LEGISLATION AND POLICY

Fiscal Year 2000 Security Assistance Legislation

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Introduction

This report is the sixteenth in a series of annual legislative studies published in *The DISAM Journal*. This year's report presents a summary and analysis of the legislation impacting on United States security assistance programs in FY2000 and beyond. As in prior years, the report is presented in an extended outline format. This summary approach, together with the use of boldface print to identify key topics, has proven useful for reference purposes in locating specific statutory provisions. DISAM's objective in producing these annual reports is to disseminate important new legislative information to assist security assistance managers and executives throughout the world. This report should enhance their understanding of the changing statutory requirements that implement the policy choices which are reflected in the U.S. security assistance programs. This year's legislation requires a 0.38 percent budget rescission for fiscal year 2000 which has not been completed. As a result, at press time, the final allocations of the security assistance appropriations have not been agreed upon; consequently the figures that normally accompany this article will be included in the spring edition of *The DISAM Journal*.

Again for 2000, Congressional action of the budget of interest to the security cooperation community was not passed until after the beginning of the fiscal year, thus necessitating a series of continuing resolutions. Work on the defense bills was completed first. The *National Defense Authorization Act for Fiscal Year 2000*, P.L. 106-65 of 5 October 1999, and the associated *Department of Defense Appropriations Act, 2000,* P.L. 106-79, 25 October 1999 provided for various ship transfers, threat reduction programs, and a comprehensive report on training of foreign militaries. Congressional-executive wrangling over foreign relations issues revolved around the Wye River commitments and the impact on the budget ceiling of the foreign aid bill. Ultimately, the legislation covering foreign relations as well as matters under the purview of other executive departments were enacted in *The Consolidated Appropriations Act, FY2000*, P.L.106-113, 29 November 1999. *The Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001* is included as Division B, Section 1001(a)(7) of the latter act, while the *Foreign Operations, Export Financing, and Related Appropriations Act, 2000,* is also contained in the omnibus appropriations legislation. Congressional requirements affecting security cooperation programs are also found in various other pieces of legislation which are covered below.

Again this year, the amounts appropriated for the security assistance programs for FY2000 show little change from the previous years. The FY2000 amounts for Economic Support Fund (ESF) and the Foreign Military Financing Program (FMFP) were upped substantially for Israel, Jordan, and the West Bank as a result of the Wye River agreements. Of interest to the security assistance community at large are the increases in the funding for disaster relief and humanitarian aid as well as for enhancing the security of American embassies around the globe.

Recent revelations about past relations with China have focused attention on the whole matter of export controls of high technology. Consequently there is great emphasis in the legislation on controls of exports to China. This scrutiny has been extended to the entire licensing process, with Congressional admonitions that the State Department's Office of Defense Trade Controls and the Defense Department's Defense Threat Reduction Agency should receive adequate resources to ensure thorough and timely reviews of export license applications.

The report of foreign military training instituted last year has been codified as an annual report due 31 January each year. This report contains substantial detail on the training of each individual so that it can be shown that human rights abusers are not receiving training from the U.S.

Included in the foreign relations authorization act is Title XII, Subtitle D, Sections 1241-1248, entitled the *Defense Offsets Disclosure Act of 1999*. These sections report Congressional concerns with offsets in exports of weapons and add significant reporting requirements on manufacturers who offer offsets as part of their export packages. These reporting requirements augment those already imposed by the Defense Production Act of 1950, as amended. The legislation also establishes a national commission of the use of offsets in the defense trade consisting of members of industry, labor, academe, and various executive departments.

Finally, there is a one-time reimbursement to the military personnel accounts and the general treasury to cover unfunded civilian retirement and other benefits. This is intended to return to the DoD accounts monies used to pay those personnel who are employed in support of the security assistance business.

Reference Sources: The following abbreviated titles are used in this report to identify the principal sources of information used herein.

- **AECA**: *Arms Export Control Act*, as amended.

- **FAA**: *Foreign Assistance Act of 1961*, as amended.

- **P.L.106-113:** *The Consolidated Appropriations Act, FY2000*, 29 November 1999, which incorporates the *Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001* and the *Foreign Operations, Export Financing, and Related Appropriations Act, 2000.*

- **FY2000 Congressional Presentation:** The Secretary of State, *Congressional Presentation (CP) for Foreign Operations, Fiscal Year 2000.*

- **Conference Report:** Conference Report on H.R. 3422, *Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000,* as published in the Congressional Record, 17 Nov 1999, pp. H12311 - H12341.

FY2000 Funding Allocations

Following the enactment of the annual appropriations for foreign operations, the Administration is tasked with specifying the amount of appropriations to be allocated among each eligible foreign country and international organization. Pursuant to the requirements of §653, AECA, the Administration must notify Congress of these funding allocations within 30 days following the enactment of "any law appropriating funds to carry out any provision" of the AECA. These allocations distribute the funds that Congress has not specifically earmarked for particular countries and programs. Where available, these allocations are included below to indicate the policy choices made for the funds appropriated.

Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, November 17, 1999, P.L. 106-113.

- **Foreign Military Financing Program (FMFP), Title III, Military Assistance**

  - ***FMFP Grant Earmarks***

    - FMFP grant funding for FY2000 has been set for Israel at $1.92 billion while the earmark for Egypt remains at $1.3 billion where it has remained for thirteen years.

    - The earmarks for these two FMFP grant countries total $3,220M and represent 94 percent of FY2000 grant FMFP funding.

  - ***Special FMFP Provisions for Israel***

    - As in past years, Congress continued to attach two special provisions to the FMFP appropriation for Israel. These provisions permit significant utility and flexibility in Israel's use of these grant funds.

    - The first such provision directs the disbursement of Israel's entire FMFP account to occur within 30 days of the enactment of P.L. 106-113.

    - Secondly, not less than $490M of Israel's FMFP appropriation is available in FY2000 for "the procurement in Israel of defense articles and defense services, including research and development." This provision represents an exception to the general restriction on the use of FMFP funds by recipient countries to finance offshore (i.e., non-U.S.) procurements (OSP). To implement this special provision, Israel and the United States must agree on the weapon systems for which these funds will be used. This represents an increase of $15M over last year's OSP authority of $475M, representing 25 percent of the total FY2000 FMFP increase of $60M for Israel.

- ***Assistance for Jordan***

  - Congress earmarked $75M in grants for Jordan.

- ***Assistance for Tunisia***

  - Tunisia received a grant of $7M, of which up to $4M can be in drawdowns.

- ***Assistance for Equador***

  - Equador received up to $1M in FMFP grants.

- ***Assistance for Georgia***

  - The Conference Committee recommended that sufficient FMFP funds be made available to Georgia to complete the the funding for the transfer of UH-1H helicopters.

- ***African Crisis Response Initiative***

  - The Conference Committee supported the full request for the African Crisis Response Initiative so that the funds could be utilized to foster the growth of democracy and the protection of human rights in Africa. It is the opinion of the committee members that the funds should not be directed to undemocratic governments with a history of human rights abuses by their militaries.

- ***Countries Prohibited/Restricted from Receiving FMFP Funding***

  - For FY2000, no FMFP funding may be provided to Guatemala, Sudan and Liberia; all three countries have been similarly prohibited from receiving FMFP funds for the last four years.

- ***FMFP Loans*** (repayable credits)

  - This year no FMFP repayable loans were sought by the administration nor authorized in Congress for FY2000.

- ***Funding for the General Costs of Administering Military Assistance***

  - The FMFP appropriations account also includes funds that are used to finance certain military assistance administration costs. As identified in the *FY2000 Congressional Presentation for Foreign Operations*, these "Defense Administrative Costs" represent the costs to manage the non-FMS segments of security assistance programs as authorized under the AECA and the FAA. These functions include staffing headquarters, personnel management, budgeting and accounting, office services and facilities, and support for non-FMS functions of SAOs. Activities covered by Defense Administrative Costs include administration of the IMET program, management of drawdowns of military equipment, grant transfers of EDA, monitoring end items previously transferred, and full cost recovery associated with International Cooperative Administration Support Services (ICASS). For FY2000, Congress approved funding for $30,495,000.

- ***FMS Administrative Budget***

  - This *non-appropriated* budget supports the administrative expenses of security assistance organizations, agencies, military departments, etc., related to the implementation of foreign military sales. The FMS Administrative Budget is funded by surcharges which are added to all FMS cases in order to recover United States Government expenses for the following activities: sales negotiation, case implementation, program control, computer programming, accounting and budgeting, and administration of the FMS Program at command headquarters and higher levels. The funds derived from these charges provide the basic financial resources used in the administration of the Foreign Military Sales Program. Though it remains a non-appropriated funding source, Congress nevertheless followed its current practice of limiting annual administrative expenditures to a specified ceiling. For FY2000, Congress approved an operating budget ceiling of $330M.

- **International Military Education and Training (IMET), Title III, Military Assistance**

  - The Administration requested $52M for the FY2000 IMET Program, however, this was reduced by both Congressional committees, and only $50M was appropriated. Of this amount, $1M remains available until expended.

- ***Civilian Participation in IMET***

  - The Act provides authority for IMET participation by civilian personnel who are not members of a government if their "participation would contribute to improved civil-military relations, civilian control of the military, or respect for human rights." Similar authority is provided in §541, FAA.

- ***School of the Americas***

  - The Conference Committee makes the obligation of IMET funds contingent upon the certification of the Secretary of Defense that "the instruction and training provided by the School of the Americas is fully consistent with training and doctrine, particularly with respect to the observance of human rights, provided by the Department of Defense to United States military students of Department of Defense institutions whose primary purpose is to train United States military personnel."

  - In addition, the Secretary of Defense must submit a report to the Committee on Appropriations no later than 15 January 2000 describing the training activities of the School and a general assessment regarding the performance of its graduates during 1997-1998.

- ***Indonesia and Guatemala***

  - The legislation limits both Indonesia and Guatemala to Expanded IMET-funded training only. With respect to Guatemala, IMET funds may only be made available to the Government of Guatemala following the regular notification of the House and Senate Appropriations Committees.

  - The limits on grant training provided to Indonesia is in line with the Conference Committee's desire to support a peaceful resolution to the situation in East Timor. The conferees

believe that the limitation of training to E-IMET would bolster efforts by the Indonesian government to respect and protect human rights and democratic pluralism.

- **Economic Support Fund (ESF), Title II, Bilateral Economic Assistance**

  - The Administration requested $2,563.6M for the ESF Program for FY2000; however, only $2,345.5M was appropriated.

  - ***Assistance for Israel***

    - This year's appropriation earmarks $960M for Israel and $735M for Egypt. This amount continues the phased reduction in Israel's economic assistance, implemented in equal increments of $120M per year for a period of ten years, starting in FY1999. The result will be the elimination of ESF for Israel. Half of the ESF reduction is transferred to military assistance, thus enabling Israel to fully ensure its security.

    - The ESF funding for Israel is once again to be made available as a cash transfer and is stipulated to be disbursed no later than 31 October 1999.

