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The U.N. Population Fund: Background and the U.S. Funding Debate

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The U.N. Population Fund: Background and the U.S. Funding Debate

Summary

The United Nations Population Fund (UNFPA), established in 1969, is the world's largest source of population and reproductive health programs and the principal unit within the United Nations for global population issues. In 2003, the organization provided services in 136 developing and transition countries, with funds totaling \$398 million, drawn exclusively from voluntary contributions made by 149 nations.

In its first 25 years, UNFPA moved from an organization focused on statistical collection and analysis to an agency providing maternal and child health/family planning assistance. UNFPA played a large role in shaping the 1994 International Conference on Population and Development (ICPD), held in Cairo. The Cairo Conference marked a turning point in the international debate over the impact of population issues on global development and established a policy framework that continues to guide current family planning and reproductive health policies, including the work of UNFPA. The Plan of Action integrated population concerns into the broad context of development, concluding that education and health, including reproductive health, were prerequisites for sustainable development.

While UNFPA receives voluntary contributions from many countries and some private foundations, most of its income comes from a handful of donors. The Netherlands and Japan recently have been the largest contributors. In years during the last decade when the United States has contributed to UNFPA programs, the American transfer has represented about 8% of UNFPA's regular budget, making it the 5th or 6th largest donor.

The United States, with strong support from Congress, was an important actor in the launch of UNFPA in 1969. During the mid-to-late 1960s, Congress began to express heightened concern over the impact of rapid population growth on development prospects in poor countries. In 1967, Congress earmarked funds for population assistance programs, urging the United States to channel family planning resources through the United Nations and other international organizations.

But during the past two decades, there has been a continuing and contentious debate within the United States, and especially within Congress, as to whether the U.S. should financially support UNFPA. The issue has centered on the extent to which, if any, UNFPA aids China's coercive family planning programs and policies. In 12 of the past 20 years the United States has not contributed to the organization as a result of executive branch determinations that UNFPA's program in China was in violation of the so-called Kemp-Kasten amendment banning U.S. aid to organizations involved in the management of coercive family planning programs. For the past three years, the Bush Administration has transferred enacted UNFPA appropriations to other foreign aid activities.

This report will be updated as policy changes or congressional action occur.

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The U.N. Population Fund: Background and the U.S. Funding Debate

The United Nations Population Fund (UNFPA), which began operations in 1969 as the U.N. Fund for Population Activities, is the world's largest source of population and reproductive health programs and the principal unit within the United Nations for global population issues. In 2003, the organization provided services in 136 developing and transition countries, with funds totaling \$398 million, drawn exclusively from voluntary contributions made by 149 nations and foundations.

During the past two decades, there has been a continuing and contentious debate within the United States, and especially within Congress, as to whether the U.S. should financially support the organization. The issue has centered on the extent to which, if any, UNFPA aids China's coercive family planning programs and policies. In eight of the past 20 years, the United States has been one of the leading contributors to UNFPA. For the other 12 years, however, the United States has not made voluntary contributions to the organization as a result of executive branch determinations that UNFPA supported coercive Chinese practices or because of legislative prohibitions. Most recently, the Bush Administration for the past three years has found UNFPA to be ineligible for U.S. funding and transferred proposed annual contributions of between \$25 and \$34 million to other foreign aid activities. Prior to September 30, 2005, the Administration will review UNFPA programs in China and determine whether the organization will receive \$34 million earmarked by Congress. Future UNFPA funding questions are also likely to be raised during the 109th Congress when lawmakers take up the Foreign Operations appropriation bill.

This report provides an overview of the U.N. Population Fund, its current mission and operations, and recent funding trends. It further discusses the role of the United States in supporting UNFPA programs, the varying interpretations by several Administrations of legislative authorities pertaining to UNFPA's eligibility for American resources, and congressional debates over how much and under what conditions the United States should voluntarily contribute to UNFPA operations. Finally, it reviews the findings of several private and U.S. government investigations of China's family planning programs and the role UNFPA plays in their implementation.

UNFPA: Its Origins and Operations

The United Nations, since its earliest days, has maintained an interest in population issues. In 1947, the U.N. established a Population Commission that collected and analyzed global population data and supported member government efforts to examine information about national populations. Following several years

of U.N. debate over the rapid rise of the world's population, the General Assembly approved a resolution in 1966 calling on the United Nations and other international organizations to extend technical assistance on population matters.

In 1967, the U.N. Secretary-General created a Trust Fund for Population Activities, which in 1969 was renamed the U.N. Fund for Population Activities (UNFPA). Initially, UNFPA was administered by the United Nations Development Program (UNDP), the organization's primary international development organ. Within a few years, at the direction of the General Assembly, UNFPA had expanded its operations beyond statistical collection and analysis to the provision of maternal and child health/family planning, communication and education, and population policy assistance. By 1972, UNFPA was operating in 78 countries with a budget of over \$30 million. With such rapid growth in the Fund's scope and programs, UNFPA became a separate entity under the direct authority of the General Assembly, with the same status as UNDP and the U.N. Children's Fund (UNICEF).¹

In these initial years, the United States provided the majority of UNFPA funding through voluntary contributions. In 1968 and 1969, when seven governments extended financial support, the \$4 million transfer by the U.S. represented nearly 80% of total contributions. By 1972, the number of donors had grown to 52, but the United States remained by far the largest source of funds, with 46% of the total. Over the next decade, the U.S. share declined to about 25% as other nations increased their contributions. (See Table 1 below.)

UNFPA and World Population Conferences: 1974 and 1984

UNFPA played a significant role in the World Population Conferences, held a decade apart in Bucharest (1974) and Mexico City (1984). Following the 1974 meeting of 133 nations, the U.N. General Assembly called for the expansion of international population assistance, with UNFPA taking a lead role, to implement the plan of action endorsed at the Bucharest Conference. Partially due to the growing attention on world population issues, UNFPA operations expanded rapidly during this period. The scope of UNFPA's work also broadened, so that by the early 1980s, the organization focused on eight primary areas:

- Family planning, including delivery systems and fertility regulation techniques;
- Data collection;
- Formulation and evaluation of population policies and programs;
- Communications and education;
- Population dynamics, including demographic projections and their analysis;
- Implementation of policies and programs, including efforts "beyond family planning" related to law and population, status of women, and economic policies;

¹ UNFPA. What it Is; What it Does. 1983; and UNFPA at 30 Years — Fact Sheets. October 26, 1999.

- Special programs focusing on women, children, the elderly, the disabled, and programs to promote social justice; and
- Multisector activities, including support for population conferences and training.²

The 1994 Cairo Conference and UNFPA's Changing Mandate

UNFPA was a major catalyst in organizing, financing, and implementing outcomes of the 1994 International Conference on Population and Development (ICPD), held in Cairo. The Cairo Conference marked a turning point in the international debate over the impact of population issues on global development and established a policy framework that continues to guide current family planning and reproductive health policies. The Plan of Action that emerged from the Cairo Conference, to a much greater extent than before, integrated population concerns into the broad context of development, concluding that education and health (including reproductive health), were prerequisites for sustainable development. The Conference shifted population program strategies away from demographic goals and toward human welfare and poverty reduction objectives. The Conference further focused far more attention on the status and empowerment of women. Moving beyond strictly health issues, the conference endorsed programs to promote expanded opportunities for the education of women and girls, to end gender discrimination and violence against women, and to strengthen women's grassroots activist organizations.³

Since the Cairo Conference, UNFPA programs have and continue to be guided by the ICPD's Program of Action, which contains the following goals:

- Universal access to reproductive health services by 2015;
- Universal primary education and closing the gender gap in education by 2015;
- Reducing maternal mortality by 75% by 2015;
- Reducing infant mortality; and
- Increasing life expectancy.

