Report, op. cit., p. 154.

<sup>76</sup>P.L. 102-391, op. cit., Title III, Military Assistance, Special Defense Acquisition Fund.

<sup>77</sup>Ibid.

<sup>78</sup>Ibid.

<sup>79</sup>P.L. 102-391, op. cit., §569.

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Stock of all Department of Defense Components at the time such articles are dropped from inventory by the supplying agency for delivery to countries or international organizations under this Act.<sup>80</sup>

Secondly, the National Defense Authorization Act for FY 1993 amends Title 10, U.S.C. by adding a new Section 2552 which restricts the sale or transfer of excess construction or fire equipment. Such transfers or military sales in the future may only occur if either of the following conditions apply:

(1) no department/agency of the U.S.G. (excluding DoD), and no State, and no other person or entity eligible to receive excess or surplus property submits a request for such equipment from the Defense Reutilization and Marketing Service (DRMS) during the period for which such a request may be accepted by the DRMS; or

(2) the President determines that such a transfer is necessary in order to respond to an emergency for which the equipment is especially suited.<sup>81</sup>

For the purpose of this second new provision, the term "construction or fire equipment" includes the following: "tractors, scrapers, loaders, graders, bulldozers, dump trucks, generators, pumpers, fuel and water tankers, crash trucks, utility vans, rescue trucks, ambulances, hook and ladder units, compressors, and miscellaneous fire fighting equipment."<sup>82</sup> The intent of this change is to permit federal agencies and the states the opportunity to request and receive such items before they are made available for sale/grant transfer to foreign countries or international organizations. Although this provision applies to construction equipment as well as fire equipment, the earlier exclusion above of construction equipment from the definition of excess defense equipment essentially limits the Defense Authorization Act's restrictions to fire equipment.

Several other FY 1993 legislative changes to Section 517, FAA, and other EDA-related statutes are summarized below:

1 Section 517, FAA, has been retitled to read, "**Modernization of Counter-narcotics Capabilities of Certain Countries.**" Formerly, the section was entitled, "Modernization of Military Capabilities of Certain Major Illicit Drug Countries."<sup>83</sup>

2 Eligibility for the grant transfer of EDA under Section 517, FAA, has been expanded to apply to a "**major drug transit country**" as well as to a major illicit drug producing country. As the statute is now written, the President may transfer EDA for counter-narcotics purposes to a country:

- (1) which is a major illicit drug producing country or a major drug transit country in Latin America and the Caribbean
- (2) which has a democratic government, and
- (3) whose armed forces do not engage in a consistent pattern of gross violations of internationally recognized human rights. . . .<sup>84</sup>

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<sup>80</sup>P.L. 102-583, op. cit., §9(b), as amends FAA, §644(g).

<sup>81</sup>P.L. 102-484, op. cit., §4304(a), as amends chapter II of chapter 152 of title 10, United States Code, as amended by section 304(c)(1).

<sup>82</sup>P.L. 102-484, op. cit., §4304(c).

<sup>83</sup>P.L. 102-583, op. cit., §(9)(a) as amends FAA, § 517.

<sup>84</sup>P.L. 102-583, §9(a)(2) as amends FAA, §517(a).

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3. Section 517, FAA, EDA transfers may now be furnished directly to “law enforcement agencies” as well as to military forces of an eligible country.<sup>85</sup>

4. The former requirement for furnishing Congress with **30 days advance notification** of EDA transfers, under Section 517, FAA, has been reduced to **15 days**.<sup>86</sup>

5. Also for the purpose of EDA transfers under Section 517, FAA, the definition of excess defense articles has been expanded to include **excess property of the Coast Guard**.<sup>87</sup> This change does not apply to other EDA-related provisions (e.g., Section 516, 518, or 519 of the FAA).

6. Countries for which a determination has been made that they are eligible to receive grant transfers of EDA under Section 517, FAA (counternarcotics), will no longer be eligible to receive EDA under either Section 518 (biodiversity) or Section 519, FAA (nonlethal).<sup>88</sup> In short, such countries will be eligible only for grant EDA for counternarcotics purposes. Further, all countries which are eligible for Section 517 grant transfers will be subject to the \$10M annual aggregate ceiling on all such transfers.<sup>89</sup> The \$10M ceiling is calculated on the basis of the current value of the equipment transferred during a single fiscal year.

#### H. Southern Region Amendment (FAA, §516)

In a highly unusual development, statutory changes were made to the FAA, §516, in two separate FY 1993 legislative acts, and as will be shown, these new provisions of law served, in part, to cancel each other out.