  - ***Assistance for Egypt***

    - This year's ESF appropriation also reflects the decision in 1999 to reduce aid to the Middle East. Egypt's ESF budget is being reduced in $40 million increments to reach a level half of the 1998 level in ten years. Consequently, the Committee recommended an appropriation of $735M for Egypt's share of ESF for FY2000, which is $40M less than prior years' funding.

    - Cash transfer of Egypt's grant ESF appropriation is also again authorized for FY2000, "with the understanding that Egypt will undertake significant economic reforms which are additional to those which were undertaken in previous fiscal years." Not less than $200M is provided as Commodity Import Program assistance.

  - ***Assistance for Jordan***

    - Provisions were made for not less than $150M to be provided to Jordan. The Conference Committee commended Jordan's constructive and critical role in the peace process, and the ESF should permit Jordan to continue in its efforts in both the economic and security areas. The Committee also encouraged Jordan to continue its ongoing economic reform program.

  - ***Assistance for East Timor***

    - Not less than $25M is available for assistance to East Timor

  - ***Assistance for Victims of the Holocaust***

    - In an effort to see that the legacy of the Holocaust is addressed in a constructive manner and that a measure of justice and redress is provided to the survivors of the Holocaust, not more than $11M was appropriated for support of Holocaust victims.

- ***Assistance for Eastern Europe and the Baltic States (Title II)***

- For FY2000, Congress has appropriated $535M for economic assistance and related programs for Eastern Europe and the Baltic States to carry out the provisions of the FAA and the *Support for Eastern European Democracy (SEED) Act of 1989*. This is an increase of $105M above the $430M appropriated for this account for FY1999. Several stipulations relating to assistance for the Federation of Bosnia and Herzegovina, as proposed by the House, are attached to this account and are discussed below.

- Not more than $130M of the funds made available under ESF as well as International Narcotics Control and Law Enforcement may be made available for Bosnia and Herzegovina.

- Since FY1998, none of these funds may be used "for new housing construction or repair or reconstruction of existing housing in Bosnia and Herzegovina unless directly related to efforts of United States troops to promote peace in said country."

- Also, the President is authorized to withhold economic revitalization program funds for Bosnia and Herzegovina if he determines and certifies to the House and Senate Appropriations Committees that:

  - (1) the Federation of Bosnia and Herzegovina has not complied with the 1995 Dayton Agreement [Article III of Annex 1-A, *General Framework Agreement for Peace* in *Bosnia and Herzegovina*] regarding the withdrawal of foreign forces; and that,

  - (2) "intelligence cooperation on training, investigations, and related activities between Iranian and Bosnian officials has not been terminated."

- Not less than $150M shall be made available for assistance to Kosovo.

  - The amount provided to Kosovo cannot exceed 15 percent of the total pledges of an international donars conference. Funds for Kosovo cannot be used for large-scale physical infrastructure reconstruction.

- ***Assistance for the Independent States of the Former Soviet Union (Title II)***

- For FY2000, Congress appropriated $839M for the Independent States and for related programs, an increase of $39M above the amount appropriated for FY1999. As in prior years, a wide array of special conditions and funding earmarks are attached to this account, as the following examples illustrate:

  - (a) Of the funds allocated for **Russia**, fifty percent shall be withheld from obligation until the President determines and certifies to the Congress that the Government of Russia has terminated implementation of arrangements to provide Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor, related nuclear research facilities or programs or ballistic missile capability.

  - (b) Not less than $180M shall be made available for **Ukraine**.

- (c) Total funds made available under Title II for assistance to **Mongolia** in FY2000 will be not less than $12M, of which $6M will be ESF.

- (d) For FY2000, of the funds made available for the **Southern Caucasus Region**, fifteen percent of this funding "should be used for confidence-building measures and other activities relating to the peaceful resolution of the regional conflicts, especially those in the vicinity of **Abkhazia** and **Nagorno-Karabakh**." [Abkhazia is a former autonomous republic located in the northwest portion of the Republic of Georgia. Separatists in this region have been deeply involved in a conflict with the Government of Georgia. Ngorno-Karabakh is an Armenian enclave in the Republic of Azerbaijan that has been similarly engaged in separatist conflict.]

- (e) Assistance to Armenia was reduced from 35 percent of the total to 12.2 percent ($10.24M).

- (f) 12.92 percent ($10.84M) shall be made available for Georgia.

- ***International Fund for Ireland (Title II)***

- As in the past several years, Congress appropriated $19.6M in ESF for the International Fund for Ireland.

- In 1986, the British and Irish government established the International Fund for Ireland to permit contributors to demonstrate support for the Anglo-Irish Agreement of 1985. The European Union is the major contributor to the Fund, and contributions are also received from Canada, Australia, and New Zealand, as well as the United States. The Fund has promoted peace by contributing to the creation of thousands of jobs and by improving the economic situation of Northern Ireland and the border countries of Ireland, addressing needs in both Catholic and Protestant communities.

- ***Funding for Indonesia***

- Not less than $75M may be made available to Indonesia from both the Economic Support Fund and the Development Assistance Fund, provided that not less than $15M goes to activities administered by the Office of Transition Initiatives. Of the amount made available, up to $25M may be derived from funds that are available for obligation pursuant to §511 of this Act or any comparable provision of the law. Ultimately none of these funds was made available from ESF.

- Section 589 IMET and ESF funds may be made available for Indonesia if the President determines and submits a report to the appropriate congressional committees that the Indonesian government and the Indonesian armed forces are:

(1) taking effective measures to bring to justice members of the armed forces and militia groups against whom there is credible evidence of human rights violations;

(2) taking effective measures to bring to justice members of the armed forces against whom there is credible evidence of aiding or abetting militia groups;

(3) allowing displaced persons and refugees to return home to East Timor, including providing safe passage for refugees returning from West Timor;

(4) not impeding the activities of the International Force in East Timor (INTERFET) or its successor, the United Nations Transitional Authority in East Timor (UNTAET);

(5) demonstrating a commitment to preventing incursions into East Timor by members of militia groups in West Timor; and

(6) demonstrating a commitment to accountability by cooperating with investigations and prosecutions of members of the Indonesian armed forces and militia groups responsible for human rights violations in Indonesia and East Timor.

• ***Miscellaneous Appropriations and Related Provisions, Title II, Bilateral Economic Assistance***

• ***Funds to Support the Wye River Agreements***

• To foster movement towards a lasting peace in the Middle East, Congress appropriated funds to support the agreements made in 1998 at Wye River, Maryland.

• Economic Support Funds in the amount of $450,000,000 for Jordan and the West Bank and Gaza. Of this amount, $100,000,000 for West Bank and Gaza will not be available for obligation until September 30, 2000.

• Additional grants of Foreign Military Financing funds were made as follows: Israel, $1,200,000,000; Egypt, $25,000,000; and Jordan, $150,000,000. Of these funds, $300,000,000 for Israel and $100,000,000 for Jordan are to be made available for obligation on September 30, 2000.

• In both cases above, the monies remain available until September 30, 2002.

• ***Funding for Cyprus***

• As in previous years, the annual $15M funding earmarked for Cyprus has been designated to be drawn from the annual Economic Support Fund and the Development Assistance appropriations accounts. The final allocation of $15M was made from ESF.

• The purpose of this funding for Cyprus remains unchanged: the funds are to be used only for scholarships, administrative support of the scholarship program, bicommunal projects, and measures aimed at reunification of the island and designed to reduce tensions and promote peace and cooperation between the two communities on Cyprus.

• ***Funding for Lebanon***

• Of the funds appropriated under the headings “Development Assistance” and “Economic Support Fund”, not less than $15,000,000 should be made available for Lebanon to be used, among other programs, for scholarships and direct support of the American educational institutions in Lebanon.

- ***Funding for Burma***

  - As with Cyprus, an earmark of not less than $6.5M is to be drawn from both the Development Assistance and Economic Support Fund accounts for FY2000 to support democracy and humanitarian activities in Burma, along the Burma-Thailand border, and for activities of Burmese student groups and other organizations located outside Burma. Only $3.5M was allocated through ESF.

- ***Nonproliferation, Anti-Terrorism, Demining, and Related Programs (NADR), Title II, Bilateral Economic Assistance***

  - This section funds many activities provided for in various pieces of legislation. The funds support anti-terrorism assistance authorized by the FAA, funding of the Nonproliferation and Disarmament Fund (NDF) as described in the FREEDOM Support Act, demining activities under the FAA and AECA, and voluntary contributions to the Korean Peninsula Energy Development Organization (KEDO), International Atomic Energy Agency (IAEA), and Comprehensive Nuclear Test Ban Treaty Preparatory Commission.

  - FY2000 appropriations for the NADR account total $216.6M. Of this amount, not more than $15M can be made available for the Nonproliferation and Disarmament Fund, and $40M should be made available for demining, clearance of unexploded ordnance, and related activities.

- ***Migration and Refugee Assistance - MRA (Title II)***

  - Administered by the Department of State, MRA enables the Secretary of State to provide assistance to the international Committee of the Red Cross, the International Organization for Migration, and the United Nations High Commissioner for Refugees. For FY2000, $625M was appropriated, a cut of $15M from the previous year.

  - Not less than $60M of this account is earmarked for the support of refugees from the former Soviet Union and Eastern Europe and other refugees resettling in Israel.

- ***U.S. Emergency Refugee and Migration Assistance - ERMA (Title II)***

  - The Department of State also administers the ERMA program. Funding from the ERMA account is drawn upon by the President to meet unexpected urgent refugee and migration needs when such assistance is determined to be important to the United States. For FY2000, this account is funded at $12.5M, down from the $30M provided in FY1999. These funds are treated as a “no-year” appropriation, as they remain available until expended.

- ***International Narcotics Control - INC (Title II)***

  - Congress appropriated $305M for the FY2000 International Narcotics Control Program, a $44M increase above the FY1999 appropriation.

  - Other FY2000 statutory provisions involving the INC program include the following:

(1) Authorization for the State Department, to use the authority of §608, FAA, to receive excess property from an agency of the U.S. Government "for the purpose of providing it to a foreign country" under Chapter 8 of Part I of the FAA, the narcotics control provisions.

(2) New funding of $5M shall be allocated to establish and operate the International Law Enforcement Academy for the Western Hemisphere at the deBremond Training Center in Roswell, New Mexico.

- ***International Disaster Assistance - IDA (Title II)***

- For the necessary expenses associated with international disaster relief, rehabilitation, and reconstruction assistance, Congress appropriated $202.88M for FY2000 to remain until expended.

- ***Voluntary Peacekeeping Operations (PKO) Title III, Military Assistance***

- For FY2000, the Administration requested $130M for voluntary peacekeeping operations assistance to friendly countries and international organizations. The level adopted by the Conference Committee and enacted for FY2000 was $153M, a significant increase from last year's $76.5M.