In 1999, an additional goal — reducing HIV infection rates in persons 15-24 years of age by 25% in the most-affected countries by 2005 and by 25% globally by 2010 — was incorporated into the Program of Action and integrated into UNFPA's work.⁴

UNFPA Operations Today

Budget Trends. As noted above, with a budget of \$398 million in 2003, UNFPA funded programs in 136 countries. This was the organization's largest budget in recent years (Table 1). UNFPA derives most of its income from voluntary

² UNFPA. *What it Is; What it Does*. 1983

³ See, *Population and Development: The 1994 Cairo Conference*, by Curt Tarnoff. CRS Report 94-533, August 25, 1994 (archived; available on request from author).

⁴ UNFPA Background. Found at UNFPA website.

contributions to its regular budget which finances continuing core country programs and the organization's administrative costs. A growing but less flexible source of revenue has been from supplementary donations that are provided either for cost-sharing purposes or for placement in trust funds. Through supplementary resource transfers, donors can earmark exactly how their contributions will be spent. In 2000, for example, the Netherlands provided \$41 million specifically to procure contraceptive commodities.

While UNFPA receives voluntary contributions from many countries and some private foundations — 149 in 2003, the highest number ever — most of its income for regular country programs and operating expenses comes from a handful of donors. During the past seven years, more than two-thirds of UNFPA's regular donations have come from five donors. The Netherlands and Japan consistently have been the largest contributors. In years when the United States has contributed to UNFPA programs, the American transfer has represented about 8% of UNFPA's regular budget, making it the 5th or 6th largest donor.

Table 1. UNFPA Income
((\$s - millions)

Year	Regular	Supplemental	Total
97	\$293	\$33	\$326
98	\$273	\$36	\$309
99	\$250	\$38	\$288
00	\$262	\$104	\$366
01	\$268	\$128	\$396
02	\$260	\$113	\$373
03	\$292	\$106	\$398

Source: UNFPA

Table 2. UNFPA Major Contributors
(contribution as a % of UNFPA regular budget)

	1997	1998	1999	2000	2001	2002	2003
Netherlands	15.2%	14.3%	17.1%	19.3%	18.8%	21.1%	23.2%
Japan	12.8%	17.9%	19.3%	18.4%	18.2%	15.2%	13.5%
Norway	9.7%	10.0%	10.1%	8.8%	9.0%	9.7%	11.3%
Denmark	11.5%	12.2%	11.2%	9.1%	8.8%	8.7%	8.7%
U.K.	7.9%	8.4%	9.6%	8.5%	8.2%	10.2%	10.3%
U.S.	8.5%	7.3%	0.0%	8.2%	8.0%	0.0%	0.0%

Source: UNFPA

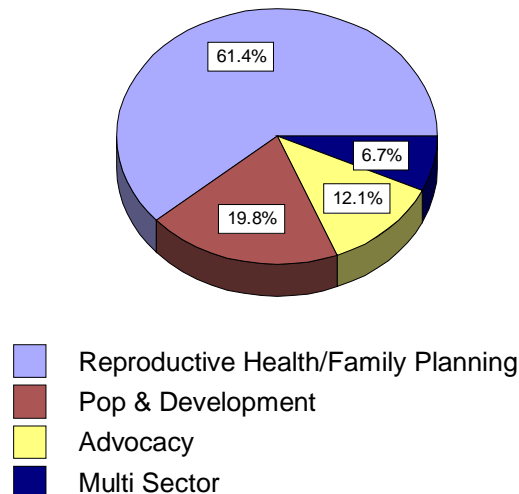
UNFPA Program Priorities. Currently UNFPA activities are focused on eight strategy areas:

- **Improving reproductive health** — access to a range of safe and affordable contraceptive methods, prenatal care, attended deliveries,

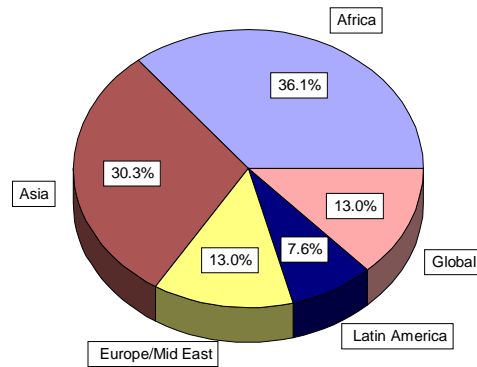
emergency obstetric and post-natal care, and prevention of sexually transmitted diseases;

- **Supporting young people** — providing accurate information, counseling, and services to prevent unwanted pregnancies and sexually transmitted diseases;
- **Preventing HIV/AIDS** — promoting safer sexual behavior among young people, ensuring that condoms are available and widely and correctly used, empowering women to protect themselves and their children, and encouraging men to take responsibility for preventing the spread of HIV/AIDS;
- **Promoting gender equality** — promoting legal and policy reforms, supporting gender-sensitive data collection, and backing programs that empower women economically;
- **Securing reproductive health supplies** — coordinating the delivery of supplies, forecasting needs, and building logistical capacity at the country level;
- **Assisting in emergencies** — providing supplies and services to protect reproductive health during disasters;
- **Advancing sustainable development** — assisting countries to collect and analyze population data to integrate population and development strategies; and
- **Building support** — partnering with other U.N. organizations, governments, NGOs, foundations, and the private sector to increase awareness.

UNFPA Program Functions 2003



UNFPA Regional Focus 2003



In the ten years since the Cairo Conference, UNFPA has allocated roughly two-thirds of its annual resources to reproductive health and family planning service programs and 20% to strategies for population and development. The balance of UNFPA spending focuses on advocacy activities and multisectoral programs.⁵

Regional and Country Program Focus. Over the past decade, roughly one-third of UNFPA programs have been carried out in sub-Saharan Africa, with an additional 30% focused in Asia. In 2003, UNFPA maintained its largest program in Bangladesh (\$21.5 million), followed by Guatemala (\$10.3 million), Mozambique (\$9 million), India (\$6.8 million), and Nigeria (\$6.6 million). UNFPA program expenditures in China have ranged between \$4 million and \$5 million annually in recent years.

U.S. Policy Towards UNFPA

The United States was an important actor in the launch of UNFPA in 1969. During the mid-to-late 1960s, Congress began to express heightened concern over the impact of rapid population growth on development prospects in poor countries, noting that the world's population was growing by about 2% annually compared with only a 1% growth in food production. In 1967, for the first time, Congress amended the Foreign Assistance Act of 1961 to specifically authorize and earmark funds for population assistance programs, urging the United States especially to channel family planning resources through the United Nations and other international organizations. Some Members believed that such earmarks were necessary because the State Department and the Agency for International Development (AID) had not been giving the issue adequate attention.⁶

⁵ UNFPA. *Annual Report 2003*. Additional data also drawn from prior-year annual reports.

⁶ U.S. Congress. Senate Committee on Foreign Relations. *Foreign Assistance Act of 1967; report to accompany S. 1872*. S.Rept. 90-499. August 9, 1967, p. 24.

These initial U.S. contributions, however, were conditioned on the requirement that other donors match the American payment in an equal amount. This incentive helped UNFPA exceed its 1970 projected resource goal when 22 other countries contributed a combined \$7.7 million. In 1971, with the same matching requirement tied to the U.S. pledge of \$15 million, UNFPA received donations of \$14.5 million from 45 nations.⁷ As shown in Table 3, U.S. contributions continued to climb throughout the 1970s and early 1980s, peaking in 1984 at \$38.2 million. At the same time, however, the number and size of transfers from other donors rose faster, so that the share of UNFPA resources from the United States declined from 50% to around 27%.

The largest UNFPA contribution earmarked by Congress — \$46 million — was enacted in the FY1985 foreign aid appropriation, P.L. 98-461. However, only a portion of these funds — \$36 million — were transferred to the organization as U.S. policy and its support for UNFPA shifted.