Section 516, entitled “Modernization of Defense Capabilities of Countries of NATO’s Southern Flank,” authorizes the grant transfer of Excess Defense Articles (EDA) to certain countries. Those countries which were previously authorized to receive such EDA included the following: Greece, Portugal, Turkey, Egypt, Israel, and Morocco and Senegal. The latter two countries’ eligibility began in FY 1991 and was based on their having met two criteria which were added to §516 in the FY 1991 Foreign Operations Appropriations Act, as follows: “those countries which received Foreign Military Financing (FMF) assistance in fiscal year 1990 and which, as of October 1, 1990, contributed armed forces to deter Iraqi aggression in the Arabian Gulf.”<sup>90</sup> For FY 1993, the Foreign Operations Appropriations Act (P.L. 102-391, dated 6 October 1992), deleted the eligibility of Morocco and Senegal by rescinding the above-quoted FY 1991 amendment (i.e., P.L. 101-513, §589) upon which their eligibility rested. However, the National Defense Authorization Act for FY 1993 (P.L. 102-484, 23 October 1992) includes a provision which rewrites and expands this eligibility clause to read:

those countries which, as of October 1, 1990, contributed armed forces to deter Iraqi aggression in the Arabian Gulf, and which either received Foreign Military Financing (FMF) assistance in fiscal year 1990 or are in the Near East Region and received Foreign Military Financing (FMF) assistance in fiscal year 1991. . . .<sup>91</sup>

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<sup>85</sup>P.L. 102-583, §9(a)(3)(A) as amends FAA, §517(b).

<sup>86</sup>P.L. 102-583, §9(a)(5) as amends FAA, § 517(i)(1).

<sup>87</sup>P.L. 102-583, §9(a)(6) as adds subsection 517(k) to the FAA.

<sup>88</sup>P.L. 102-583, §9(a)(6) as adds subsection 517(j) to the FAA.

<sup>89</sup>FAA, §517-e).

<sup>90</sup>See P.L. 101-513, §589 (1054Stat 2057) as amends FAA, §516.

<sup>91</sup>P.L. 101-513, §1313.

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There are two results of this National Defense Authorization Act provision. First, it becomes the operative provision since it postdates the related provision in the FY 1993 Foreign Operations Appropriations Act. In short, the National Defense Authorization Act provision serves to restore the grant EDA eligibility of Morocco and Senegal. Secondly, the addition of a new eligibility provision involving a country in "the Near East Region" which received FMF assistance "in FY 1991," provides an opportunity to furnish EDA to Oman; and this is the apparent principal objective of this provision, for although it does not formally identify Oman, the statute appears under the subject title, "Sec. 1313, Authority for Government of Oman to Receive Excess Defense Articles." Thus, for FY 1993, the following countries will be eligible to receive grant EDA under the FAA, §516: Greece, Portugal, Turkey, Egypt, Israel, Morocco, Senegal, and Oman.

### I. Assistance to Countries in Default

Section 518 of the *FY 1993 Foreign Operations Appropriations Act* provides an annual renewal of the original **Brooke-Alexander amendment** whereby funded U.S. assistance is prohibited for any country which is in arrears by more than one calendar year on its repayment of any foreign assistance loans which it received from the U.S. Additionally, Section 518 continues to **exempt** from this restriction any counter-narcotics assistance funding for **Bolivia, Colombia, and Peru**, and also exempts any foreign assistance funding for **Nicaragua**. Similarly, these funding waivers for the four countries have also been applied to the default penalty provisions of **Section 620(q), FAA**. Finally, a new feature of Section 518 involves the application of these exemptions to all such assistance made available during or for FY 1993 for any of these four countries, whether the funds were appropriated for FY 1993 or for any prior years.

### J. Prohibitions on Direct and Indirect Assistance

P.L. 102-391 provides an update of the two annual lists of countries which are prohibited from receiving *direct* or *indirect* U.S. assistance. Per Section 512, none of the funds appropriated or otherwise made available pursuant to P.L. 102-391 may be obligated or expended to finance *directly* any assistance or reparations to Cuba, Iran, Iraq, Libya, Syria, or Vietnam. Similarly, per Section 543, none of the funds appropriated or otherwise made available pursuant to P.L. 102-391 may be obligated to finance *indirectly* any assistance or reparations to any of the same countries listed above plus China, Jordan, Laos, North Korea, and Yemen. Both Angola and Cambodia, which were on these two lists in FY 1991 and FY 1992, have been removed from the current lists.