- Voluntary PKO appropriations reflect U.S. interest in supporting, on a voluntary basis, various peacekeeping activities that are not United Nations mandated and/or are not funded by U.N. assessments. The Voluntary PKO account promotes conflict resolution, multilateral peace operations, sanctions enforcement, and similar efforts outside the context of assessed U.N. peacekeeping operations. Funding for Voluntary Peacekeeping Operations is distinct from the bulk of international peacekeeping assistance which is contributed by the U.S. and other countries in fulfillment of their United Nations financial assessments, and which in U.S. budget documentation is termed, "Contributions for International Peacekeeping Activities" (CIPA).

Miscellaneous Appropriations and Related Provisions, Title V, General Provisions

- **Limitations on Representational Allowances (§505)**

- Congress set ceilings on FY2000 FMFP and IMET allowances that are identical to those authorized for several years:

(1) FMFP: Not to exceed $2,000 is available for entertainment expenses, and not to exceed $50,000 shall be available for representational allowances,

(2) IMET: Not to exceed $50,000 shall be available for entertainment.

- ***Prohibition Against Funding For Certain Countries (§507).***

- Non of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance or reparations to Cuba, Iraq, Libya, North Korea, Iran, Sudan, or Syria. §523 prohibits indirect funding to this list of countries except Sudan. The People's Republic of China is also subject to the restrictions on indirect funding.

- ***Military Coups (§508)***

  - None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance to any country whose duly elected head of government is deposed by military coup or decree: until the President determines and reports to the Committees on Appropriations that a democratically elected government has taken office.

- **Limitation on Assistance to Countries in Default (§512)** [**"Brooke Amendment"**]

  - No assistance shall be provided to countries in default for a period in excess of one year in payments to the U.S. of principal or interest on a program for which funds are appropriated by this Act.

  - This Section and §620(q) of the FAA shall not apply to funds appropriated by this Act for any narcotics-related assistance for Colombia, Bolivia, and Peru authorized by the FAA or the AECA.

- ***Special Notification Requirements (§520)***

  - A special 15-day advance notification to the Committees on Appropriations is required prior to obligating or expending any of the funds appropriated in P.L. 106-113 for FY2000 for Colombia, Haiti, Liberia, Pakistan, Panama, Serbia, Sudan, or the Democratic Republic of Congo.

    - Honduras is removed from the FY1999 list for which this notification was required.

    - Panama is added to the FY1999 list.

- ***Prohibition on Bilateral Assistance To Terrorist Countries (§527)***

  - Funds appropriated for bilateral assistance under any heading of this Act and funds appropriated under any such heading in a provision of law enacted prior to the enactment of this Act, shall not be made available to any country which the President determines and grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or otherwise supports international terrorism.

  - The President may waive the application of this section to a country if national security or humanitarian reasons justify such waiver.

  - Similarly, §549 provides that no funds will be made available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for purposes of §40(d) of the Arms Export Control Act.

- ***Commercial Leasing of Defense Articles (§528)***

  - The authority of ***§***23(a) of the Arms Export Control Act may be used to provide financing to Israel, Egypt and NATO and major non-NATO allies for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having

possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under such Act.

- ***Stingers in the Persian Gulf Region (§530)***

  - Except as provided in *§*581 of the *Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990*, the United States may not sell or otherwise make available any Stingers to any country bordering the Persian Gulf under the *Arms Export Control Act* or Chapter 2 of Part II of the *Foreign Assistance Act of 196*1.

- ***Landmines (§555)***

  - For FY2000, Congress extended an authority first provided in FY1997 to authorize the provision of U.S. "demining equipment available to the Agency for International Development and the Department of State to be used in support of the clearance of landmines and unexploded ordnance for humanitarian purposes, to be disposed of on a grant basis in foreign countries, subject to such terms and conditions as the President may prescribe." [See also discussion of demining funding in Miscellaneous Appropriations and Related Provisions section below.]

- ***Competitive Pricing For Sales of Defense Articles (§556)***

  - Direct costs associated with meeting a foreign customer's additional or unique requirements will continue to be allowable under contracts under §22(d) of the *Arms Export Control Act.* Loadings applicable to such direct costs shall be permitted at the same rates applicable to procurement of like items purchased by the Department of Defense for its own use.

- ***Assistance for Haiti (§559 and §562)***

  - In *§*559, Congress set forth the policy it wishes to pursue in Haiti.

    - In providing assistance to Haiti, the President should place a priority on the following areas:

(1) support for the Haitian National Police, especially the efforts to purge corruption and politicized elements from the force.

(2) steps to ensure that any election held in Haiti are free and democratic;

(3) support for an indigenous human rights monitoring capacity;

(4) steps to continue privatization of state-owned enterprises;

(5) a sustainable agricultural development program; and

(6) establishment of an economic development fund for Haiti to provide long-term, low-interest loans to United States investors and businesses that have a demonstrated commitment to, and expertise in doing business in Haiti, in particular those businesses present in Haiti prior to the 1994 United Nations embargo.

- Section 559 also requires reports from the President with regard to:

(1) the status of each of the government institutions envisioned in the 1987 Haitian Constitution, including an assessment of the extent to which officials in such institutions hold their positions on the basis of a regular, constitutional process;

(2) the status of the privatization of the major public entities;

(3) the status of efforts to re-sign and implement the lapsed bilateral Repatriation Agreement and an assessment of the extent to which the Government of Haiti has been cooperating with the United States in halting illegal emigration from Haiti;

(4) the status of the Government of Haiti's efforts to conduct through investigations of extrajudicial and political killings, and assessment of the progress that has been made in bringing to justice the responsible persons;

(5) an assessment of actions taken by the Government of Haiti to remove from public security units those individuals who are credibly alleged to have engaged in or conspired to conceal gross volations of internationally recognized human rights;

(6) the status of steps being taken to secure the ratification of the maritime counter-narcotics agreements signed October 1997;

(7) an assessment of the extent to which domestic capacity to conduct free, fair, democratic, and administratively sound elections has been developed in Haiti; and

(8) an assessment of whether Haiti's Minister of Justice has demonstrated a commitment to the professionalism of judicial personnel by consistently placing students graduated by the Judicial School in appropriate judicial positions, in order to make the judicial branch in Haiti independent from the executive branch.

- In a related separate provision (§562), the Government of Haiti shall be eligible to purchase defense articles and services [through FMS] under the AECA, "for the civilian-led Haitian National Police and Coast Guard" subject to the regular reporting notification procedures of the Committees on Appropriations.

- ***Limitation on Assistance to Security Forces (§564)***

- This "Leahy Amendment" provision prohibits U.S. assistance funds from being provided to any unit of the security forces of a foreign country "if the Secretary of State has credible evidence that such unit has committed gross violations of human rights," unless the Secretary determines that the country is bringing the responsible members to justice.

- When such assistance funds are withheld from any such unit under this provision, "The Secretary of State shall promptly inform the foreign government of the basis for such action and shall, to the maximum extent practicable, assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice so funds to the unit may be resumed."

• The Conference Committee did not intend that "credible evidence" must be admissible in a court of law. The Committee also defined "taking effective measures" as a government carrying out a credible investigation and that the individuals involved face appropriate disciplinary action or impartial prosecution in accordance with local law.

• ***Limitations on Transfer of Military Equipment To East Timor (§565)***

• All agreements for the sale, transfer, or licensing of any lethal equipment or helicopter for Indonesia entered into by the United States pursuant to the authority of this Act or any other Act, shall state that the items will not be used in East Timor.

• **Excess Defense Articles for Certain European Countries (§569)**

Section 569 amends section 105 of P.L. 104-164 (110 Stat. 1427) to extend to fiscal years 1999 and 2000 the authority for DoD to fund the packing, crating, handling, and transportation of grant excess defense articles to countries participating in the Partnership for Peace and eligible for assistance under the *Support for East European Democracy (SEED) Act of 1989.*

• ***Aid to the Government of the Democratic Republic of Congo (§570)***

• None of the FY2000 funds appropriated or otherwise made available by P.L. 106-113 maybe furnished to the central government of the Democratic Republic of Congo.

• ***Assistance for the Middle East (§571)***

• The legislation imposes a ceiling of $5,321,150,000 on the total amount of U.S. assistance that can be made available for Israel, Egypt, Jordan, Lebanon, the West Bank and Gaza, the Israel-Lebanon Monitoring Group, the Multinational Force and Observers, the Middle East Regional Democracy Fund, Middle East Regional Cooperation, and Middle East Multilateral Working Groups.

• This overall ceiling applies to assistance provided under all of the following programs: Economic Support Fund, Foreign Military Financing Program, International Military Education and Training, Peacekeeping Operations, for refugees resettling in Israel (under the heading "Migration and Refugee Assistance"), and for anti-terrorism assistance to Israel (under the heading Nonproliferation, Anti-Terrorism, Demining, and Related Programs).

• Further, this provision also prohibits the use of prior year funds in the accounts listed above that were allocated for other regions (such as Africa and Latin America) to fund any of the programs listed above for Middle East countries and activities.

• This ceiling limitation may be waived if the President determines and certifies to the Committees on Appropriations that it is important to the U.S. national security interest to exceed the imposed ceiling.

• ***Cambodia (§573)***

• None of the funds appropriated by this Act may be made available for assistance for the central government of Cambodia.

- ***Report on All United States Military Training Provided to Foreign Military Personnel (§575)***

- Section 575 requires that the Departments of Defense and State provide to Congress no later than 1 March 2000 a report on all military training provided to foreign military personnel, excluding sales and training to military personnel of NATO, under the auspices of any program administrated by the Departments of Defense and State during fiscal years 1999 and 2000. The report must contain:

(1) the location of training;

(2) the number of foreign military personnel by country, including their units of operation;

(3) the cost of the training;

(4) the foreign policy justification and purpose of the training; and

(5) the operational benefits to U.S. forces derived from such training activity and the U.S. military units involved in each training activity.

- ***Korean Peninsula Energy Development Organization (§576)***

- The Korean Peninsula Energy Development Organization is authorized the use of no more than $35M of the funds made available under the heading "Nonproliferation, anti-terrorism, demining and related programs."

- ***Iraq Opposition (§580)***

- Of the funds appropriated under the heading 'Economic Support Fund', $10,000,000 shall be made available to support efforts to bring about political transition in Iraq, of which not less than $8,000,000 shall be made available only to Iraqi opposition groups designated under the Iraq Liberation Act (Public Law 105-338) for political, economic, humanitarian, and other activities of such groups, and not more than $2,000,000 may be made available for groups and activities seeking the prosecution of Saddam Hussein and other Iraqi government officials for war crimes.

- ***Additions Relating to the Stockpiling of Defense Articles for Foreign Countries (§584)***

- §514(b)(2), FAA, establishes the annual value of defense articles located abroad that may be set aside, reserved, or otherwise earmarked from U.S. military inventories for use as war reserve stocks for allies (WRSA) or for other countries other than for NATO or Israel. The title to these stocks and their control remains with the U.S. government, and any future transfer of any of these items must be in accordance with the provisions of the security assistance legislation prevailing at the time of such transfer.