1984 Review of U.S. Funding for UNFPA

In August 1984, government representatives from around the world met in Mexico City for the 2nd U.N. International Conference on Population. At that conference, the Reagan Administration announced new eligibility requirements for organizations receiving U.S. bilateral population assistance funds. This change became known as the “Mexico City policy” and was applied by the Reagan and George H.W. Bush Administrations for nine years, reversed by President Clinton in 1993, and re-instated by President George W. Bush in 2001.⁸

Table 3. U.S. Contributions to UNFPA
(\$s — millions)

Calendar Year	U.S. Contribution	% of Total UNFPA Funds	Calendar Year	U.S. Contribution	% of Total UNFPA Funds
1968	\$1.7	79.3%	1986	\$0.0	—
1969	\$2.3	79.3%	1987	\$0.0	—
1970	\$7.5	50.0%	1988	\$0.0	—
1971	\$14.2	50.0%	1990	\$0.0	—
1972	\$14.0	46.1%	1991	\$0.0	—
1973	\$17.9	42.2%	1992	\$0.0	—

⁷ Agency for International Development. Development and Humanitarian Assistance; FY1973 Program Presentation to Congress. p. L-15.

⁸ For a discussion of the Mexico City policy and its eligibility requirements, see CRS Report RL30830, *International Family Planning: The “Mexico City” Policy*.

Calendar Year	U.S. Contribution	% of Total UNFPA Funds	Calendar Year	U.S. Contribution	% of Total UNFPA Funds
1974	\$20.0	37.0%	1993	\$0.0	—
1975	\$20.0	31.7%	1994	\$40.0	15.1%
1976	\$20.0	25.2%	1995	\$35.0	11.2%
1977	\$29.0	31.6%	1996	\$22.8	7.4%
1978	\$28.0	27.2%	1997	\$25.0	8.6%
1979	\$30.0	26.7%	1998	\$20.0	7.2%
1980	\$32.0	25.7%	1999	\$0.0	—
1981	\$32.0	26.3%	2000	\$21.5	8.1%
1982	\$33.8	26.1%	2001	\$21.5	8.0%
1983	\$33.8	26.1%	2002	\$0.0	—
1984	\$38.2	27.5%	2003	\$0.0	—
1985	\$36.0	27.3%	2004	\$0.0	—

Source: Department of State and CRS percentage calculations since 1985.

Also at the 1984 Mexico City Conference, the Reagan Administration announced it would establish requirements for UNFPA to provide assurances that the organization was not engaged in, or was not providing funds for abortion or coercive family planning programs. Concerns focused on UNFPA's activities related to China's coercive family planning practices. UNFPA had launched its first program in China in 1980, focusing largely on increasing Beijing's capacity for data collection and improving maternal and child health and family planning services. At the time, the Administration reportedly held up \$19 million (of \$38 million allocated for UNFPA for FY1984) until the organization could provide the necessary assurances. These funds were released later in FY1984.

Following the Mexico City conference, attention returned to the FY1985 UNFPA earmark of \$46 million and how much the United States should transfer, given the new White House policy. AID, which at the time maintained responsibility for managing UNFPA contributions,⁹ undertook a review in early 1985 of UNFPA's program, especially in China, to determine whether the organization was involved in any way with involuntary abortions. In March 1985 that review found that UNFPA did not include involuntary abortion as part of its programs, and therefore did not

⁹ More recently, responsibility for UNFPA voluntary contributions has shifted to the State Department and the Bureau of Population, Refugees, and Migration.

violate legislative restrictions or conditions announced at the Mexico City conference on funding organizations engaged in involuntary practices.¹⁰

As a result, UNFPA remained eligible for U.S. support but did not receive the full earmarked amount of \$46 million. On March 30, 1985, AID contributed \$36 million to UNFPA, withholding \$10 million “to express United States disapproval of coercion in the implementation of the China population control program.”¹¹ The \$10 million matched roughly the amount UNFPA spent annually in China. Because AID wanted to re-program the \$10 million for other bilateral population assistance programs, the Administration needed to overcome the specific legislative earmark of \$46 million in the FY1985 appropriation. Accordingly, the White House requested authority as part of an FY1985 supplemental appropriation submission to shift \$10 million from UNFPA to other population aid groups.

The Kemp-Kasten Amendment¹²

Instead of approving the Administration’s request for authority to re-program the \$10 million from UNFPA, the House Appropriations Committee adopted in May 1985 an amendment to H.R. 2577, the FY1985 Supplemental Appropriation bill, that would prohibit U.S. funds to an organization or program that “supports or participates in the management of a program of coercive abortion.” The Committee’s report noted that the FY1985 Continuing Resolution (P.L. 98-473) had included language blocking funds to any country or organization that included involuntary abortions as part of its population planning program.¹³ “The new provision,” the Committee continued, “amends the FY1985 Act by adding language that also prohibits the use of funds for organizations or programs that support or participate in the management of a program of coercive abortion.”¹⁴

¹⁰ Action Memorandum for the Administrator/Acting Director of IDCA. *1985 Funding for the United Nations Fund for Population Activities (UNFPA)*, September 25, 1985, p. 1.

¹¹ *Ibid.*

¹² Initially in 1984, the amendment was referred to as the Kemp-Inouye provision, so named after its original sponsors, Representative Kemp, ranking Member of the House Foreign Assistance Appropriations Subcommittee, and Senator Inouye, Ranking Member of the Senate Foreign Assistance Appropriations Subcommittee. Senator Inouye became associated with the provision when he sponsored an amendment changing the House-passed language during Senate Committee consideration. Senator Inouye, however, later opposed the Administration’s determination issued pursuant to the amendment and the fact that the decision was delegated from the President to the Secretary of State to the Administrator for the Agency for International Development (AID). (Senator Inouye’s amendment to the original Kemp language required the determination to be made by the President.) For the next several years, Senator Kasten, Chairman/Ranking Minority Member of the Foreign Assistance Subcommittee, was a strong supporter of retaining the amendment, and the provision came to be referred to as “Kemp-Kasten.”

¹³ AID had determined in March 1985 that UNFPA did not fall under this restriction.

¹⁴ U.S. House. Committee on Appropriations. *Supplemental Appropriations, 1985*, House Report 99-142, May 22, 1985, p. 86.

Although the Committee provided no other details on what it meant by the term, “support or participate in the management of a program of coercive abortion,” Representative Kemp, sponsor of the amendment, said, in the “additional views” section of the Committee report, that the participation in the management of such a program would include:

providing resources to collect and analyze the data necessary to the enforcement of such a program; training of the individuals who plan, manage, and carry out such a program; education and publicity about the programs; assistance to the official bodies of government that are charged with developing and implementing such a program; and other such assistance.¹⁵

Congressman Kemp went on to state that his amendment would add to the restrictions enacted in P.L. 98-473, and that “the debate in Committee clearly indicated that the United Nations Fund for Population Activities would be immediately affected by this amendment because of its involvement with the program of coercive abortion in the People’s Republic of China.”¹⁶

Following House passage of H.R. 2577, the Senate Appropriations Committee reported the bill in June 1985, including an amendment to the Kemp language. Senator Inouye, ranking Member of the Foreign Assistance Subcommittee, sponsored new text that required any determination made under the Kemp amendment to be issued by the President. Senator Inouye believed that the decision whether to release to UNFPA or reprogram the withheld \$10 million might be different depending on where the decision was made.

I believe that, were this question to be resolved at a level in our Government where political pressures do not exert an undue influence, it would be found that the Government of the People’s Republic has not falsified its assurances to our Government; it would be found that the UNFPA has not engaged in prevarication but has accurately described its program; and it would be found that AID’s internal review did not distort UNFPA’s role in the population planning programs of the People’s Republic of China....The committee believes that this issue [of specifying the President as the one to make the determination] is of great significance, not only in relation to continued U.S. participation in population planning programs, but also in terms of its potential impact on the growing bilateral relationship between the People’s Republic of China and the United States. Consequently, the committee has directed that the President of the United States, or if he chooses to delegate this responsibility, the Secretary of State make this determination.¹⁷

Unlike Representative Kemp, Senator Inouye believed, as suggested in his remarks, that the addition of the Kemp-Inouye amendment (as it was then known — see footnote 11) would not have any impact on U.S. contributions to UNFPA. He argued that AID should release the final \$10 million to the organization. Senator Inouye also offered a different interpretation, with fewer details, from that put forward by

¹⁵ *Ibid.*, p. 232.