## MISCELLANEOUS PROVISIONS

### A. Support for Commercial Arms Shows

The *FY 1993 Foreign Operations Appropriations Act* includes a provision which prohibits the use of any FMFP funds or any DSAA employees "to facilitate the transport of aircraft to commercial arms sales shows."<sup>92</sup> This provision, which applies to CONUS as well as overseas-based shows, was initiated by the House Appropriations Committee which reported that the Committee had learned that DoD "has provided funding for transport and other arrangements at commercial arms shows in France, Great Britain, and other countries." In the HAC's view, such transportation costs, which reportedly "run into the millions of dollars and the time and expenses of DSAA employees should not be at the expense of the United States taxpayer." The

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<sup>92</sup>P.L. 102-391, Title III, Military Assistance, Foreign Military Financing Program.

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Committee also noted its concern over the fact that “the transport program was initiated without notification to the Committee.”<sup>93</sup>

In addition to the above prohibition, Section 1082 of the *National Defense Authorization Act for Fiscal Year 1993*, further limits the ability of DoD (a) to provide support to U.S. firms which participate in overseas airshows or trade exhibitions, and (b) to participate directly in such shows. DoD or military department support for defense contractors or industrial associations in the form of military equipment for any airshow or trade exhibition conducted outside the U.S. may only be provided if the contractor or association agrees to reimburse the Treasury of the U.S. for:

- (1) all incremental costs of military personnel accompanying the equipment, including food, lodging, and local transportation;
- (2) all incremental transportation costs incurred in moving such equipment from its normally assigned location to the airshow or trade exhibition, and return; and
- (3) any other miscellaneous incremental costs not included under paragraphs (1) and (2) that are incurred by the Federal Government but would not have been incurred had military support not been provided to the contractor or industrial association.

*Direct* participation in such overseas events by a U.S. military department is permitted only if the Secretary of Defense:

- (A) determines that it is in the national security interests of the United States for the military department to do so; and
- (B) provides to the congressional defense committees at least 45 days before the opening of the airshow or trade exhibition a report detailing—
  - (i) why the show or exhibition is in the National security interest;
  - (ii) a description of the implications that promoting the sale of the weapons in question will have on arms control; and
  - (iii) an estimate of any costs to be incurred.

To assure that these requirements receive top-level attention within DoD, the legislation adds that the Secretary of Defense may not delegate the authority to make the required determination below the level of the Under Secretary of Defense for Policy.<sup>94</sup>

### **B. POW/MIA Drawdown Authority**

A new POW/MIA drawdown authority has been established to support efforts to resolve the fate of U.S. personnel who have remained unaccounted for since the Vietnam War. Such personnel were either reported as prisoners-of-war or as missing in action in Southeast Asia. This new authority permits the drawdown, without reimbursement, of defense articles from DoD stocks, defense services, and military education and training of an aggregate of \$15,000,000 in FY 1993.<sup>95</sup> Such items may be provided to Cambodia and Laos:

as the President determines are necessary to support efforts to locate and repatriate members of the United States Armed Forces and civilians employed directly or indirectly by the United States Government who remain unaccounted for from the Vietnam War, and to ensure the safety of United States Government personnel

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<sup>93</sup>HAC Report, op. cit., p. 106.

<sup>94</sup>P.L. 102-484, National Defense Authorization Act for FY 1993, §1082.

<sup>95</sup>P.L. 102-391, §575A(a).

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engaged in such cooperative efforts, and to support United States Department of Defense-sponsored humanitarian projects associated with the POW/MIA efforts.<sup>96</sup>

If any U.S. aircraft are to be furnished in support of these efforts, they may be provided only to Laos, and only on a lease or loan basis, although they "may be provided at no cost notwithstanding the provisions of Section 61 of the AECA" which requires payment for such leases. Moreover, funds may be appropriated to the President to reimburse the applicable appropriation, fund, or account for the costs associated with the provision of defense articles, defense services, and military education and training under this new POW/MIA drawdown authority.<sup>97</sup>

### C. Israel Special Drawdown Authority (SDA)

Special authority was previously given to the President for FY 1991 to drawdown defense articles from DoD stocks, defense services, and military education and military training "of an aggregate value of \$700,000,000" to transfer to Israel on a grant basis."<sup>98</sup> This special drawdown authority was extended for FY 1992,<sup>99</sup> and now has been further extended through FY 1993.<sup>100</sup> DSAA has reported that under this authority, and as of 30 October 1992, the U.S. has authorized Israel to be furnished with F-15 A/B fighter aircraft, AH-64 Apache helicopters, UH-60 Blackhawk helicopters, and Harpoon missiles.