- Congress has amended §514(b)(2), FAA, to approve WRSA additions totaling $60M for FY2000. Of the total, such additions valued at not more than $40M are authorized to be transferred to stockpiles in the Republic of Korea, and not more than $20M for stockpiles in Thailand.

- ***Indonesia (§589)***

- Funds appropriated under the headings "International Military Education and Training" and "Foreign Military Financing Program" may be made available for Indonesia if the President determines and submits a report to the appropriate congressional committees that the Indonesian government and the Indonesian armed forces are:

(1) taking effective measures to bring to justice members of the armed forces and militia groups against whom there is credible evidence of human rights violations;

(2) taking effective measures to bring to justice members of the armed forces against whom there is credible evidence of aiding or abetting militia groups;

(3) allowing displaced persons and refugees to return home to East Timor, including providing safe passage for refugees returning from West Timor;

(4) not impeding the activities of the International Force in East Timor (INTERFET) or its successor, the United Nations Transitional Authority in East Timor (UNTAET);

(5) demonstrating a commitment to preventing incursions into East Timor by members of militia groups in West Timor; and

(6) demonstrating a commitment to accountability by cooperating with investigations and prosecutions of members of the Indonesian armed forces and militia groups responsible for human rights violations in Indonesia and East Timor.

- ***Consultations on Arms Sales To Taiwan (See §593)***

- Consistent with the intent of Congress expressed in the *Taiwan Relations Act*, The Secretary of State shall consult with the appropriate committees and leadership of Congress to devise a mechanism to provide for congressional input prior to making any determination on the nature or quantity of defense articles and services to be made available to Taiwan.

***1999 Emergency Supplemental Appropriations Act,* P.L.106-31, 21 May 1999.**

- Provides additional funding to the Economic Support Fund (ESF), specifically in the amounts of:

  - $50,000,000 in grant aid assistance for Jordan (Title I, Chapter 4),

  - $6,500,000 in grant aid assistance for election monitoring and related activities in East Timor (Title I, Section 403), and

  - $105,000,000 in grant aid assistance for Albania, Macedonia, Bosnia-Herzegovina, Bulgaria, Montenegro, and Romania, and for investigations and related activities in Kosovo and in adjacent entities and countries regarding war crimes (Title II, Chapter 4).

- Title I, Chapter 4 provides an additional $50,000,000 to the Foreign Military Financing Program (FMFP) specifically as grant aid for Jordan.

- Provides an extension of special drawdown authorities to include that the amount for:

  - Section 506(a)(2), FAA, drawdowns as of 15 November 1998; of $75,000,000 in [DoD] articles, services, and training for Hurricane Mitch assistance; not be counted against the authorized annual ceiling of $150M per fiscal year (Title I, Section 402).

  - Section 552(c)(2), FAA, drawdowns as of 31 March 1999; of $25,000,000 in government [DoD] commodities and services to support international relief efforts relating to Kosovo; not be counted against the authorized annual ceiling of $25M per fiscal year (Title II, Section 2014).

- Title I, Chapter 3, provides an additional $37,500,000 to Department of Defense for "Overseas Humanitarian, Disaster, and Civic Aid."

  - Also provides $46,000,000 to the Department of Defense for expenses incurred by the U.S. military participating New Horizon Exercise programs while undertaking relief, rehabilitation, and restoration operations and training activities in response to disasters [Hurricane Mitch] within the USSOUTHCOM area of responsibility.

- Title I, Chapter 4, provides an additional $25,000,000 to the Department of State for "International Disaster Assistance."

  - Also provides $621,000,000 to the Department of State for the Central America and the Caribbean Emergency Disaster Recovery Fund for necessary expenses to address the effects of hurricanes [e.g., Mitch] in Central America and the Caribbean and the earthquake in Colombia.

- Title II, Chapter 2, provides an additional $50,500,000 to the Department of State for "Security and Maintenance of U.S. Missions."

- Title II, Chapter 4, provides an additional $163,000,000 to the U.S. Agency for International Development (USAID) for "International Disaster Assistance."

  - Also provides an additional $120,000,000 to the Department of State for "Assistance for Eastern Europe and the Baltic States."

  - Also provides an additional $266,000,000 to the Department of State for "Migration and Refugee Assistance."

  - Also provides an additional $165,000,000 to the Department of State for the "U.S. Emergency Refugee and Migration Assistance Fund."

- Title II, Chapter 5, provides an additional $100,000,000 to the Department of Health and Human Services for "Refugee and Entrant Assistance" as necessary to assist in the temporary resettlement of displaced Kosovar Albanians.

***Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001*, Division B, §1001(a)(7), of *The Consolidated Appropriations Act, FY2000*, P.L.106-113, 29 November 1999.**

- Section 101 authorizes:

  - $254,000,000 for FY2000 and $315,000,000 for FY2001 to be used for worldwide security upgrades.

  - $434,066,000 for FY2000 and $445,000,000 for FY2001 to be used for embassy security, construction, and maintenance.

  - $9,490,000 for FY2000 and $9,490,000 for FY2001 to be used for the protection of foreign missions and officials.

- Section 103 authorizes $750,000,000 for FY2000 and $750,000,000 for FY2001 to be used for migration and refugee assistance with the following earmarks:

  - $2,000,000 each fiscal year for Tibetan refugees in India and Nepal,

  - $60,000,000 each fiscal year for refugees from other countries settling in Israel,

  - $2,000,000 each fiscal year for displaced Burmese,

  - $2,000,000 each fiscal year for displaced Sierra Leoneans, and

  - $1,000,000 each fiscal year in support of a international rape counseling program.

- Section 106 authorizes $940,000,000 for FY2000 to be used as contributions to international organizations.

- Section 107 authorizes $500,000,000 for FY2000 to be used as contributions for international peacekeeping activities.

- Section 108 authorizes $293,000,000 for FY 2000 to be used as voluntary contributions to international organizations.

- Section 252 amends §502B(b), FAA, [the annual human rights report] by adding after the fourth sentence, "Each report under this section shall describe the extent to which each country has extended protection to refugees, including the provision of first asylum and resettlement."

- **Title VI, Sections 601-609, is the *Secure Embassy Construction and Counterterrorism Act of 1999*.**

- This is one result of the "Crowe Panel" convened in response to the coordinated 7 August 1998 U.S. Embassy bombings in Nairobi, Kenya and Dar es Salaam, Tanzania, killing 220 people and injuring more than 4,000 others. The panel was chaired by ADM William J. Crowe, USN (Ret.). The report, available at http://www.state.gov/www/regions/africa/accountability_report.html, listed many problems with security at U.S. diplomatic facilities, with the following in particular:

- The U.S. government has devoted inadequate resources to security against terrorist attacks.

- The U.S. government places too low a priority on security concerns.

- Section 604 authorizes an additional $900,000,00 each year through FY2004 for embassy security, construction and maintenance. This funding is only to be used for (1) acquisition of U.S. diplomatic facilities and, if necessary, any residences or other structures located in close proximity to the facilities, and (2) the provision of major security enhancements to U.S. diplomatic facilities.

- Section 605 requires the Secretary of State to provide an annual report beginning not later than 1 February 2000 to Congress for the next four years identifying each diplomatic or consular facility that is a priority for replacement or for any major security enhancement because of its vulnerability to terrorist attack.

- The report shall list such facilities in groups of 20 and ranked in order from most vulnerable to least vulnerable. The funds authorized by above §604 may only be used for those facilities that are listed in the first four groups except when Congress authorizes or appropriates otherwise or the Secretary notifies Congress to do otherwise.

- The Secretary of State shall also submit a semi-annual report to Congress providing the progress and projected plans on acquisition and major security upgrades authorized by this Act.

- Section 606 provides security requirements that will apply with respect to U.S. diplomatic facilities and specified personnel.

- Threat assessment

  - Each U.S. mission's emergency action plan shall address the threat of large explosive attacks and be reviewed and updated annually.

  - The security environment threat list shall contain a section that addresses potential acts of international terrorism against U.S. diplomatic facilities based on threat identification criteria that emphasize the threat of transnational terrorism and include the local security environment, host government support, and other relevant factors such as cultural realities. Such plan shall be reviewed and updated every six months.

- Site selection

  - In general, in selecting a new site for a diplomatic facility, the Secretary of State shall ensure all U.S. government personnel (except those under the command of an area military commander) will be located on the site. Only the Secretary, in coordination with each affected agency head, may waive those provisions to locate others at a separate site. This waiver authority may not be delegated and Congress must be notified at least fifteen days prior to implementation of the waiver.

- Each newly acquired diplomatic facility must be located not less than 100 feet from the perimeter of the property. Again, only the Secretary can waive this requirement and must notify Congress at least fifteen days prior to implementing the waiver.

- Crisis management training

  - Appropriate Department of State headquarters staff shall be trained for mass casualty and mass destruction incidents at overseas facilities for the purpose of bringing a rapid response to the affected overseas site.

  - Personnel at overseas U.S. diplomatic facilities shall be provided instruction in crisis management at least annually.

- Diplomatic security training - Not later than six months after enactment, the Secretary shall:

  - Develop annual physical fitness standards for all diplomatic security agents, and

  - Provide for an independent evaluation by an outside entity of the overall adequacy of current new agent, in-service, and management training programs in preparing agents.

- The Department of State Foreign Emergency Support Team (FEST) shall receive sufficient support, including:

  - Routine training exercises,

  - Providing personnel to serve on the FEST as a collateral duty,

  - Providing personnel to assist in security, medical relief, public affairs, engineering, and building safety, and

  - Providing additional support in a post-crisis environment involving mass casualties and physical damage.

- The President shall develop and report to Congress a plan to replace the current FEST aircraft funded by DoD with a dedicated, capable, and reliable aircraft and backup aircraft to be operated and maintained by DoD.

- The Secretary of State shall enter into an MOU with the Secretary of Defense setting out rapid response procedures for mobilization of personnel and equipment of their departments to provide more effective assistance in times of emergency at diplomatic facilities.

- All U.S. diplomatic facilities shall have emergency equipment and records required in case of an emergency to be stored at an off-site facility.

- Section 609 requires a report from the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to Congress on a proposed operational plan and site selection to expeditiously establish an International Law Enforcement Academy (ILEA) in Africa to increase training and cooperation in anti-terrorism and transnational crime fighting.

• Section 806 amends Sections 116(d) and 502B(b), FAA, *Annual Human Rights Report*, with the following additional reporting requirement:

• "Wherever applicable, such report shall include consolidated information regarding the commission of war crimes, crimes against humanity, and evidence of acts that may constitute genocide (as fined in Article 2 of the *Convention on the Prevention and Punishment of the Crime of Genocide* and modified by the U.S. instrument of ratification to that convention and §2(a) of the *Genocide Convention Implementation Act of 1987*)."