¹⁶ *Ibid.*

¹⁷ *Congressional Record*, June 20, 1985, p. S8526, daily edition.

Representative Kemp regarding the criteria with which to decide whether to issue a determination.

If the President determines that: One, the People's Republic of China does have a population planning program which includes coercive abortion; and two, the UNFPA supports or participates in the management of that program, funding to the UNFPA would be cut off. If the President does not reach that determination, funding which has been withheld would, under the law, be released to the UNFPA.¹⁸

Following adoption of one further amendment by Senator Helms — adding the words “or involuntary sterilization” to the Kemp-Inouye language — the Senate adopted H.R. 2577. The Kemp-Inouye amendment, as approved by the Senate, was included by the conference committee and the language became law on August 15, 1985 (P.L. 99-88).

Implementation and Court Challenges

Despite the directive that the President, or alternatively the Secretary of State, issue any determination regarding the Kemp-Inouye amendment, President Reagan delegated his authority to the Secretary of State on September 19, 1985, who in turn authorized the re-delegation of this authority to the Director of the International Development Cooperation Agency.¹⁹ An AID memorandum drafted for the Administrator at that time noted that congressional statements regarding the expectation that the President, or if delegated, the Secretary of State, make the determination were not legally binding, but “considered significant” by the Executive branch.²⁰

On September 25, 1985, Administrator McPherson announced the Administration's determination that UNFPA, because of its activities in China, was participating in the management of a program of coercive abortion and involuntary sterilization. In letters to congressional leaders, Administrator McPherson cited Representative Kemp's interpretation, as set out in his additional views in House Report 99-142, of what characterized the participation of an organization in a coercive abortion program. The Administrator concluded that China's “one-child-per-couple policy has resulted in coerced abortion and involuntary sterilization.” Because UNFPA assists China, he continued,

in the general management areas described in Congressman Kemp's Additional Views...and since we have concluded that sufficient evidence exists to indicate

¹⁸ Ibid.

¹⁹ IDCA had been established by Congress as a government entity to oversee and coordinate the activities of all U.S. foreign aid agencies. In practice, however, it exercised little influence and the IDCA Director served simultaneously as the AID Administrator. As such, this re-delegation moved the decision point to Peter McPherson, the AID Administrator and the Acting IDCA Director.

²⁰ Action Memorandum for the Administrator/Acting Director of IDCA, September 25, 1985, p. 4.

that implementation of the population program of the Government of the People's Republic of China results in such abuses, we have no alternative but to bar further obligation of funds in Fiscal Year 1985 to the UNFPA.²¹

The Administrator further announced that since the Kemp-Inouye amendment and his determination under it now superceded the \$46 million UNFPA earmark for FY1985, AID would reprogram \$10 million for voluntary family planning programs for use elsewhere in the world. He also put on the record that if Kemp-Inouye was enacted again in FY1986, UNFPA could receive funds under only three conditions:

- UNFPA withdraws its program from China;
- China would begin to punish abuses concerning coercive abortion and involuntary sterilizations; or
- UNFPA “radically” changes its program in China, such as by supplying only contraceptive materials.²²

Almost immediately, the Population Institute filed suit against Administrator McPherson and the U.S. Government to block the re-programming of UNFPA funds and invalidate the determination. Although the Population Institute lost its suit, the U.S. Court of Appeals for the District of Columbia issued an injunction on November 13, 1985, blocking AID from proceeding with the planned reprogramming, while the Population Institute prepared an appeal.

After reviewing the Court's opinion and noting concerns expressed by the Court of Appeals, Administrator McPherson reviewed his September 25 determination and issued another, more detailed statement on November 25, 1985. In it, he decided to adhere to the earlier determination, but he addressed several issues that had not been raised in previous statements and letters. First, he noted that in deciding how to apply the Kemp-Inouye amendment, the objective had been to have a “measured foreign policy impact;” to express to China and UNFPA strong U.S. objections to coercive practices in China, “while not adversely affecting the broader strategic relationship” between the two countries and not undermining UNFPA's work in other nations.²³

The Administrator also acknowledged the ambiguity of the statute, referring to the uncertainty over whether it meant “supports or participates in the management of a program;” or “supports...a program of coercive abortion or involuntary sterilization;” or “participates in the management” of such a program. The Administrator concluded that it was necessary to examine the legislative history in order to determine the intent of Congress. In addition to citing the additional remarks made by Representative Kemp in the House Committee report, Administrator McPherson emphasized the House Committee's comments that the Kemp amendment represented a “new prohibition.” Therefore, AID believed the

²¹ Letter from IDCA Acting Director Peter McPherson to Senator Hatfield, Chairman of the Senate Appropriations Committee, September 25, 1985, p. 2.

²² *Ibid.*, p. 2.

²³ Statement of M. Peter McPherson, Administrator, Agency for International Development, November 25, 1985, p. 1.

Committee intended the restriction to be broader than existing law which simply banned funds to an organization that provided direct support for abortion.²⁴ Based on this, the Administrator argued that it was not necessary to find that UNFPA actually performs or directly finances involuntary abortions in China in order to prohibit funding to UNFPA.²⁵

Administrator McPherson further argued that Senator Inouye's floor statement on what standards should be applied supported the determination to withhold UNFPA funding (see footnote 11, above). He underscored Senator Inouye's words that a determination must find that China's population program "includes" coercive abortion, which to the Administrator suggested the existence of a broader program within which coercive practices might be one of many elements. Even though UNFPA might not be directly involved in these coercive elements of the China program, it did participate in the management of the broader China population program. Therefore, AID concluded that by applying Senator Inouye's explanation, the agency had no choice but to withhold assistance.²⁶

Administrator McPherson was also guided by other actions taken by Congress in 1985, including:

- House adoption on July 10 of an amendment to the FY1986 foreign aid authorization bill sponsored by Representative Smith, finding that China "has systematically employed coercive abortion and coercive sterilization as a means of enforcing that government's one-child-per-couple policy."
- Two Senate-passed amendments to the same bill concerning aid to countries that permit infanticide or coerced abortion (Senator Helms) and a prohibition on aid to family planning programs in China (Senator Kassebaum).
- exclusion of a UNFPA earmark in the FY1986 foreign aid authorization for the first time in several years.

Although these amendments regarding China and UNFPA were dropped from the enacted foreign aid authorization bill, Administrator McPherson concluded that, "This record demonstrated to me, however, the overwhelming attitude in Congress regarding coercion, including involuntary abortion and sterilization in the China

²⁴ As discussed above, however, the House Committee report referred to the Kemp amendment as a "new provision," not a "new prohibition." It appears that the Administrator's memorandum mis-quoted the Committee's report language.

²⁵ Statement of M. Peter McPherson, Administrator, Agency for International Development, November 25, 1985, p. 4.

²⁶ *Ibid.*, p. 7.

population control program and the desire to disassociate United States funding from it.²⁷

Despite Chinese government assertions that its population program was totally voluntary, Administrator McPherson found that the one-child-per-couple policy had resulted in coerced abortions and involuntary sterilization. He supported his view with evidence supplied by many press stories and statements issued by China scholars. He further noted that in order to implement the one-child-per-couple policy, China needed demographic information. This, he found, had been provided through the help of UNFPA, although he added that it did not mean that UNFPA intended that its assistance be used for coercive purposes.²⁸

Continued Application of Kemp-Kasten, 1986-1992

During the next few years, AID continued to request funds for UNFPA, although with the understanding that a decision whether to transfer the money would be reviewed under the terms of the Kemp-Kasten amendment, which Congress also continued to enact each year in the foreign assistance appropriations.²⁹ In each year, AID found that UNFPA was ineligible for U.S. support.

In 1989, Congress added language to the FY1990 Foreign Operations Appropriations (H.R. 2939) that would essentially reverse the Kemp-Kasten amendment as it applied to UNFPA. An amendment by Senator Mikulski provided that “notwithstanding” Kemp-Kasten, UNFPA would receive not less than \$15 million in FY1990, so long as the organization maintained U.S. funds in a segregated account and did not spend them in China. President George H.W. Bush, who had previously informed Congress that he would reject legislation containing the Mikulski amendment, vetoed H.R. 2939 on November 19, 1989, because of the Mikulski language and several other objectionable provisions unrelated to UNFPA and China. Congress removed the Mikulski amendment following the veto and the President signed the revised legislation.