### D. Bosnia-Hercegovina Drawdown Authority

Finding that the United Nations arms embargo against "any country on the territory of the former Yugoslavia" has served "to sustain the military advantage of the aggressor" (i.e., Serbia), the Congress has authorized military assistance to be provided to Bosnia-Hercegovina upon the lifting of the U.N. embargo.<sup>101</sup> This provision, which originally was introduced in the Senate by Joseph R. Biden, D-DE, presented a challenge to the established policy of maintaining a ban on arms transfers to all former Yugoslav republics. Sen. Biden argued that this policy, "left Bosnians almost defenseless against attacks by well-armed Serbians."<sup>102</sup> The law now authorizes up to \$50M in defense articles to be drawn down from DoD stocks and furnished to Bosnia-Hercegovina on a grant basis in FY 1993. The Bush Administration reportedly opposed this authority, believing that "such aid would only deepen the involvement of the United States in a region where all sides have engaged in brutality."<sup>103</sup> It should be noted that the transfer of such items to Bosnia-Hercegovina is dependent upon (1) a lifting of the U.N. arms embargo, and (2) a Presidential certification to Congress that:

(1) the transfer of such articles would assist that nation in self-defense and thereby promote the security and stability of the region; and

(2) United States allies are prepared to join in such a military assistance effort.<sup>104</sup>

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<sup>96</sup>P.L. 102-391, §575A(b).

<sup>97</sup>P.L. 102-391, §575 (d).

<sup>98</sup>P.L. 101-513, §599B(a)

<sup>99</sup>P.L. 102-145.

<sup>100</sup>P.L. 102-391, §580.

<sup>101</sup>P.L. 102-391, §599D

<sup>102</sup>As quoted by Doherty, Carroll J., "Senate Passes Foreign Aid Bill Backing U.S. Arms for Bosnia," *Congressional Quarterly Weekly Review*, October 3, 1992, p. 3066.

<sup>103</sup>Ibid.

<sup>104</sup>P.L. 102-391, §599D

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This new provision also provides appropriations authority to furnish "such funds as may be necessary to reimburse the applicable appropriation, fund, or account for defense articles provided under this section."<sup>105</sup>

### E. Assistance for the New Independent States of the Former Soviet Union (FSU)

The *FY 1993 Foreign Operations Appropriations Act* provides \$417M for economic assistance to the new independent states of the FSU.<sup>106</sup> This assistance is authorized in the *FREEDOM Support Act* which also adds a new chapter 11 to the FAA entitled "Support for Economic and Democratic Development of the Independent States of the FSU."<sup>107</sup> Of the \$417M appropriated for the FSU, \$50M has been earmarked for the "provision of United States agricultural commodities to address the food and nutrition needs of the people of the new independent states of the former Soviet Union."<sup>108</sup> Similarly, "not less than \$50M shall be made available for scholarship programs bringing people of the new independent states of the former Soviet Union to the United States for a broad spectrum of study, training, exchange, internship and similar programs."<sup>109</sup> Also, up to \$12M may be made available to establish American Agribusiness Centers in the FSU.<sup>110</sup>

The new chapter 11 in the FAA, as added by the *FREEDOM Support Act*, identifies a series of activities for which U.S. assistance may be provided, including the establishment of "a democratic and free society by fostering. . . [among other things] the development of effective control by elected civilian officials over, and the development of a nonpolitical officer corps in, the military and security forces" of the FSU.<sup>111</sup> Further, up to \$100M of FY 1993 security assistance funds (ESF or FMFP) is authorized to be made available for the support of nuclear, biological, and chemical weapons nonproliferation and disarmament activities in the FSU.<sup>112</sup> In the Conference Report accompanying the *FREEDOM Support Act*, the Conference Committee stated that it established "this new security assistance account in recognition of the urgent need to address the nonproliferation and disarmament challenges that confront the United States in the post-Cold War era." Further, the Committee urged "the executive branch to employ. . . this fund to the fullest extent in the years ahead," and the Committee, "fully expects the executive branch to formally establish and authorize a nonproliferation and disarmament fund in its fiscal year 1994 budget submission and Congressional Presentation Document for Security Assistance."<sup>113</sup>

Both the *FY 1993 Foreign Operations Appropriations Act* and the *FREEDOM Support Act* attach restrictions to the furnishing of this assistance. Before any such assistance may be furnished, the Appropriations Act requires the President to provide Congress with "a report on

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<sup>105</sup>P.L. 102-391, §599D(d).

<sup>106</sup>P.L. 102-391, Title II, Bilateral Economic Assistance, Assistance for the New Independent States of the Former Soviet Union.

<sup>107</sup>P.L. 102-511, 24 October 1993, §201 as adds a new Chapter 11 to Part I of the FAA. The term FREEDOM in the short title of this act is spelled out in the full title as "Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992."

<sup>108</sup>P.L. 102-391, §592.

<sup>109</sup>P.L. 102-391, Title II, Bilateral Economic Assistance, Assistance for the New Independent States of the Former Soviet Union.

<sup>110</sup>Ibid.