• **Title XII, Subtitles A through C, Sections 1201-1232, is the *Security Assistance Act of 1999.***

• Section 1211(a) amends §105 of P.L.104-164, 21 July 1996, to allow DoD funding of packing, crating, handling, and transportation of grant excess defense articles (EDA) during Fiscal Years 2000 and 2001 to countries eligible to participate in Partnership for Peace (PfP) and eligible for assistance under the *Support for East European Democracy (SEED) Act of 1989*.

• The *Congressional Presentation (CP) for Foreign Operations, FY2000* lists the following countries as currently eligible for SEED assistance: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Romania, and Serbia and Montenegro.

• Section 1211(b) amends §516(b)(2), FAA, by extending the requirement for the traditional 7:10 ratio of grant EDA to Greece and Turkey for the four-year period beginning on 1 October 2000.

• Section 1212 authorizes the use of DoD funds for packing, crating, handling, and transportation of grant EDA transferred in accordance with §516, FAA, during Fiscal Years 2000 and 2001 to the countries of Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Slovakia, Ukraine, and Uzbekistan.

• If the grant EDA transfer is to be notified to Congress in accordance with §516(f), FAA, then the notification shall include an estimate of the DoD funds to be expended under this authority.

• Section 1213 amends §516(g)(1), FAA, by changing the aggregate value of grant EDA transfers allowed during a fiscal year from $350,000,000 to $425,000,000.

• Section 1221 amends §617, FAA, by adding the following, "Such expenses for orderly termination of programs under the Arms Export Control Act may include the obligation and expenditure of funds to complete the training or studies outside the countries of origin of the students whose course of study or training program began before assistance was terminated, as long as the origin country's termination was not a result of activities beyond default of financial responsibilities."

• This amendment provides authority to allow AECA-authorized students (e.g., FMS, DCS, and FMFP-funded) from countries whose assistance have been terminated, other than from the lack of funding, to complete their current training pipeline then return to their country of

origin. This authority has been in place for FAA-authorized students (e.g., IMET and drawdowns) since 16 December 1980 by P.L. 96-533.

• Section 1222 amends §21(a)(1), AECA, by authorizing the sale of U.S. Coast Guard articles from stock. Before this change, only the Department of Defense was specifically authorized to sell from stock.

• Section 1223 amends §22(d), AECA, Competitive Pricing, by inserting a new subsection 22(d)(2) to read, "Direct costs associated with meeting additional or unique requirements of the purchaser shall be allowable under contracts described in paragraph (1) [Section 22(d)(1)]. Loadings applicable to such direct costs shall be permitted at the same rates applicable to procurement of like items purchased by the Department of Defense for its own use."

• The direct costs referred to in §22(d)(1) include pricing to be "on the same costing basis with regard to profit, overhead, independent research and development, bid and proposal, and other costing elements, as is applicable to procurements of like items purchased" by DoD for its own use.

• This codifies the authority provided for several years by the annual Foreign Operations Appropriations Act.

• Section 1224 amends §36(c), AECA, by adding the following new paragraph:

• "(4) the provisions of subsection (b)(5) shall apply to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to paragraph (1) in the same manner and to the same extent as that subsection applies to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to subsection (b)(1). For purposes of such application, any reference in subsection (b)(5) to "a letter of offer" or "an offer" shall be deemed to be a reference to "a contract"."

• Section 36(b)(5) requires that if the sensitivity of technology or the capability of an article, equipment, or service is enhanced or upgraded from the level of an already notified FMS sale (now to also include a direct commercial sale), then Congress is to be notified at least 45 days before delivery to the country. If the enhancement or upgrade of the FMS sale (now to also include a direct commercial sale) costs $14M or more in the case of major defense equipment (MDE) or $50M or more in the case of defense articles or services, then a new numbered notification must be submitted to Congress for the traditional 15 or 30 day review period.

• This new requirement for a licensed direct commercial sale has applied to an FMS sale since 1983 and is referred to as the "*Glenn Amendment*."

• Section 1225 amends §3, AECA, with a new subsection regarding the U.S. government's right to verify reports of the unauthorized use U.S.-origin defense articles.

• "(g) Any agreement for the sale or lease of any article on the U.S. Munitions List entered into by the U.S. government after the date of enactment of this subsection shall state that the U.S. government retains the right to verify credible reports that such article has been used for a purpose not authorized under §4 or, if such agreement provides that such article may only be

used for purposes more limited than those authorized under §4, for a purpose not authorized under such agreement."

- This does not appear to apply to DCS articles. This already applies to grant and drawdown transfers since the recipient government must agree to a similar verification by agreeing to §505(a), FAA, conditions of eligibility prior to transfer.

- Section 4, AECA, purposes for which military sales or leases are authorized include:

  - Internal security,

  - Legitimate self-defense,

  - Participation in regional or collective arrangements or measures consistent with the Charter of the U.N., and

  - Enabling foreign military forces in less developed countries to construct public works and engage in other activities of economic and social development.

- Section 1231 amends §514(b)(2) authorizes additions to stockpiles of defense articles in foreign countries not to exceed $60,000,000 during FY2000 with not more than $40,000,000 and $20,000,000 being made available to stockpiles in the Republic of Korea and Thailand respectively.

- Section 1232 authorizes the transfer of munitions, equipment, and material to the Republic of Korea and Thailand in return for concessions negotiated by the Secretary of Defense, with the concurrence of the Secretary of State. The items eligible for this transfer must be:

  - Obsolete or surplus,

  - In the DoD inventory,

  - Intended for use as reserve stocks in the applicable country, and

  - As of 29 November 1999, located in a stockpile in the applicable country.

- The value of the negotiated concessions shall be at least equal to the fair market value of the items transferred. The concessions may include cash compensation, services, waiver of charges otherwise payable by the U.S., and other items of value. Congress is to be notified not less than 30 days before the transfer with details of the transfer and the concessions received.

- **Title XII, Subtitle D, Sections 1241 - 1248, is the *Defense Offsets Disclosure Act of 1999* [also referred to as the *Feingold Amendment*].**

- Section 1243(a) provides a list of Congressional findings regarding offsets:

  - A fair business environment is necessary to advance international trade, economic stability, and development worldwide, is beneficial for American workers and businesses, and is in the U.S. national interest.

- In some cases, mandated offset requirements can cause economic distortions in international defense trade and undermine fairness and competitiveness, and may cause particular harm to small and medium-sized businesses.

- The use of offsets may lead to increasing dependence on foreign suppliers for the production of U.S. weapons systems.

- The offset demands required by some purchasing countries, including some close allies of the U.S., equal or exceed the value of the base contract they are intended to offset, mitigating much of the potential economic benefit of the exports.

- Offset demands often unduly distort the prices of defense contracts.

- In some cases, U.S. contractors are required to provide indirect offsets which can negatively impact non-defense industrial sectors.

- Unilateral efforts by the U.S. to prohibit offsets may be impractical in the current era of globalization and would severely hinder the competitiveness of the U.S. defense industry in the global market.

- The development of global standards to manage and restrict demands for offsets would enhance U.S. efforts to mitigate the negative impact of offsets.

- Section 1242(b) provides a declaration of policy regarding offsets.

- It is the policy of the U.S. to monitor the use of offsets in international defense trade, to promote fairness in such trade, and to ensure that foreign participation in the production of U.S. weapons systems does not harm the economy of the U.S.

- Section 1243(3) defines "offset" to mean the entire range of industrial and commercial benefits provided to foreign governments as an inducement or condition to purchase military goods or services, including benefits such as coproduction, licensed production, subcontracting, technology transfer, in-country procurement, marketing and financial assistance, and joint ventures.

- Section 1244 states the sense of Congress that:

- The executive branch should pursue efforts to address trade fairness by establishing reasonable, business-friendly standards for the use of offsets in international business transactions between the U.S. and its trading partners and competitors;

- The Secretaries of Defense, State, and Commerce and the U.S. Trade Representative, or their designees, should raise with other industrialized nations at every suitable venue the need for transparency and reasonable standards to govern the role of offsets in international defense trade;

- The U.S. government should enter into discussions regarding the establishment of multilateral standards for the use of offsets in international defense trade through the appropriate

multilateral fora, including such organizations as the Transatlantic Economic Partnership, the Wassenaar Arrangement, the G-8, and the World Trade Organization; and

- The U.S. government, in entering into the discussions described above, should take into account the distortions produced by the provision of other benefits and subsidies, such as export financing, by various countries to support defense trade.

- Section 1245 amends the AECA Congressional notification requirements for both FMS and DCS.

- Section 36(b)(1), AECA, is modified to require the notification to include "and a description of any offset agreement with respect to such sale."

- Section 36(c)(1), AECA, is modified to require the notification to include "and a description of any such offset agreement."

- A new §36(g) is added to the AECA to state "(g) Information relating to offset agreements provided pursuant to subparagraph (C) of the fifth sentence of subsection (b)(1) and the second sentence of subsection (c)(1) shall be treated as confidential information in accordance with §12(c) of the *Export Administration Act of 1979* (50 U.S.C. App. 2411(c))."

- Section 1246 amends §39A(a), AECA, to also specifically prohibit incentive payments by a U.S. supplier of defense articles or services with respect to a direct commercial sale for the purpose of satisfying, in whole or in part, any offset agreement with the purchasing country by inserting "or licensed" after "sold" and "or exported" after "sale."

- Section 39A(d)(2), AECA, defines "incentive payment" to mean "direct monetary compensation made by a U.S. supplier of defense articles or defense services or by any employee, agent, or subcontractor thereof to any other U.S. person to induce or persuade that U.S. person to purchase or acquire goods or services produced, manufactured, grown, or extracted, in whole or in part, in the foreign country which is purchasing those defense articles or services from the U.S. supplier."

- Section 1247 directs, within 120 days, the establishment of a *National Commission on the Use of Offsets in Defense Trade*.

- The President, with the concurrence of the majority and minority leaders of both Houses, will appoint eleven individuals as members of the Commission.

  - From the private sector, one each from:

    - A labor organization,

    - A U.S. defense manufacturing company dependent on foreign sales,

    - A U.S. non-defense manufacturing company dependent on foreign sales, and

    - A U.S. company specializing in international investment, plus

- Two members from academia with widely recognized expertise in international economics.

- From the executive branch, one each from:

  - Office of Management and Budget (to chair the Commission),

  - Department of Commerce,

  - Department of Defense,

  - Department of State, and

  - Department of Labor.

- The Commission shall be responsible for reviewing and reporting on:

  - The full range of current practices by foreign governments in requiring offsets in purchasing agreements and the extent and nature of offsets offered by U.S. and foreign defense contractors,

  - The impact of the use of offsets on defense subcontractors and non-defense industrial sectors affected by indirect offsets, and

  - The role of offsets, both direct and indirect, on domestic industry stability, U.S. trade competitiveness and national security.