Re-Interpretation of Kemp-Kasten by the Clinton Administration

As one of his first acts as chief executive, President Clinton reversed the Mexico City policy of Presidents Reagan and Bush, and issued a determination finding that UNFPA programs in China did not violate the terms of Kemp-Kasten. The new Administration’s policy was explained in more detail in letters exchanged between AID Administrator Brian Atwood and Senator Helms in July and September 1993. The policy reversal was based on several factors:

²⁷ Ibid., p. 9.

²⁸ Ibid., p. 10.

²⁹ After 1985, most sources referred to the amendment as Kemp-Kasten. See footnote 11 for an explanation.

- Ambiguity of the Kemp-Kasten language — Administrator Atwood noted that the Court of Appeals, in considering the case brought by the Population Institute, deferred to the AID interpretation of Kemp-Kasten because it was a “reasonable reading of an ambiguous provision and did not otherwise conflict with the expressed intention of Congress.” Administrator Atwood argued that because of this ambiguity, a situation that had not been clarified in the intervening years, it was therefore the right of a new Administration to interpret Kemp-Kasten for itself.
- Over-reliance in 1985 on the statements by Representative Kemp — Administrator Atwood pointed especially to the 1985 Court of Appeals opinion which questioned the relevance of the additional views of Representative Kemp interpreting the Kemp-Inouye amendment. The Court observed that, although the Administration considered Representative Kemp’s remarks as the clearest explanation of an “ambiguous term,” Congressman Kemp could not convince his colleagues to adopt his views in the committee report itself. To the Court, this suggested that a majority of Representative Kemp’s colleagues did not support his precise meaning of the amendment.
- Focus should be on the terms, “coercive” and “involuntary” and the intent of the organization in question — The Clinton Administration believed that it was reasonable to apply the Kemp-Kasten restrictions only in cases where the organization knowingly and intentionally provided direct support for, or helped manage people or agencies who were clearly engaged in coercive abortion or involuntary sterilization. Administrator Atwood concluded that although the Administration remained concerned about coercive practices in China, it believed that UNFPA did not “knowingly” or “intentionally” support directly such practices.³⁰

The issue of coercive practices within China’s family planning program and the role of UNFPA remained controversial throughout the Clinton Administration and during the first year of the George W. Bush Presidency. Congress continued to include Kemp-Kasten language in Foreign Operations Appropriations acts, and in most years attached additional conditions on UNFPA contributions requiring the organization to keep U.S. funds in a separate account, to not spend U.S. money in China, and to forego transfers from the United States equal to the amount UNFPA allocated for its China program. In several years, the United States withheld about \$3.5 million from UNFPA, an amount that approximated the size of UNFPA’s expenditures in China. For a brief period in 1997, the controversy over whether to fund UNFPA subsided when UNFPA’s program in China expired and new activities did not resume immediately. Nevertheless, despite opposition from the United States, UNFPA re-established a program in China, and in FY1999 appropriation

³⁰ This discussion is drawn from letters of Administrator Atwood to Senator Helms, dated August 6 and September 10, 1993.

legislation, Congress prohibited all U.S. contributions to the organization. Congress restored funding the following year, but with the requirement that an amount equal to UNFPA expenditures in China be withheld. This resulted in a \$3.5 million deduction in FY2000 and FY2001. (For details on Administration actions and legislative restrictions regarding UNFPA funding, 1985-2004, see Appendix A.)

Fourth and Fifth UNFPA Programs in China and Conflicting Evaluations

As noted above, initial UNFPA programs in China concentrated on bolstering China's capacity for data collection and analysis, and maternal and child health/family planning activities. Following the Cairo population conference in 1994 and the conclusion of UNFPA's third Chinese program, UNFPA and Beijing officials began to discuss significant changes for a fourth agreement that would more closely follow the principles set out in Cairo.

The subsequent UNFPA program, launched in 1999, concentrated efforts in 32 counties where birth targets and quotas had been eliminated by the Chinese government. The fourth program shifted from a more administrative family planning approach — focusing on population control and imposed contraceptive methods and orders — to an “integrated, client-oriented reproductive health approach in the project counties” which included education and counseling regarding informed choice of contraceptive methods and reproductive health and rights. According to the UNFPA, service delivery points were upgraded to offer integrated reproductive health services in both the Chinese State Family Planning Commission and the Ministry of Health. UNFPA said that there had been a “downward trend” in the abortion ratio in these counties, and that the organization had played a “catalytic role in introducing a comprehensive, voluntary reproductive health approach,” that included rigorously monitoring the projects.³¹ The fifth program, covering the period 2003-2005, aims at expanding many of the initiatives begun under the previous operation.

Investigations of UNFPA Programs

During implementation of the fourth program and the launch of a fifth cycle of UNFPA assistance in China, the organization's operations in China have been closely scrutinized by several investigatory teams, including one dispatched by the State Department in 2002. Most of these groups concluded that UNFPA was not involved in supporting coercive or involuntary family planning programs in China, although one — sponsored by the Population Research Institute (PRI) — concluded otherwise. These conflicting reports, together with continuing reviews of UNFPA practices in China and varying interpretations by U.S. officials, sparked renewed controversy and extensive congressional debate beginning in 2001 over the appropriate role of the

³¹ UNFPA, *Country Programme Outline for China*. DP/FPA/CPO/CHN/5*, July 12, 2002. UNFPA, *Report of the International Review Team on the UNFPA China Country Programme*, October 2001.

United States in financially supporting UNFPA operations worldwide. The four non-U.S. government sponsored investigations came to the following conclusions.

The Population Research Institute. PRI's report concluded that UNFPA "directly supports coercive family planning with funding, and through its complicity with the implementation of policies which are fundamentally coercive in principle and practice." The PRI team, led by Josephine Guy, spent four days in Sihui county, Guangdong Province, in late September 2001, conducting numerous interviews with alleged victims and witnesses of coercive practices. According to the team's interview notes and videos, non-voluntary abortions and use of IUDs, mandatory examinations, and punishment for non-compliance — both imprisonment and economic fines — continued in this county which was among the 32 in which UNFPA supported programs.³²

The Biegan Group. This team found that UNFPA plays a "positive and important catalytic role in the reform of RH/FP services in China" and in moving China away from coercive family planning practices and abuses. It recommended that UNFPA continue its program in China and expand its scope and resources in the future.³³ This UNFPA-sponsored review team, led by Ambassador Nicolaas Biegan, former Dutch Ambassador to the U.N. and including diplomats from Honduras, the Czech Republic, and Botswana, conducted a six-day investigation in October 2001, interviewing officials and visiting sites in Beijing and in Sihui and Qianjiang counties.

British All-Party Parliamentary Group on Population, Development, and Reproductive Health. The British parliamentary team found that although problems remain in some parts of China regarding reproductive rights, the Chinese government was "moving in the right direction, with the support of UNFPA." The bi-partisan group spent a week in Beijing and Yunnan province in April 2002, reporting that UNFPA programs were having a "positive effect" in reforming Chinese reproductive health services and offering women "a choice over their own lives."³⁴

The Interfaith Delegation to China. This group returned from a September 2003 visit finding, among other things, that the Chinese government was taking steps to end coercive family planning practices, that UNFPA was a major force in China's transition to voluntary policies, and that UNFPA did not support or participate in

³² Population Research Institute, *UNFPA, China, and Coercive Family Planning*. December 12, 2001. See also two congressional hearings in which Josephine Guy testified: House Committee on International Relations, *Coercive Population Control in China: New Evidence of Foreign Abortion and Forced Sterilization*. Committee Hearing, October 17, 2001; and Senate Committee on Foreign Relations, *U.S. Funding for the U.N. Population Fund: The Effect on Women's Lives*. Committee Hearings, February 2002.