<sup>111</sup>Ibid., P.L. 102-511, §201.

<sup>112</sup>P.L. 102-511, §504.

<sup>113</sup>U.S. House of Representatives, *Report of the Committee of Conference on S 2532, the FREEDOM Support Act*. 102d Congress, 2d Session, Report No. 102-964. October 1, 1992, p. 68.

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the progress being made toward the withdrawal of the armed forces of Russia and the Commonwealth of Independent States from the territories of Lithuania, Latvia, and Estonia, and on the status of negotiations regarding the establishment of a timetable for total withdrawal." Further, the Appropriations Act permits only 50% of the funds to be made available to the FSU "unless the President certifies to the Congress by June 1, 1993 that the Government of Russia" and the three Baltic states "have made substantial progress towards establishing a timetable" for the withdrawal.<sup>114</sup>

The *FREEDOM Support Act* prohibits assistance to any of the new independent states of the FSU which the President determines:

- (1) is engaged in a consistent pattern of gross violations of human rights;
- (2) has failed to facilitate the effective implementation of applicable arms control obligations;
- (3) has transferred missiles or missile control technology to another country inconsistent with the guidelines and parameters of the Missile Technology Control Regime;
- (4) or has transferred materiel, equipment, or technology that would contribute significantly to the ability of the recipient country to manufacture any weapon of mass destruction; or
- (5) for the government of Russia, that it has failed to make significant progress on the removal of Russian or Commonwealth of Independent States troops from Estonia, Latvia, and Lithuania or if it has failed to undertake good faith efforts, such as negotiations, to end other military practices that violate the sovereignty of the Baltic states.<sup>115</sup>

These restrictions, and any other similar provisions of law, may be waived if the President determines that furnishing such assistance (1) is important to the national interest of the U.S., or that such assistance (2) will foster respect for internationally recognized human rights and the rule of law or the development of institutions of democratic government. Also, a waiver may be granted if the assistance is furnished for the alleviation of suffering resulting from a natural or man made disaster.<sup>116</sup>

#### F. Assistance for the Baltic States

Another provision of the *FREEDOM Support Act*, as introduced originally in the Senate by Robert Byrd (D-WV), extends eligibility for U.S. security assistance to the Baltic States—Estonia, Latvia, and Lithuania. Per Section 906 of that act, these countries are now eligible to purchase, or to receive financing to purchase, nonlethal defense articles under the authority of the AECA, or to receive nonlethal EDA as grant assistance under the FAA, Section 519.<sup>117</sup> Further, the eligibility requirement of Section 519(a), that "a foreign military financing program" must be "justified for the fiscal year in which the grant transfer [of nonlethal EDA] is authorized," has been waived for these three countries.<sup>118</sup>

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<sup>114</sup>P.L. 102-391, Title II, Bilateral Economic Assistance, Assistance for the New Independent States of the Former Soviet Union.

<sup>115</sup>P.L. 102-511, §201 as adds a new §498A(b) to the FAA of 1961.

<sup>116</sup>P.L. 102-511, §201 as adds a new §498A(c) to the FAA of 1961.

<sup>117</sup>P.L. 102-511, §906.

<sup>118</sup>P.L. 102-511, §906(a)(2).

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## G. Compliance with U.N. Sanctions Against Iraq

No U.S. assistance is to be furnished in FY 1993 to any country which is not in compliance with the sanctions placed against Iraq by the United Nations Security Council. Nevertheless, such assistance may be furnished if the President determines and certifies to the Congress that:

- (1) such assistance is in the national interest of the United States;
- (2) such assistance will directly benefit the needy people in that country; or
- (3) the assistance to be provided will be humanitarian assistance for nationals who have fled Iraq and Kuwait.<sup>119</sup>

Congress has also empowered the President to prohibit the importation into the United States "of any or all products of any foreign country that [itself] has not prohibited (1) the importation of products of Iraq into its customs territory, and (2) the export of its products to Iraq." Such action is predicated upon the President considering that the "taking of such action would promote the effectiveness of the economic sanctions of the United Nations and the United States imposed with respect to Iraq, and is consistent with the national interest. . . ."<sup>120</sup>

## H. Israel Loan Guarantees

Beginning in FY 1993, and for four years thereafter, the President is authorized under P.L. 102-391, "to issue guarantees against losses incurred in connection with" a total of \$10B in commercial loans for the State of Israel.<sup>121</sup> The loans are to be used to "resettle and absorb immigrants into Israel from the republics of the former Soviet Union, Ethiopia and other countries."<sup>122</sup> From 1989 to mid-1991, almost 350,000 Soviet Jews had emigrated to Israel, and the figure is expected to rise to one million by the end of 1995—a 25% increase in Israel's total population in just six years. The loan guarantees represent a form of humanitarian assistance for which the U.S. will stand surety (i.e., serve as a "cosigner") for the commercial loans. These U.S. guarantees should make it easier for Israel to obtain the loans and also aid in acquiring the funds at lower than generally prevailing interest rates. The guarantees may be issued at a rate of \$2B per year for each of the five years (FY 1993 through FY 1997) for which this authority has been granted; and the guarantees may only be used "to support activities in the geographic areas which were subject to the administration of the Government of Israel before June 5, 1967."<sup>123</sup> In short, none of the funds may be used in the territories occupied by Israel after its victory in the Six-Day War of June, 1967.