- Within twelve months of establishment, the Commission shall submit a report to Congress to include the above review and:

  - An analysis of:

  - The collateral impact of offsets on industry sectors that may be different than those of the contractor providing the offsets, including estimates of contracts and jobs lost as well as an assessment of damage to industrial sectors,

  - The role of offsets with respect to competitiveness of the U.S. defense industry in international trade and the potential damage to the ability of U.S. contractors to compete if offsets were prohibited or limited, and

  - The impact on U.S. national security, and upon U.S. nonproliferation objectives, of the use of coproduction, subcontracting, and technology transfer with foreign governments or companies that results from fulfilling offset requirements, with particular emphasis on the question of dependency upon foreign nations for the supply of critical components or technology.

  - Proposals for unilateral, bilateral, or multilateral measures aimed at reducing any detrimental effects of offsets, and

- Identification of the appropriate executive branch agencies to be responsible for monitoring the use of offsets in international defense trade.

- Section 1248 directs the President to determine the feasibility of establishing, and the most effective means of negotiating, a multilateral treaty on standards for use of offsets in international defense trade, with a goal of limiting all offset transactions that are considered injurious to the economy of the U.S.

- Not later than ninety days after the Commission submits its report required by §1247 to Congress, the President shall submit to Congress a report containing the President's determination pursuant to the review required by this section, and, if the President determines a multilateral treaty is feasible or desirable, a strategy for U.S. negotiation of such a treaty. Starting one year after submitting this report, and annually thereafter for five years, a report shall be submitted to Congress detailing the progress toward reaching such a treaty.

- The Comptroller General of the U.S. shall monitor and periodically report to Congress on the progress in reaching a multilateral treaty.

- **Title XII, Subtitle E, Sections 1251 - 1256, is the *Proliferation Prevention Enhancement Act of 1999.***

- Section 1252 amends 13 U.S.C. 301 by adding the following new subsection,

- "(h) The Secretary [of Commerce] is authorized to require by regulation the filing of Shippers' Export Declarations under this chapter through an automated and electronic system for filing of export information established by the Department of the Treasury."

- This amendment shall take effect 270 days after the Secretary of Commerce, the Secretary of the Treasury, and the Director of the National Institute of Standards and Technology jointly certify to Congress that a secure Automated Export System (AES) available through the Internet that is capable of handling the expected volume of information required to be filed under chapter 9 of title 13, U.S. Code, plus the anticipated volume from voluntary use the AES, has been successfully implemented and tested and is fully functional with respect to reporting all items on the U.S. Munitions List, including their quantities and destinations.

- The Automated Export System is the automated and electronic system for filing export information established under chapter 9 of title 13, U.S. Code, on 19 June 1995 (60 FR 32040).

- The Secretary of Commerce, with the concurrence of the Secretary of State, shall publish regulations in the Federal Register to require that, upon the effective date of those regulations, exporters (or their agents) who are required to file Shippers' Export Declarations under chapter 9 of title 13, U.S. Code, file such Declarations through the AES with respect to exports of items on the U.S. Munitions List or the Commerce Control List.

- Section 1254 requires within 180 days of enactment, a report from the Secretary of Commerce, in consultation with the Secretaries of State, Defense, Treasury, and Energy, and the Director of Central Intelligence, to Congress, including:

- The advisability and feasibility of mandating electronic filing through the AES for all Shippers' Export Declarations;

- The manner in which data gathered through the AES can most effectively be used, consistent with the need to ensure the confidentiality of business information, by other federal agency automated licensing systems, including:

  - Defense Trade Application System of the Department of State,

  - Export Control Automated Support System of the Department of Commerce,

  - Foreign Disclosure and Technology Information System of the Department of Defense,

  - Proliferation Information Network System of the Department of Energy,

  - Enforcement Communications System of the Department of the Treasury, and

  - Export Control System of the Central Intelligence Agency; and

  - A proposed timetable for any expansion of information required to be filed through the AES.

- Section 1255, notwithstanding any other provision of law, allows the Secretary of State to employ up to forty percent of the individuals who are performing services within the Office of Defense Trade Controls (DTC) in the positions classified at GS-14 and GS-15 and other individuals within the Office at a rate of basic pay that may exceed the maximum rate payable for positions classified at GS-15.

- **Title XII, Subtitle F, Sections 1261 - 1262, is the *International Arms Sales Code of Conduct Act of 1999.***

- The President shall take the necessary steps to begin negotiations within appropriate international fora not later than 120 days after enactment of this Act to establish an international regime to promote global transparency with respect to arms transfers, including participation by countries in the U.N. Register of Conventional Arms, and to limit, restrict, or prohibit arms transfers to countries that do not observe certain fundamental values of human liberty, peace, and international stability.

- Congress provides several criteria in §1262(b) that the President shall consider during the negotiations.

  - The annual human rights report required by Sections 116(d) and 502B(b), FAA, from the Secretary of State to Congress shall describe the extent to which the practices of each country evaluated meet these criteria.

  - Not later than six months after negotiations begin, and every six months thereafter, the President shall report to Congress on the progress made during these negotiations.

• Section 1271 amends §1018 of the *National Defense Authorization Act for Fiscal Year 2000*, P.L.106-65, 5 October 1999, concerning the transfer of ships to other countries.

• The value of the ships to be transferred IAW §516, FAA, as grant excess defense articles (EDA) shall not count for the purposes of §516(g), FAA, in the aggregate value of grant EDA (fiscal year limit of $425M) transferred to countries in any fiscal year.

• Throughout the entire section, "Secretary of Navy" is changed to read "President."

• Section 1301 amends §36(e), AECA, to cause the numbered certifications of proposed FMS and DCS sales plus proposed commercial technical assistance agreements (TAA) and manufacturing licensing agreements (MLA) notified to Congress to be published in the Federal Register "in a timely manner."

• Both Sections 36(b)(1) and 36(c)(1), AECA, are amended so that the dollar value and description of items to be transferred within certification to Congress of the proposed FMS and DCS sales "may be classified if the public disclosure thereof would be clearly detrimental to the security of the U.S., in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information."

• Section 1302 amends §38, AECA, with a new subsection as follows,

• "(i) As prescribed in regulations issued under this section [the International Traffic in Arms Regulation], a United States person to whom a license has been granted to export an item on the United States Munitions List shall, not later than 15 days after the item is exported, submit to the Department of State a report containing all shipment information, including a description of the item and the quantity, value, port of exit, and end-user and country of destination of the item."

• Likewise, §36(a), AECA, is amended with a new subsection as follows,

• "(13) a report on all exports of significant military equipment for which information has been provided pursuant to §38(i)."

• Section 1303 amends Sections 38(e) [arms exports], 39A(c) [incentive payments], and 40(k) [antiterrorism], AECA, by inserting in each case after "except that" the new words "§11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that":

• Eliminates the *Export Administration Act of 1979*, §11(c)(2)(B), requirement for a notice and opportunity for an agency hearing on record as required in 5 U.S.C. 554-7 (the *Administrative Procedures Act of 1946*, as amended) prior to the Secretary of State levying any administrative sanction for a AECA violation.

• Section 1304 amends §38(g)(1)(A)(iii), AECA, requiring appropriate mechanisms within the export licensing process to identify those indicted or convicted for a violation of terrorism.

- Section 1306 amends §655, FAA, which requires an annual report by 1 February to show the aggregate dollar value and defense articles (including EDA and drawdowns), services, and IMET authorized by the U.S. for transfer to each foreign country and international organization during the prior fiscal year. In addition to being categorized by grant, drawdown, FMS, and DCS transfer, the report is now to include if the transfers were furnished with U.S. government financial assistance.

  - All unclassified portions of this report shall be made available to the public on the Internet through the Department of State.

- Section 1307 amends the FAA with a new §656, entitled *Annual Foreign Military Training Report*, required by Congress by 31 January of each year.

  - Joint unclassified (but may include a classified annex) report by the Secretaries of Defense and State to include training provided during the previous fiscal year with a projection for the current fiscal year.

  - Contents of the report are to include:

    - For each military training activity:

      - Foreign policy justification and purpose, and

      - Number of foreign military personnel provided the training, their units of operation, and the training location.

    - For each country:

      - The aggregate number of students trained, and

      - The aggregate cost of the training activity.

    - With respect to U.S. personnel:

      - The operational benefits to the U.S. forces from each training activity, and

      - The U.S. military units involved with each training activity.

  - All unclassified portions of the report shall be made available to the public on the Internet through the Department of State.

  - This codified report requirement is more substantial than the training report required by §575 of the *Foreign Operations Appropriations Act, 2000*, P.L.106-133, which is to be submitted by 1 March 2000 and excludes the reporting of training provided through FMS and training provided to the military of NATO countries.

- Section 1308 provides a congressional policy declaration for U.S. military assistance to the Republic of the Philippines.

- The President should transfer UH-1 helicopter, A-4 aircraft, and various types of boats and ships up to the size of frigates on a grant EDA basis in accordance with §516, FAA, to the Philippine Government.

- The U.S. should not oppose the third country transfer of F-5 aircraft to the Philippine Government.

- $5,000,000 of foreign military financing program funding appropriated each year during Fiscal Years 2000 and 2001 to carry out §23, AECA, should be made available on a grant basis to the Philippine Government.

- Section 1309 directs the Secretary of State to establish a regulatory regime for the licensing export of commercial satellites, satellite technologies, their components, and systems which shall include expedited approval, as appropriate, of the licensing for export by U.S. companies of commercial satellites, satellite technologies, their components, and systems, to NATO allies and major non-NATO allies.

- The more restrictive conditions of control for the export of satellites and their clearly defined "related items" put into place last year by §1514 of the *Strom Thurmond National Defense Authorization for Fiscal Year 1999*, P.L.105-261, does not apply to the export to NATO allies and major non-NATO allies.

- Of the funding authorized to be appropriated by §101(1)(A) of this Act for Fiscal Years 2000 and 2001 for "Diplomatic and Consular Programs," $9,000,000 is authorized to be appropriated each year for the Office of Defense Trade Controls which manages the export licensing of direct commercial sales.

- Section 1310 requires not later than 180 days after enactment a report by the Secretary of State to Congress of a study on the performance of the licensing process pursuant to the AECA with recommendations on how to improve this performance. The study showed the following.

  - An analysis of the typology of licenses on which action was completed in 1999, including:

    - Number for non-automatic and automatic small arms, technical data, parts and components, and other weapons,

    - Percentage of each category staffed to other agencies,

    - Average and median time taken for the processing cycle for each category when staffed and not staffed,

    - Average time taken by Presidential or National Security Council review or scrutiny, if significant, and

    - Average time spent at the Department of State after a decision had been taken on a license but before a contractor was notified of the decision.

- A review of the current computer capabilities of the Department of State relevant to the processing of licenses and its capability to communicate with other agencies and contractors, and what improvements could be made, to include the cost for the improvements.

- An analysis of the work load and salary structure for export licensing officers in Defense Trade Controls as compared to comparable jobs in the Departments of Defense and Commerce.

- Any suggestions relating to resources and regulations, and any relevant statutory changes that might expedite the licensing process while furthering the objectives of the AECA.