³³ UNFPA, *Report of the International Review Team on the UNFPA China Country Programme*, October 2001. Senate Committee on Foreign Relations, *U.S. Funding for the U.N. Population Fund: The Effect on Women's Lives*. Committee Hearings, February 2002.

³⁴ China Mission Report by UK MP's, 1st April - 9th April 2002. Found at [<http://www.appg-popdevrh.org.uk>].

managing China's family planning program. While the group acknowledged that in such a brief trip it could not gain a comprehensive view of China's family planning activities or the work of UNFPA, it felt confident in recommending that the United States should maintain a policy of constructive engagement with China regarding family planning matters, and that U.S. funding for UNFPA should be restored and the Kemp-Kasten amendment revised. The nine-member mission was sponsored by Catholics for a Free Choice.³⁵

Bush Administration Reviews of Kemp-Kasten and UNFPA Contributions

The first budget submitted by President Bush in early 2001 for FY2002 included a proposed \$25 million U.S. contribution to UNFPA. While the new Administration re-instated the so-called "Mexico City policy" restrictions that applied to bilateral family planning funds, there was no indication of a change in policy regarding UNFPA and the Kemp-Kasten conditions attached to U.S. contributions. Subsequently, in the FY2002 Foreign Operations Appropriations, Congress provided "not more than" \$34 million for UNFPA. Although such language represented a ceiling for the amount of funds for UNFPA, as opposed to a floor, or minimum amount that must be provided, the language was similar to prior year Foreign Operation bills that had been fulfilled by the Clinton Administration, minus the withholding requirement.

However, in the face of the conflicting evidence released in late 2001 by the Guy and Biegman investigation teams, in mid-January 2002, the White House placed a hold on U.S. contributions to UNFPA, pending a review of the organization's program in China. In a statement before the Senate Foreign Relations Committee on February 27, 2002, Assistant Secretary of State for Population, Refugees and Migration Arthur Dewey noted that the legislative text regarding UNFPA funding — "not more than \$34 million" — gave the Administration considerable discretion over exactly how much to provide UNFPA. While stating that the United States supported UNFPA's work worldwide to provide safe and voluntary family planning, enhance maternal and infant health, and prevent the spread of HIV/AIDS, the Administration remained concerned about periodic reports of abuse and coercion in China's family planning program. Given new information and the requirements of the Kemp-Kasten amendment, Assistant Secretary Dewey argued that the State Department was obligated to investigate the matter further before releasing any funds in FY2002.³⁶

State Department Assessment and Findings

The State Department sent an investigation team to China for a two-week review of UNFPA programs on May 13, 2002. The team was led by former

³⁵ Catholics for a Free Choice. *The United Nations Population Fund in China: A Catalyst for Change*. Report of an Interfaith Delegation to China. 2003.

³⁶ Senate Committee on Foreign Relations, *U.S. Funding for the U.N. Population Fund: The Effect on Women's Lives*. Committee Hearings, February 2002.

Ambassador William Brown, and included Bonnie Glick, a former State Department official, and Dr. Theodore Tong, a public health professor at the University of Arizona. The State Department's assessment team filed its report with Secretary Powell on May 29, making a series of findings and recommendations.³⁷ The group found that:

- There was no evidence that UNFPA “has knowingly supported or participated in the management of a program of coercive abortion or involuntary sterilization” in China;
- Despite some relaxation of government restrictions in counties where UNFPA operates, China maintained coercive elements in its population programs in law and practice; and
- Chinese leaders viewed “population control as a high priority” and remained concerned over implications for socioeconomic change.

On the basis of these findings, Ambassador Brown and his colleagues recommended that:

- The United States should release not more than \$34 million of previously appropriated funds to UNFPA;
- Until China ends all forms of coercion in law and practice, no U.S. government funds should be allocated to population programs in China; and
- Appropriate resources, possibly from the United States, should be allocated to monitor and evaluate Chinese population control programs.

UNFPA Found in Violation of Kemp-Kasten. Subsequent to the findings and recommendations of the Brown investigation, on July 22, 2002, Secretary of State Powell, to whom the President had delegated the decision, announced that UNFPA was in violation of Kemp-Kasten and ineligible for U.S. funding. The State Department's analysis of the Secretary's determination found that even though UNFPA did not “knowingly” support or participate in a coercive practice, that alone would not preclude the application of Kemp-Kasten. Instead, a finding that the recipient of U.S. funds — in this case UNFPA — simply supports or participates in such a program, whether knowingly or unknowingly, would trigger the restriction. The assessment team found that the Chinese government imposes fines and penalties on families (“social compensation fees”) that have children exceeding the number approved by the government. The Department further noted that UNFPA had funded computers and data-processing equipment that had helped strengthen the management of the Chinese State Family Planning Commission. Beyond the

³⁷ *Report of the China UN Population Fund (UNFPA) Independent Assessment Team*, released by the Department of State on May 29, 2002. See [<http://www.state.gov/g/prm/rls/rpt/2002/12122.htm>] for the report's full text.

legitimate uses of these and other items financed by UNFPA, such equipment facilitated, in the view of the State Department, China's ability to impose social compensation fees or perform abortions on those women coerced to have abortions they would not otherwise undergo. The State Department analysis concluded that UNFPA's involvement in China's family planning program "allows the Chinese government to implement more effectively its program of coercive abortion."³⁸

Subsequent Administration Reviews and Legislative Action.

Following the July 2002 determination, the Administration notified Congress that it intended to transfer to USAID \$34 million from FY2002 appropriations in order to fund bilateral family planning programs in which UNFPA had no involvement. Congressional committees placed a hold on this transfer while the House and Senate debated other proposals regarding UNFPA funding for FY2003 and FY2004, and changes to the Kemp-Kasten provision.

In the Foreign Operations appropriation for FY2003, which became law on February 20, 2003, Congress directed that UNFPA receive the funds appropriated in the FY2002 appropriation, plus an equal amount for FY2003, so long as the President determined that "UNFPA no longer supports or participates in the management of a program of coercive abortion or involuntary sterilization."³⁹ However, on September 25, 2003, the State Department notified Congress that the "factual circumstances" did not support making a determination that UNFPA no longer supports or participates in the management of a program of coercive abortion or involuntary sterilization. The Administration again proposed transferring funds earmarked by Congress for UNFPA to USAID for bilateral family planning activities.

The question over the allocation of FY2002 and FY2003 UNFPA funds was settled in the FY2004 Foreign Operations Appropriations, signed into law on January 23, 2004,⁴⁰ when Congress specified that the \$34 million withheld in FY2002 be used for family planning programs in twelve countries, including Congo, Ethiopia, Uganda, Haiti, and Russia. The \$25 million in FY2003 funds that was earmarked for but not transferred to UNFPA would be available for vulnerable children and for a new initiative assisting young women, mothers, and children who are victims of trafficking in persons. For UNFPA, the FY2004 funding bill earmarked \$34 million, subject, however, to the Kemp-Kasten conditions.

Recent Efforts to Amend Kemp-Kasten

During the 108th Congress, lawmakers tentatively approved two legislative efforts to modify the Kemp-Kasten language in a way that might have paved the way

³⁸ Department of State, *Analysis of Determination that Kemp-Kasten Amendment Precludes Further Funding to UNFPA under P.L. 107-115*. Released on July 18, 2002. See [<http://www.state.gov/g/prm/rls/other/12128.htm>] for the full text.

³⁹ Section 572 of the FY2003 Foreign Operations Appropriation, enacted in P.L. 108-7.

⁴⁰ Section 567 of the FY2004 Foreign Operations Appropriations, enacted in Division D of P.L. 108-199.

for a U.S. contribution to UNFPA in FY2004 and 2005. Ultimately both were defeated.

The first occurred during consideration of an omnibus bill authorizing State Department and public diplomacy programs, where the House International Relations Committee voted 23-22 to authorize \$50 million for UNFPA in FY2004 and FY2005, and to amend existing eligibility requirements that would appear to have made it more difficult for the President to deny funding to UNFPA. The vote came on an amendment offered by Congressman Crowley to H.R. 1950, legislation reported by the Committee on May 8, 2003.