The issue of using these funds to support new settlements in the occupied territories was the subject of a contentious political debate in the U.S. In September 1991, with a rising prospect of sponsoring a new round of Middle East peace talks, the Administration asked Congress to defer the discussion of the loan guarantees to February, 1992. Having adhered to the request, the Congress then found that the Administration and Israel had become locked into disagreement regarding a U.S. policy which would prohibit the use of the occupied territories for new housing settlements. This dispute had a direct impact on the FY 1992 legislative process.

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<sup>119</sup>P.L. 102-391, §573(a).

<sup>120</sup>P.L. 102-391, §573(b).

<sup>121</sup>P.L. 102-391, §601, as it adds a new section 226(a) to the FAA.

<sup>122</sup>Ibid.

<sup>123</sup>Ibid.

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The loan guarantee provisions were a key element in a proposed FY 1992 Foreign Operations Appropriations Act which had been deferred pending resolution of this issue. Given the failure to obtain agreement on the loan guarantee provisions, Congress abandoned its efforts to produce a stand alone appropriations bill, and simply extended a continuing appropriations resolution through the remainder of FY 1992.<sup>124</sup> The Israeli national elections in July, 1992, in which the debate over the loan guarantees played a prominent role, resulted in a victory for the Israel Labor Party over Yitzhak Shamir's Likud Party. The new Prime Minister, Yitzhak Rabin, proceeded to resolve Israel's differences with the Bush Administration on the occupied territories issue, leading thereby to this year's legislation.

Several provisions of the loan guarantee legislation warrant attention. First, the President is given the authority to reduce the amount of guarantees to be issued :

by an amount equal to the amount extended or estimated to have been extended by the Government of Israel during the previous year for activities which the President determines are inconsistent with the objectives of this section [of the statute] or understandings reached between the United States and the Government of Israel regarding the implementation of the loan program.<sup>125</sup>

Secondly, all fees which may be charged for the loan guarantee program are to be paid by the Government of Israel to the Government of the United States. Such fees shall include "an aggregate annual loan origination fee equal to the estimated subsidy cost of the guarantees issued for that year," as calculated by the Office of Management and Budget per the Federal Credit Reform Act of 1990.<sup>126</sup> This origination fee must be paid to the U.S.G., "on a pro rata basis as each guarantee for each loan or incremental is issued."<sup>127</sup> Also included as a separate fee is "an amount for the administrative expenses of the Agency for International Development [AID] in administering" this loan guarantee program.<sup>128</sup> Although no direct U.S. appropriations have been made in connection with these fees, Israel is authorized to use its annual ESF funding to pay the fees.<sup>129</sup>

Thirdly, the financial terms of the legislation mandate that each issued loan guarantee must provide a guarantee for 100 percent of the principal and interest payable on the respective loans. Further, the standard terms of any loans (or increment) guaranteed by the U.S.G., "shall be 30 years with semiannual payments of interest only over the first 10 years, and with semiannual payments of principal and interest on a level payment basis over the last 20 years thereof. . . ."<sup>130</sup>

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<sup>124</sup>P.L. 102-266, April 1, 1992. For a discussion of the loan guarantee dispute, see this author's article, "Fiscal Year 1992 Security Assistance Legislation: A Status Report," *The DISAM Journal of International Security Assistance Management*, Winter, 1991-1992, pp. 18-19.

<sup>125</sup>P.L. 102-391, §601, as it adds a new subsection 226(d) to the FAA.

<sup>126</sup>P.L. 102-391, §601, as it adds a new subsection 226(e)(1) to the FAA.

<sup>127</sup>P.L. 102-391, §601, as it adds a new subsection 226(e)(2) to the FAA.

<sup>128</sup>P.L. 102-391, §601, as it adds a new subsection 226(e)(1) to the FAA.

<sup>129</sup>Ibid.