- Section 1311 requires the Secretary of State to submit not later than 180 days of enactment a report to Congress concerning proliferation of small arms, including an assessment of whether the global trade in small arms poses any proliferation problems, including:

  - Estimates of the numbers and sources of licit and illicit small arms and light weapons in circulation and their origins,

  - Challenges associated with monitoring small arms, and

  - Political, economic, and security dimensions of this issue, and the threats posed, if any, by these weapons to U.S. interests, including national security.

- An assessment of whether the export of small arms of the type sold commercially in the U.S. should be considered a foreign policy or proliferation issue.

- A description and analysis of the adequacy if current Department of State activities to monitor and, to the extent possible, ensure adequate control, both the licit and illicit manufacture, transfer, and proliferation of small arms and light weapons, including efforts to survey and assess this with respect to Africa and to survey and assess the scope and scale of the issue, including stockpile survey and destruction of excess inventory, in NATO and Partnership for Peace countries.

- A description of the impact of the reorganization of the Department of State made by the *Foreign Affairs Reform and Restructuring Act of 1998*, P.L.105-277, on the transfer of functions relating to monitoring, licensing, analysis, and policy on small arms and light weapons, including:

  - The integration of and the functions relating to small arms and light weapons of the U.S. Arms Control and Disarmament Agency (ADCA) with those of the Department of State,

  - The functions of the Bureau of Arms Control, the Bureau of Nonproliferation, the Bureau of Political-Military Affairs, the Bureau of International Narcotics and Law Enforcement, regional bureaus, and any other relevant bureau or office of the Department of State, including the allocation of personnel and funds, as they pertain to small arms and light weapons,

  - The functions of the regional bureaus of the Department of State in providing information and policy coordination in bilateral and multilateral settings on small arms and light weapons,

- The functions of the Under Secretary of State for Arms Control and International Security pertaining to small arms and light weapons, and

- The functions of the scientific and policy advisory board on arms control, nonproliferation, and disarmament pertaining to small arms and light weapons.

- An assessment of whether foreign governments are enforcing their own laws concerning small arms and light weapons import and sale, including commitments under the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials or other relevant international agreements.

***National Defense Authorization Act for Fiscal Year 2000,* P.L.106-65, 5 October 1999**

- Section 301(23) authorizes the appropriation of $475,500,000 for the Cooperative Threat Reduction Program; however, P.L. 106-79 only appropriates $460,500,000 for the program.

- Section 541 amends 10 U.S.C. 2111 authorizing the establishment of a program to facilitate the enrollment and instruction of persons from foreign countries as international students at the senior military colleges.

- The international student who admitted to the college under this program is responsible for the cost of instruction at that college. However, the Secretary of Defense may provide some or all of the costs for the student. $2,000,000 is authorized during FY2000 for this financial support.

- Section 911 redesignates the Under Secretary of Defense for Acquisition and Technology as the Under Secretary of Defense for Acquisition, Technology, and Logistics.

- Section 912 codifies the authorities and functions of the Technology Security Directorate assigned as an element within the Defense Threat Reduction Agency (DTRA), which is an agency within Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

- The head of the Technology Security Directorate shall have the authority to advise the Secretary of Defense and the Deputy Secretary of Defense, through the Under Secretary of Defense for Policy, on policy issues related to the transfer of strategically sensitive technology, including issues relating to the following:

    - Strategic trade,

    - Defense cooperative programs,

    - Science and technology agreements and exchanges,

    - Export of munitions items,

    - International memorandums of understanding, and

    - Foreign acquisition.

- The Secretary of Defense shall ensure that the head of the Technology Security Directorate has appropriate personnel, resource, and support to carry out his mission.

- The staff and resources of the Technology Security Directorate may not be used to fulfill any requirement or activity of DTRA that does not directly relate to the technology security and export control mission of the Directorate except with prior approval of the Under Secretary of Defense for Policy.

- The Secretary of Defense is required to submit a report describing the personnel strength and budget resources within the Technology Security Directorate as of 1 October 1998 and 30 September 1999 and any planned increases for Directorate resources for FY2000 and FY2001.

- Sections 1017 and 1018 authorize a total of 13 ship transfers during a two-year period beginning 5 October 1999 including the following:

- CYCLONE (PC-1) class coastal patrol craft or a craft with a similar hull to Thailand on a sale, lease, lease/buy, or grant (Sec. 516, FAA) basis.

- Medium Auxiliary Floating Dry Dock (AFDM-2) to Dominican Republic on a grant basis.

- OAK RIDGE class medium auxiliary repair dry dock ALAMOGORDO (ARDM-2) to Ecuador on a grant basis.

- NEWPORT class tank landing ships BARBOUR COUNTY (LST-1195) and PEORIA (LST-1183) to Egypt on a sales (Sec. 21, AECA) basis.

- KNOX class frigate CONNOLE (FF-1056) to Greece on a grant basis.

- NEWPORT class tank landing ship NEWPORT (FF-1052) and KNOX class frigate WHIPPLE (FF-1062) to Mexico on a sales basis.

- OLIVER HAZARD PERRY class guided missile frigate CLARK (FFG-11) to Poland on a grant basis.

- NEWPORT class tank landing ship SCHENECTADY (LST-1185) to Taiwan on a sales basis.

- KNOX class frigate TRUETT (FF-1095) to Thailand on a grant basis.

- OLIVER HAZARD PERRY class guided missile frigates FLATLEY (FFG-21) and JOHN A. MOORE (FFG-19) on a sales basis.

- The following stipulations apply to these authorized transfers.

  - The values of the authorized grant transfers are not to be included in the aggregate value limitation set forth in §516(g), FAA.

- Any expenses of the U.S. in connection with a transfer are to be charged to the recipient government.

- To the maximum extent practicable, the Secretary of the Navy shall require, as a condition of the transfer, that the country have any required repair or refurbishment of the ship, as is needed, before the ship joins the naval forces of the recipient country, completed at a shipyard located in the U.S., including a U.S. Navy shipyard.

- Section 1025 requires the Secretary of Defense to submit an annual report by 1 January every year to Congress detailing the number of U.S. military members deployed or otherwise assigned to duty in Colombia at any time during the preceding year, the length and purpose of the deployment or assignment, and the costs and force protection risks associated with such deployments and assignments.

- Section 1201 provides that the Secretary of Defense may not authorize any military-to-military exchange or contact listed below be conducted by the armed forces with representatives of the People's Republic of China's People's Liberation Army (PLA) if that exchange or contact would create a national security risk due to an inappropriate exposure specified below.

  - Force projection operations
  - Nuclear operations
  - Advance combined-arms and joint combat operations
  - Advanced logistical operations
  - Chemical and biological defense and other capabilities related to weapons of mass destruction
  - Surveillance and reconnaissance operations
  - Joint warfighting experiments and other activities related to a transformation in warfare
  - Military space operations
  - Other advanced capabilities of the armed forces
  - Arms sales or military-related technology transfers
  - Release of classified or restricted information
  - Access to a Department of Defense laboratory.

- None of the above applies to any search and rescue or humanitarian operations or exercises.

- Annually, the Secretary of Defense shall send the following two reports to Congress regarding the above listed exchange or contact restrictions.

  - By 31 December every year, a certification as to whether or not any exchange or contact was conducted in violation of the above listed restrictions.

  - By 31 March every year beginning in 2001, an assessment of the current state of exchanges and contacts with the PLA, to include:

    - A summary of all such military-to-military contacts conducted in the past year to include topics discussed and questions asked by the Chinese participants.

    - A description of the exchanges and contacts scheduled during the next twelve months and a plan for future exchanges and contacts.

    - An assessment of the benefits the Chinese expect to gain from these exchanges and contacts.

    - An assessment of the benefits DoD expects to gain from these exchanges and contacts.

    - An assessment of how exchanges and contacts with the PLA fit into the larger security relationship between the U.S. and the P.R.C.

  - Not later than 31 March 2000, the Secretary of Defense is also to provide a rather extensive unclassified (with a classified annex) report to Congress regarding past military-to-military exchanges and contacts between the U.S. and the P.R.C.

- Section 1223 directs each military department to give due consideration to according a high priority to the attendance of military personnel from Poland, Hungary, and the Czech Republic at professional military education schools and training programs in the U.S., including the military academies, various war colleges, staff officer courses, and other schools and training programs that admit foreign military personnel.

- Section 1302 lists the Cooperative Threat Reduction (*Nunn-Lugar*) programs that are authorized to receive funding during FY2000, with the funding to be available for a three year period.

  - Strategic offensive arms elimination in Russia - $177,300,000

  - Strategic nuclear arms elimination in Ukraine - $41,800,000

  - Activities to support warhead dismantling in Russia - $9,300,000

  - Security enhancements at chemical weapons storage sites in Russia - $20,000,000

  - Weapons transportation security in Russia - $15,200,000

- Planning, design, and construction of a storage facility for Russian fissile material - $64,500,000

- Weapons storage security in Russia - $99,000,000

- Development of a cooperative program with the government of Russia to eliminate the production of weapons grade plutonium at Russian reactors - $32,300,000

- Biological weapons proliferation prevention activities in Russia - $12,000,000

- Activities designated as Other Assessments/Administrative Support - $1,800,000

- Defense and military contacts - $2,300,000.

- Section 1401 provides the sense of Congress that the President should take all actions appropriate to obtain a bilateral agreement with the P.R.C. to adhere to the Missile Technology Control Regime (MTCR) and the MTCR Annex.

- Also, the P.R.C. should not be permitted to join the MTCR as a member without having:

  - agreed to the MTCR and the specific provisions of the MTCR Annex,

  - demonstrated a sustained and verified record of performance with respect to the nonproliferation of missiles and missile technology, and

  - adopted an effective export control system for implementing guidelines under the MTCR and the MTCR Annex.

- Section 1402 requires the President to submit an annual report to Congress by 30 March of each year, ending in the year 2007, regarding transfers during the preceding calendar year to countries and entities of concern of the most significant categories of U.S. technologies and technical information with potential military applications.

- Countries of concern include those which the Secretary of State has determined to repeatedly provide support for acts of terrorism, has detonated a nuclear device, and is not a member of NATO. Entities of concern include those organizations which are engaged in international terrorism or activities in preparation thereof or are directed or controlled by the government of an above designated terrorism-supporting country.

- The annual report must include:

  - An assessment by the Director of Central Intelligence (DCI) of efforts by those of concern to acquire technologies and technical information.

  - An assessment of the Secretary of Defense, in consultation with the Joint Staff and the DCI, of the cumulative impact of licenses granted by the U.S. for the subject technologies and technical information during the past five calendar years, to include:

- Military capabilities of the countries and entities of concern, and

- Countermeasures that may be necessary to overcome the use of the subject technologies and technical information.

- An audit by the Inspectors General of Defense, State, Commerce, and Energy, in consultation with the DCI and the Director of the FBI, of the U.S. government's policies and procedures with respect to the export of subject technologies and technical information to the countries and entities of concern. The first report is to include an assessment of the adequacy of current export controls and counterintelligence measures to protect against the acquisition of the subject technologies and technical information.