The Crowley amendment would have made the money available only if the President determined that UNFPA “directly” supports or participates in coercive or involuntary activities. By adding the word “directly,” many presumed that the determination issued in July 2002 by the Secretary of State that denied transfers to UNFPA would not be sufficient to cut off contributions authorized in H.R. 1950. In addition, the Crowley amendment defined the circumstances under which UNFPA would be found ineligible. The provision in H.R. 1950 stated that the President would need to find that UNFPA is “knowingly and intentionally working with a purpose to continue, advance or expand the practice of coercive abortion or involuntary sterilization, or playing a primary and essential role in a coercive or involuntary aspect of a country’s family planning program.” Many believe that the justification for terminating UNFPA funds for FY2002 would not meet this more specific test. During House debate on H.R. 1950, however, lawmakers voted 216-211 on July 15, 2003, to delete the Crowley amendment.

The second effort was approved by the Senate in passing the FY2005 Foreign Operations appropriations measure (H.R. 4818) on September 23, 2004. The Senate-approved bill amended the “Kemp-Kasten” language in a way that would narrow somewhat the grounds on which the Administration could find UNFPA in violation of the restrictions. Similar to the Crowley amendment, the Senate text stated that an organization must “directly” support coercive abortions or involuntary sterilizations in order to be denied U.S. support. The measure further included new language stating that no organization could be denied funds solely because the government of a country engages in coercive practices. This presumably was an indirect reference to China, intending to establish a policy that UNFPA cannot be declared ineligible for U.S. funding exclusively because of coercive practices by Chinese family planning officials. Conferees, however, deleted the Senate changes to the Kemp-Kasten restriction and retained the existing text that has been in place the past two decades.

Current Status: Administration Determination for FY2004 and the FY2005 Appropriation

Although Congress earmarked \$34 million for UNFPA in FY2004, the funds remained conditioned on meeting the terms of the Kemp-Kasten provision. The Administration had to make a determination by September 30, 2004, otherwise the period for obligating the funds would expire and the money would revert to the Treasury.

Accordingly, on July 16, 2004, the State Department issued a finding that the U.N. Population Fund (UNFPA) remains in violation of the Kemp-Kasten amendment due to its continuing programs in China, and that the organization will not receive the \$34 million appropriated for FY2004. The statement said that the United States has been urging UNFPA and China to modify the organization's program in a manner that would permit U.S. support to resume. The State Department found that no key changes had occurred in UNFPA's programs that would permit a resumption of U.S. funding under the conditions of the Kemp-Kasten provision. Subsequently, the Administration transferred the funds to the Economic Support Fund account, where the obligation authority does not expire until the end of FY2005. State Department officials indicated that the Administration would submit at some point a re-programming notification to Congress proposing that the money be used to support programs combating human trafficking and prostitution.

For FY2005, Congress approved in H.R. 4818, the Consolidated Appropriation, FY2005 (P.L. 108-447), \$34 million for UNFPA, subject to Kemp-Kasten restrictions. If the President determines that UNFPA is ineligible for U.S. funding under Kemp-Kasten, P.L. 108-447 directs that the Administration use the \$34 million for USAID-managed family planning, maternal and reproductive health programs. The act further specifies that FY2004 funds previously earmarked for UNFPA be spent on anti-trafficking programs (\$12.5 million) and family planning and maternal and reproductive health activities (\$12.5 million), rather than exclusively on anti-trafficking programs as the Administration had signaled.

During conference committee consideration of H.R. 4818, lawmakers dropped a Senate-passed provision that would have amended the Kemp-Kasten language in a way that would narrow somewhat the grounds on which the Administration could find UNFPA in violation of the restrictions. The Senate text stated that an organization must *directly* support coercive abortions or involuntary sterilizations in order to be denied U.S. support, adding the word "directly" to the condition. The amendment further included new text stating that no organization can be denied funds solely because the government of a country engaged in coercive practices. This presumably was an indirect reference to China, intending to establish a policy that UNFPA could be declared ineligible for U.S. funding exclusively because of coercive practices by Chinese family planning officials.

Kemp-Kasten Application Beyond UNFPA

Critics of the Administration policy, including some Members of Congress, have expressed concern over what they perceive to be a shift in the interpretation of Kemp-Kasten restrictions related to UNFPA and other international organizations. They point to a USAID notification to the Global Health Council that the agency would not provide funding for the Council's 31st annual meeting in June 2004 because UNFPA would be a participant. Some believe that the State Department is warning UNICEF, the World Health Organization, and other organizations that

continued involvement in joint programs with UNFPA might jeopardize their funding support from the United States.⁴¹

In 2003, the State Department decided that it would fund a \$1 million HIV/AIDS program supporting African and Asian refugees only if the implementing NGO group — Reproductive Health for Refugees Consortium — did not include Marie Stopes International among its members. Marie Stopes International is a British-based reproductive health organization that is also a major implementing partner of UNFPA in China. The State Department, while not making a legal determination under the Kemp-Kasten amendment, felt that an action not to fund Marie Stopes International would be the “approach most consistent with U.S. policy.”⁴² On August 11, 2003, however, the Consortium declined to accept the \$1 million grant due to the exclusion of Marie Stopes International.

⁴¹ Christopher Marquis. U.S. is Accused of Trying to Isolate U.N. Population Unit. *New York Times*, June 21, 2004. Letter to Secretary of State Colin Powell from Representatives Maloney, Lee, Waxman, and Crowley, June 18, 2004.

⁴² *Details for Funding the Reproductive Health Consortium (Taken Question)*, Office of the State Department’s Spokesman, August 27, 2003.

Appendix — UNFPA Administration Policy and Legislative Conditions, 1985-2004

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
1985	\$26 million for UNFPA.	<p>Regular FY1985 appropriation:</p> <p>Not less than \$46 million, or 16% of Population Assistance, whichever is lower, shall be made available for UNFPA.</p> <p>*****</p> <p>Supplemental FY1985 appropriation:</p> <p>Kemp-Kasten conditions first enacted.</p>	UNFPA received \$36 million, after the withholding of \$10 million to express U.S. disapproval of coercion in China's family planning program.
1986	\$38 million for UNFPA.	<p>Kemp-Kasten conditions.</p> <p>No specific UNFPA provision.</p>	No UNFPA funding.
1987	\$32 million for UNFPA, subject to Kemp-Kasten.	<p>Kemp-Kasten conditions.</p> <p>No specific UNFPA provision.</p>	No UNFPA funding.
1988	\$25 million for UNFPA, subject to Kemp-Kasten.	<p>Kemp-Kasten conditions.</p> <p>No specific UNFPA provision.</p>	No UNFPA funding
1989	\$20 million for UNFPA, subject to Kemp-Kasten.	<p>Kemp-Kasten conditions.</p> <p>No specific UNFPA provision.</p>	No UNFPA funding.

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
1990	\$19.39 million for UNFPA, subject to Kemp-Kasten.	<p>Appropriation passed Congress but vetoed by the President:</p> <p>Not less than \$15 million shall be made available for UNFPA, notwithstanding the Kemp-Kasten conditions.</p> <p>No funds for UNFPA may be used in China.</p> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account and UNFPA does not commingle amounts with other sums.</p> <p>Entire \$15 million shall be refunded if any used by UNFPA for family planning programs in China or used for any abortion related activity in any country.</p> <p>*****</p> <p>Subsequent appropriation signed by the President:</p> <p>Kemp-Kasten conditions.</p> <p>No specific UNFPA provision.</p>	<p>No UNFPA funding</p> <p>Earlier, \$15 million appropriation for UNFPA vetoed by the President.</p>
1991	\$10 million for UNFPA, subject to Kemp-Kasten.	<p>Kemp-Kasten conditions.</p> <p>No specific UNFPA provision.</p>	No UNFPA funding
1992	\$10 million for UNFPA, subject to Kemp-Kasten.	<p>Kemp-Kasten conditions.</p> <p>No specific UNFPA provision.</p>	No UNFPA funding
1993	No UNFPA funding.	<p>Kemp-Kasten conditions.</p> <p>No specific UNFPA provision.</p>	No UNFPA funding.