<sup>130</sup>P.L. 102-391, §601, as it adds a new subsection 226(m) to the FAA. Several additional financial terms are contained in this subsection. For example, "the guaranteed loan or any increments issued in a single transaction may include obligations having different maturities, interest rates, and payment terms if the aggregate scheduled debt service for all obligations issued in a single transaction equals the debt service for a single loan or increment of like amount having the standard terms described in this sentence." Also, the guarantor [i.e., the U.S.G.] shall not have the right to accelerate any of the guarantees issued other than in accordance with the original payment terms of the loan."

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Finally, the legislation includes requirements for continuing consultations between Israel and the United States concerning economic and financial matters. These consultations are to include, "structural and other reforms that Israel should undertake. . .to enable its economy to absorb and resettle immigrants and to accommodate the increased debt burden that will result from loan guaranteed under this section."<sup>131</sup> Further, in "a sense of the Congress" statement, included in the statute, the Congress stated its expectations that these consultations should also address, "progress and plans in the areas of budget policies, privatization, trade liberalization, financial and capital markets, labor markets, competition policy, and deregulation."<sup>132</sup>

## COUNTRY-SPECIFIC PROVISIONS IN P.L. 102-391

The following discussion provides information on various country-specific provisions of the *FY 1993 Foreign Operations Appropriations Act* that have not been examined in the earlier sections of this article.

### A. El Salvador

In addition to the limitations placed on El Salvador's FY 1993 FMFP, IMET, and ESF assistance, as discussed previously, Congress also outlined conditions under which all United States assistance to that country would be terminated: "if the duly-elected head of Government of El Salvador is deposed by military coup or decree, or in the event of an unconstitutional interruption of the legitimate exercise of power by the democratically elected government," no United States assistance under the *FY 1993 Foreign Operations Appropriations Act* may be furnished to El Salvador.<sup>133</sup> This provision is similar to the annually renewed provision regarding military coups which prohibits assistance to any country whose duly elected Head of Government is deposed by military coup or decree."<sup>134</sup> This latter provision, however, allows assistance to be resumed upon a Presidential certification to the two appropriations committees "that subsequent to the termination of assistance a democratically elected government has taken office."<sup>135</sup> In the case of the special conditions attached to El Salvador, should assistance be terminated because of a military coup or decree, such assistance "may only be resumed pursuant to a law subsequently enacted by the Congress."<sup>136</sup>

### B. Guatemala and Counter-Narcotics Aircraft

A new provision originally introduced in the Senate by Mitch McConnell (R-KY) prohibits the use of any appropriated funds to transfer any aircraft from the Department of Defense to the Drug Enforcement Administration for use in the conduct of counter-narcotics activities in Guatemala. This prohibition may be lifted if the President (1) determines that such transfers are important to the national interest of the United States, and (2) he reports his finding to the Committees on Foreign Relations and Appropriations of the Senate.<sup>137</sup>

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<sup>131</sup>P.L. 102-391, §601, as it adds a new subsection 226(i) to the FAA.

<sup>132</sup>Ibid.

<sup>133</sup>P.L. 102-391, §530(f)(1).

<sup>134</sup>P.L. 102-391, §513.

<sup>135</sup>Ibid.

<sup>136</sup>P.L. 102-391, §530(f)(2).

<sup>137</sup>P.L. 102-391, §599C.

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### C. Jordan

No U.S.-funded assistance (including IMET and ESF assistance under the FAA or FMFP assistance under the AECA) may be provided to Jordan in FY 1993, "unless the President determines and so certifies to Congress that: (1) Jordan has taken steps to advance the peace process in the Middle East, (2) Jordan is in compliance with United Nations Security Council sanctions against Iraq, and (3) such assistance is in the national interest of the United States."<sup>138</sup>

### D. Kenya

A variety of human rights issues prompted Congress to place a prohibition on the furnishing of FMFP or ESF funds to Kenya in FY 1993. However, such assistance may be furnished if the President determines and certifies to Congress that the Kenyan Government:

- (1) has released all political detainees and has ended the prosecution of individuals for the peaceful expression of their political beliefs;
- (2) has ceased the physical abuse or mistreatment of prisoners;
- (3) has restored judicial independence;
- (4) has taken significant steps toward respecting human rights and fundamental freedoms, including the freedom of thought, conscience, belief, expression, and the freedom to advocate the establishment of political parties and organizations; and
- (5) has set and published an elections schedule or timetable for the holding of multi-party elections.<sup>139</sup>

## CONCLUSION

Security assistance legislation for FY 1993 reflects the continuation of a variety of trends which have characterized such legislation since FY 1984. Foremost among these trends is the continuing decrease in the annual levels of security assistance funding. For example, the combined FMFP/MAP funding for FY 1984 totaled \$6,428M, whereas by FY 1993, the FMFP program had fallen over 35% to \$4,155M.<sup>140</sup> Similarly, IMET funding fell from a high in FY 1985 of \$56.221M to \$42.5M in FY 1993 (a drop of over 17%); and in the same period, ESF appropriations fell by over 30% from \$3,841M to \$2,670M. Moreover, these figures represent current year, as opposed to constant year calculations; if the figures were to be adjusted for the effects of inflation over the period, the actual reductions would be considerably greater.