- Section 1403 provides that the Secretary of State shall take the necessary steps to ensure that during any fiscal year adequate resources are allocated to the functions of the Office of Defense Trade Controls (DTC) relating to the timely and thorough review and processing of export license applications.

- Likewise, the Secretary of Defense shall similar steps to ensure that the Defense Threat Reduction Agency (DTRA) has adequate resources for the timely and thorough review of export license applications.

- Sections 1404 and 1405 provides additional requirements regarding the licensing and monitoring of any satellite to be launched in a country [those not in NATO or designated as major non-NATO allies] subject to controls delineated in §1514 of *The Strom Thurmond National Defense Authorization Act for FY1999*, P.L.105-261.

- Among the new requirements are the technology transfer control plan set forth the security arrangements both before and during the launch operations. Also, the assigned monitoring personnel receive training in the International Trafficking in Arms Regulations, have significant experience and expertise with satellite launches, and be of sufficient number to maintain 24-hour security.

- Refer to *The DISAM Journal*, Spring Edition, 1999, p.47, for further information regarding §1514, P.L.105-261.

***Department of Defense Appropriations Act, 2000,* P.L. 106-79, 25 October 1999**

- Title II, Operation and Maintenance, defense-wide, provides for up to $25,000,000 to be available for the CINC Initiative Fund Account.

- Title II, Operations and Maintenance, Former Soviet Union Threat Reduction [also known as "*Nunn-Lugar*"], provides for $460,000,000 in assistance to the republics of the former Soviet Union for facilitating the elimination and the safe and secure transportation and storage of nuclear, chemical, and other weapons.

- Also to establish programs to prevent the proliferation of weapons, weapons components, and weapons-related technology and expertise.

- Also for programs relating to the training and support of defense and military personnel for demilitarization and protection of weapons, weapons components, and weapons technology and expertise.

- $25,000,000 of this amount shall be available only to support the dismantling and disposal of nuclear submarines and submarine reactor components in the Russian Far East.

- Section 8085 provides the Secretary of Defense the authority to waive reimbursement of the cost of conferences, seminars, course of instruction, or similar educational activities of the Asia-Pacific Center for Security Studies for military officers and civilian officials of foreign countries if the Secretary determines the attendance of such personnel, without reimbursement, is in the national security interest of the U.S. The waived cost shall be paid from the Center's appropriated funding.

- Section 8092 states that no funds from this Act may be used to approve or license the sale of the F-22 advanced tactical fighter to any foreign government.

- Section 8098 prohibits DoD funding in support of any training program involving a unit of the security forces of a country if the Secretary of State provides to the Secretary of Defense any credible information that the unit has committed a gross violation of human rights, unless all necessary corrective step have been taken.

- After consultation with the Secretary of State, the Secretary of Defense may waive this prohibition if he determines that such a waiver is required by extraordinary circumstances.

- If such a waiver is granted, the Secretary of Defense shall submit a report to the congressional defense committees in not more than fifteen days describing the circumstances, purpose and duration of training, U.S. and foreign forces involved, and information relating to the human rights violation(s).

- This is similar to the *Leahy Amendment*, §564, *Foreign Operations Appropriations Act*, P.L.106-113, which prohibits foreign assistance funding to any unit of a country's security forces under the same human rights violation circumstances. However, unlike the DoD funding prohibition, the authority to waive the foreign assistance funding prohibition is not provided to the Secretary of State.

- Section 8123 requires the one-time FY2000 reimbursement of $94,000,000 from the FMS administrative trust fund (the repository of the administrative services charge added to all FMS cases) as follows:

- $63,000,000 as to the applicable military personnel accounts, and

- $31,000,000 as unfunded estimated costs of civilian retirement and other benefits to the General Treasury.

- Of historical note, "Fair Pricing" legislation within *The Department of Defense Appropriations Act, Fiscal Year 1990*, P.L.101-165, eliminated the liability of the administrative trust fund for these two overhead costs, avoiding a probable increase in the standard administrative surcharge from 3 percent to 5 percent in FY1991. However, the strength of the

administrative trust fund caused the standard admin surcharge to be changed, effective 1 June 1999, from 3 percent to 2.5 percent. See *The DISAM Journal*, Winter Edition, 1989/90, p.12-13, for further discussion of the Fair Pricing legislation, including the seemingly prophetic justification that the elimination of these two overhead expenses would save the trust fund approximately $94M each year.

• Title IX provides the President the authority to waive any sanction in Sections 101 or 102, AECA, [also referred to as the *Glenn Amendment*], §2(b)(4), *Export Import Bank Act*, or §620E(e), FAA, [also referred to as the *Pressler Amendment*] with respect to India and Pakistan.

• However, the authority to resume FMS, DCS, FMFP, or dual-use technology sales programs requires the President to determine and so certify to Congress that application of the sanction(s) would not be in the national security interests of the U.S.

• Any waiver shall cease to apply with respect to India or Pakistan if that country detonates a nuclear explosive device.

• It is the sense of Congress that the broad applications of export control to nearly 300 Indian and Pakistani entities is inconsistent with the specific national security interests of the U.S. Any sanctions should be targeted only to those entities that make direct and material contributions to weapons of mass destruction and missile programs and only to those items that can contribute to such programs. Therefore, both a classified and unclassified report is to be submitted to Congress identifying those entities whose activities contribute to missile programs or weapons of mass destruction programs.

***Miscellaneous Appropriations for the Fiscal Year ending September 30, 1999, and for other Purposes*, Division B, §1001(a)(5), of *The Consolidated Appropriations Act, FY2000*, P.L.106-113, 29 November 1999**

• Section 301 directed a 0.38 percent rescission of the discretionary budget authority for FY2000. The legislated restrictions include:

• No program, project, or activity may be reduced by more than 15 percent,

• No reduction shall be taken from any military personnel account, and

• The reduction for the Department of Defense and Department of Energy defense activities shall be applied proportionately to all defense accounts.

• This directed 0.38 percent rescission will negatively affect the security assistance programs funded by the earlier described *Foreign Operations Appropriations Act for FY 2000*. However, the extent of reductions was not available at press time for this *Journal* edition.

• Section 501 directs the President to cancel selected authorized debts owed by eligible countries to the U.S. One of the loan programs eligible for cancellation is the foreign military financing program (FMFP) authorized by §23, AECA. However, the cancellations are subject to the availability of funds provided in advance in appropriations acts through FY2004.

- A country that is performing satisfactorily under an economic reform program shall be eligible for debt cancellation if:

  - Is eligible to borrow from the International Development Association,

  - Is not eligible to borrow from the International Bank for Reconstruction and Development, and

  - Has outstanding public and publicly guaranteed debt, the net present value of which on 31 December 1996, was at least 150 percent of the average annual value of the exports of the country for the period 1994 through 1996, or

  - Has outstanding public and publicly guaranteed debt, the net present value of which, as of the date the President determines that the country is eligible for debt relief under this section, is at least 150 percent of annual value of the exports of the country, or

  - Has outstanding public and publicly guaranteed debt, the net present value of which, as of the date the President determines that the country is eligible for debt relief under this section, is at least 250 percent of the annual fiscal revenues of the country, and has minimum ratios of exports to gross domestic product (GDP) of 30 percent, and of fiscal revenues to GDP of 15 percent.

- A country is not eligible for debt cancellations if it:

  - Has an excessive level of military expenditures,

  - Is determined by the Secretary of State as a repeated supporter of international terrorism act,

  - Is failing to cooperate on international narcotics control matters, or

  - Engages in a consistent pattern of gross violations of internationally recognized human rights.

- Except as the President may otherwise determine for reasons of national security, a cancellation of debt under this section shall not be considered to be assistance for purposes of any provision of law limiting assistance to a country.

***Departments of Commerce, Justice, and State, the Judiciary, and related Agencies Appropriations Act, FY2000,* Division B, §1001(a)(1), of *The Consolidated Appropriations Act, FY2000,* P.L.106-113, 29 November 1999**

- Title II, inter alia, provides $54,038,000 for necessary expenses for export administration and national security activities of the Department of Commerce.

  - $1,877,000 shall be for inspections and other activities related to national security.

  - No funds may be obligated or expended for processing licenses for the export of satellites of U.S.-origin (including commercial satellites and satellite components) to the People's

Republic of China (P.R.C.), unless, at least fifteen days in advance, Congress is notified of such proposed action.

- Title IV, inter alia, provides,

  - $8,100,000 for the protection of foreign missions and officials.

  - $428,561,000 for the security and maintenance of U.S. missions.

  - $885,203,000 for expenses necessary to meet annual obligations of membership in international multilateral organizations.

  - $500,000,000 for necessary expenses to pay assessed and other expenses of international peacekeeping activities.

  - $244,000,000 for payment of arrearages to meet obligations of authorized membership in international multilateral organizations and to pay assessed expenses of international peacekeeping activities.

Conclusion

With the exception of substantial additions for Israel, Jordan, and Egypt that will implement the Wye River accords, the basic security assistance funding remained at the levels commensurate with the last few years. The amounts appropriated for ESF, FMFP, and IMET showed little variance from FY1999. However, with regard to Congressional oversight of the security assistance programs, amendments to the basic legislation will substantially add reporting requirements to the players in the security assistance business.

For the foreign military training community, the report instituted in FY1999 on all military training provided to foreign personnel has become an annual report rather than just a one-time occurrence. Since different legislative provisions institute different requirements for this report, these will have to be worked out before the actual reports are prepared. In order to gather data on commercial sales, section 38 of the AECA has been amended to require that complete description and shipping information be provided to the Department of State for all exports of material for which an export license has been granted under the provisions of the United States Munitions List. Similarly, the Glenn Amendment to the AECA that requires a report to Congress if equipment previously sold has been upgraded through the addition of sensitive technology or to give an enhanced capability has been extended to include material sold through direct commercial sales. The Feingold Amendment responds to Congressional concerns about offsets in defense exports. Along with an expression of the sense of Congress on this matter, the amendment also requires additional information on offsets to be reported to Congress for both foreign military and direct commercial sales. The legislation also establishes a national commission to study offsets with the requirement to report its findings within a year.

The FY2000 legislation expresses grave concerns of Congress over the issue of technology transfer and the proliferation of weapons technologies that could prove disadvantageous to the United States. Consequently, various provisions of the law focus attention on the process for determining export eligibility, control systems in use to monitor exports, and the roles of the different organizations throughout the executive branch that have a role in the export of defense

technologies. As in last year's statutes, emphasis is placed on dealings with the People's Republic of China. A variety of reports and certifications are spelled out in this year's legislation.

Finally, of great interest to the security cooperation community, significant increases in funding have been appropriated for humanitarian assistance, refugee care, and peacekeeping operations. Also, Congress demonstrated great concern for the security of American embassies against terrorist attacks and thus appropriated additional funding for embassy security, construction, and maintenance.

Acknowledgments

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