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
1994	\$50 million for UNFPA.	<p>Not more than \$40 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</p> <p>No funds for UNFPA may be used in China.</p> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account and does not commingle amounts with other sums.</p> <p>Not more than half of the UNFPA contribution may be provided before March 1, 1994.</p> <p>Secretary of State report to Congress by Feb. 15, 1994, regarding the amount of UNFPA's budget for China. Whatever amount for China above \$10 million shall be deducted after March 1 from the \$40 million U.S. contribution.</p>	UNFPA received \$40 million from the United States.

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
1995	\$60 million for UNFPA.	<p>Not more than \$50 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</p> <p>No funds for UNFPA may be used in China.</p> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account and does not commingle amounts with other sums.</p> <p>Not more than half of the UNFPA contribution may be provided before March 1, 1995.</p> <p>Secretary of State report to Congress by Feb. 15, 1995, regarding the amount of UNFPA's budget for China. Whatever amount for China above \$7 million shall be deducted after March 1 from the \$50 million U.S. contribution.</p> <p>*****</p> <p>In separate legislation, Congress rescinded \$15 million of the original \$50 million appropriation for UNFPA.</p>	<p>UNFPA received \$35 million from the United States, after a rescission of \$15 million.</p>

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
1996	\$55 million for UNFPA.	<p>Not more than \$30 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</p> <p>No funds for UNFPA may be used in China.</p> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account and does not commingle amounts with other sums.</p> <p>Not more than half of the UNFPA contribution may be provided before March 1, 1996.</p> <p>Secretary of State report to Congress by Feb. 15, 1996, regarding the amount of UNFPA's budget for China. Whatever amount for China above \$7 million shall be deducted after March 1 from the \$30 million U.S. contribution.</p>	UNFPA received \$22.8 million from the United States, after a withholding of \$7.2 million.
1997	\$30 million for UNFPA.	<p>Not more than \$25 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</p> <p>No funds for UNFPA may be used in China.</p> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account and does not commingle amounts with other sums.</p> <p>Not more than half of the UNFPA contribution may be provided before March 1, 1997.</p> <p>Secretary of State report to Congress by Feb. 15, 1997, regarding the amount of UNFPA's budget for China. Whatever amount for China shall be deducted after March 1 from the \$25 million U.S. contribution.</p>	UNFPA received \$25 million from the United States.

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
1998	\$30 million for UNFPA.	<p>Not more than \$25 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</p> <p>No funds for UNFPA may be used in China.</p> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account and does not commingle amounts with other sums.</p> <p>Not more than half of the UNFPA contribution may be provided before March 1, 1998.</p> <p>Secretary of State report to Congress by Feb. 15, 1998, regarding the amount of UNFPA's budget for China. Whatever amount for China shall be deducted after March 1 from the \$25 million U.S. contribution.</p>	UNFPA received \$20 million from the United States, after a withholding of \$5 million.
1999	\$25 million for UNFPA.	<p>No funds may be made available for UNFPA.</p> <p>Kemp-Kasten conditions included in enacted appropriation.</p>	UNFPA received no funding from the United States.
2000	\$25 million for UNFPA.	<p>Not more than \$25 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</p> <p>No funds for UNFPA may be used in China.</p> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and does not fund abortions.</p> <p>Secretary of State report to Congress by Feb. 15, 2000, regarding the amount of UNFPA's budget for China. Whatever amount for China shall be deducted after March 1 from the \$25 million U.S. contribution.</p>	UNFPA received \$21.5 million from the United States, after a withholding of \$3.5 million.

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
2001	\$25 million for UNFPA.	<p>Not more than \$25 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</p> <p>No funds for UNFPA may be used in China.</p> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and does not fund abortions.</p> <p>Secretary of State report to Congress by Feb. 15, 2001, regarding the amount of UNFPA's budget for China. Whatever amount for China shall be deducted after March 1 from the \$25 million U.S. contribution.</p>	UNFPA received \$21.5 million from the United States, after a withholding of \$3.5 million.
2002	\$25 million for UNFPA.	<p>Not more than \$34 million shall be made available for UNFPA, subject to Kemp-Kasten conditions.</p> <p>No funds for UNFPA may be used in China.</p> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and does not fund abortions.</p>	<p>Secretary of State determined that UNFPA not eligible under the Kemp-Kasten conditions.</p> <p>UNFPA received no funding from the United States.</p> <p>FY2002 UNFPA funds re-program-med for bilateral family planning/ maternal & re-productive health activities in several deve-losing countries.</p>

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
2003	\$25 million “reserve” available for UNFPA, subject to Kemp-Kasten conditions.	<p>Not more than \$34 million in FY2002 appropriations and an equal amount from FY2003 appropriations shall be available for UNFPA if the President determines that UNFPA no longer supports or participates in the management of a program of coercive abortion or involuntary sterilization.</p> <p>No funds for UNFPA may be used in China.</p> <p>Other abortion restrictions in this act or in the FY2002 appropriation shall apply to UNFPA funding.</p> <p>FY2002 conditions on UNFPA funding shall apply to FY2003 appropriations.</p> <p>UNFPA funds deducted by the amount UNFPA spends in China in 2002 and 2003.</p>	<p>President did not issue a finding that UNFPA no longer supports or participates in the management of a program of coercive abortion or involuntary sterilization.</p> <p>UNFPA received no funding from the United States.</p> <p>FY2003 UNFPA funds re-program-med for assistance for “vulnerable children” and made available for a new initia-tive for assistance for young women, mothers and children who are victims of traf-ficking in persons.</p>

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
2004	\$25 million "reserve" available for UNFPA, subject to Kemp-Kasten conditions.	<p>Up to \$34 million shall be available to UNFPA, subject to Kemp-Kasten conditions.</p> <p>FY2002 UNFPA funds shall be made available for family planning, maternal & reproductive health activities in the Democratic Republic of the Congo, Ethiopia, Nigeria, Tanzania, Uganda, Haiti, Georgia, Azerbaijan, Russia, Albania, Romania, and Kazakhstan.</p> <p>FY2003 UNFPA funds shall be allocated for assistance for "vulnerable children" and made available for a new initiative for assistance for young women, mothers and children who are victims of trafficking in persons.</p> <p>No UNFPA funds available for programs in China.</p> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and UNFPA does not fund abortions.</p>	<p>Secretary of State determined that UNFPA not eligible under the Kemp-Kasten conditions.</p> <p>UNFPA received no funding from the United States.</p> <p>FY2004 UNFPA funds transferred to the Economic Support Fund account, with the intention to use in support of anti-trafficking in persons programs. Possible congressional notification forthcoming.</p>

Fiscal Year	Administration Budget Request	Congressional Action/Legislative Conditions Enacted	Funding and Policy Outcome
2005	\$25 million "reserve" available for UNFPA, subject to Kemp-Kasten conditions.	<p>\$34 million shall be available to UNFPA, subject to Kemp-Kasten conditions.</p> <p>No UNFPA funds available for programs in China.</p> <p>No UNFPA funds available unless UNFPA maintains amounts in a separate account, does not commingle amounts with other sums, and UNFPA does not fund abortions.</p> <p>If FY2005 funds are not made available to UNFPA, they shall be transferred to the Child Survival/Health account and used by USAID for family planning, maternal, and reproductive health activities.</p> <p>Of the FY2004 funds earmarked for UNFPA, \$12.5 million shall be available for anti-trafficking programs and \$12.5 million shall be available for USAID for family planning, maternal, and reproductive health activities in Albania, Azerbaijan, the Democratic Republic of the Congo, Ethiopia, Georgia, Haiti, Kazakhstan, Kenya, Nigeria, Romania, Russia, Rwanda, Tanzania, Uganda, and Ukraine.</p>	The Administration is likely to review UNFPA programs in China later in 2005 and issue a determination regarding UNFPA eligibility in July or August 2005.