A second trend involves the growing number of restrictions, limitations, and prohibitions that are attached to U.S. security assistance programs. Directly related to this is the increasing number of new Congressional reporting requirements which are contained in annual security assistance legislation. In most cases there is a direct correlation between the passage of a new legislative restriction/limitation/prohibition and the passage of a related new reporting require-

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<sup>138</sup>P.L. 102-391, §584.

<sup>139</sup>P.L. 101-391, §577. Development Assistance (DA) funding and funding from the Development Assistance Fund for Africa are also prohibited for Kenya, but may be made available with a 15-day advance notification from the Administration to the two appropriations committees. Obligation of either FMS or ESF funding is permitted 30 days after the above Presidential certification is furnished to the two committees.

<sup>140</sup>The FMFP and MAP accounts are considered together in FY 1984 since they both provided funding for the FMS acquisition of defense articles, services, and training. No funding for MAP has been provided since FY 1989, and the FMFP has become the sole source for U.S.G. funded assistance for FMS purchases.

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ment. Such new requirements, which represent the principal means of Congressional oversight, invariably encumber the Administration to provide Congress with a detailed report covering the implementation of the new statutory provision. This linkage is evident even upon a casual review of the present article.

Finally, a related trend involves what may be termed "weapon-specific" legislation. Throughout the years Congress has passed "country-specific" legislation involving the application of special conditions to particular countries; this article identifies numerous examples of this form of legislation. The "weapons-specific" legislation, on the other hand, is a fairly new genre, whose origin may be dated to FY 1987 when Congress first placed a ban on "the sale of M-833 antitank shells or any comparable antitank shells containing a depleted uranium (DU) penetrating component."<sup>141</sup> A second such example was introduced in FY 1988 when Congress prohibited the U.S. from selling or otherwise making available STINGER man-portable, air defense missiles (MANPADs) to any country in the Persian Gulf region other than Bahrain.<sup>142</sup> Since then, we have seen the enactment of a new and broader type of weapons-specific legislation which is designed to control various categories of conventional weapons. Thus, in the *National Defense Authorization Act for FY 1991*, the AECA was amended to add a new Chapter 7, "Control of Missiles and Missile Equipment or Technology;" this chapter establishes a system for controlling the proliferation of such weapons and technologies.<sup>143</sup> Similarly, the *Foreign Relations Authorization Act, FY 1992 and 1993*, added to the AECA a new Chapter 8, entitled "Chemical or Biological Weapons Proliferation" which sets forth various means for halting the proliferation of such weapons.<sup>144</sup> Finally, as discussed earlier in this paper, a new weapons-specific provision has been introduced for FY 1993, as Congress has placed a one year moratorium (23 October 1992 through 22 October 1993) on the U.S. sale, transfer, or commercial export of broadly-defined anti-personnel landmines.<sup>145</sup>

These legislative trends serve to define the nature of security assistance in the 1990s as one of growing Congressional oversight and program control, together with continuing reductions in annual program appropriations. As usual, the burden of dealing with these continuing changes falls upon the managers of U.S. security assistance programs throughout the world. It is hoped that this article will prove helpful in their ongoing management actions.

## ACKNOWLEDGEMENTS

The various analytical memoranda produced within the Plans Division of the Defense Security Assistance Agency provided a valued source in preparing this article. Of particular benefit were the several reports composed by Claudio Lilienfeld in the Program Analysis Division together with the sage advice of Jerry Silber, DSAA General Counsel. The author also wishes to recognize the support provided by the DISAM faculty, especially the perceptive contributions of Dr. Larry A. Mortsof and the sharp eyes of Mr. Ken Martin.

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<sup>141</sup>Currently, such DU antitank shells may only be sold to NATO-member countries, the major non-NATO allies (Australia, Egypt, Israel, Japan, and Korea), and Taiwan. P.L. 102-391, §551.

<sup>142</sup>The STINGER prohibitions are continued in P.L. 102-391, §564.

<sup>143</sup>P.L. 101-510, §1703; 104 Stat 1745 (added Chapter 7, §§71-74, to the AECA).

<sup>144</sup>P.L. 102-138, §505(b), 105 Stat 727 (added Chapter 8, §81 to the AECA).

<sup>145</sup>P.L. 102-484, §1365.

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## ABOUT THE AUTHOR

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