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## *U.S. Military Exports and the Armed Export Control Act of 1976: The F-16 Sale to Iran*

**T**HERE CAN BE NO WAR without weapons. Yet the trend of history strongly suggests that mankind is far from ready to part with either. Since the end of the Second World War, there have been 55 significant armed conflicts throughout the world.<sup>1</sup> Further, the international marketing of increasingly destructive weapons of war has expanded at an unprecedented rate. Total yearly international sales of conventional weapons have grown from \$300 million in fiscal year 1952 to an estimated \$20 billion in fiscal year 1975.<sup>2</sup> Although the proliferation of nuclear weapons may appear to be a matter of greater urgency, it should be stressed that the astronomical market figures just outlined reflect the trade in conventional, not nuclear weapons. More important, the death and destruction that has attended post-war armed conflict has resulted exclusively from the use of conventional weapons.

The history of efforts to curb the international trade in conventional arms is not a success story.<sup>3</sup> Attempts to limit the arms trade through the League of Nations and the United Nations have been so ineffective that they have served “. . . merely as symbolic gestures of disapproval.”<sup>4</sup> There may be many reasons for this lack of success. George Thayer advances an explanation which should be considered:

Member countries of the U.N. will gladly vote for “disarmament” and nuclear restrictions because it is good public relations, but few would be affected by the decisions. They may vote for an arms embargo against South Africa, but only because it is a specific reaction against an unpopular and vulnerable nation and few will be affected. But any across-the-board

<sup>1</sup> G. THAYER, *THE WAR BUSINESS* 2 (1969).

<sup>2</sup> Mayer, Norman, Scott, *Anatomy of the Arms Trade*, NEWSWEEK, Sept. 6, 1976, at 39.

<sup>3</sup> STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE, *THE ARMS TRADE WITH THE THIRD WORLD* 86-132 (1971). Chapter 2 traces the history of international efforts to control the trade of arms.

<sup>4</sup> R. HARKAVY, *THE ARMS TRADE AND INTERNATIONAL SYSTEMS* 221 (1975).

vote to restrict their own lifeblood — arms — would be dismissed as inappropriate.<sup>5</sup>

By default, the responsibility for initiating and executing policies to control the international trade in conventional weapons has fallen on the producing nations individually.

The United States leads the world in exports of conventional weapons. United States exports in fiscal year 1975 reached \$9.5 billion — up from \$798 million in fiscal year 1968, an increase of 1,200 percent.<sup>6</sup> Further, in the ten year period from 1965 through 1974, the United States exported \$24.5 billion in conventional weapons to underdeveloped nations, an amount representing 53 percent of the total arms shipments to the Third World.<sup>7</sup>

It is not just the quantity of exports that has changed. There has also been a significant change in the quality of the arms exported. Sales of the most advanced United States conventional arms to foreign buyers, including nations of the Third World, are becoming common.<sup>8</sup> This trend has been the subject of sharp criticism. Senator Edward Kennedy has suggested that the trend of international sales of conventional weapons by the United States indicates an “. . . apparently indiscriminate Administration policy of selling as much military equipment as foreign countries will pay for.”<sup>9</sup> This criticism was firmly restated by Senator Nelson, with particular emphasis on United States weapons sales to the Mideast:

More than half of our foreign military sales in recent years have been made to the oil-rich Persian Gulf and Mideast. Such sales have major foreign policy implications, but there is little if any evidence that the Administration has given adequate

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<sup>5</sup> G. THAYER, *supra* note 1, at 375. In a television interview conducted on Jan. 3, 1964, U.S. Secretary of State Dean Rusk stated substantially the same point:

I recall that at the United Nations General Assembly, at a time when all the members were voting unanimously for disarmament, 70 members were at that moment asking us for military assistance.

<sup>6</sup> U.S. DEP'T OF DEF., FOREIGN MILITARY SALES AND MILITARY ASSISTANCE FACTS 14-15 (1975).

<sup>7</sup> U.S. ARMS CONTROL AND DISARMAMENT AGENCY, WORLD MILITARY EXPENDITURES AND ARMS TRANSFERS 73 (1976).

<sup>8</sup> Klare, *The Political Economy of Arms Sales*, BULLETIN OF THE ATOMIC SCIENTISTS, Nov., 1976, at 12.

<sup>9</sup> 121 CONG. REC. S2409 (daily ed. Feb. 22, 1975) (remarks of Sen. Kennedy). See also Kennedy, *The Persian Gulf: Arms Race or Arms Control*, 54 FOR. AFF. 14 (1975).

thought to the long-range diplomatic or military consequences of such weapons transfers.<sup>10</sup>

This criticism has been met with the assertions that United States sales of conventional arms are both a useful instrument for conducting foreign policy and an important economic asset.<sup>11</sup>

What is the policy of the United States regarding the sale of conventional weapons to the Third World? How is the policy being implemented? On June 30, 1976, President Ford signed into law the International Security Assistance and Arms Export Control Act of 1976.<sup>12</sup> The International Security Assistance and Arms Export Control Act of 1976 amends two older laws: The Foreign Assistance Act of 1961,<sup>13</sup> and the Foreign Military Sales Act.<sup>14</sup> Both pieces of legislation deal with the subject of conventional arms sales. Section 503(a) of the Foreign Assistance Act authorizes the President to make sales of weapons as an option in establishing a program of military assistance to a friendly nation. The Foreign Assistance Act seems much more applicable to U.S. participation in foreign military programs than to sales of U.S. arms to foreign nations. The Foreign Military Sales Act, in contrast, is concerned exclusively with the sale of United States conventional weaponry to foreign countries. The Foreign Military Sales Act purports to “. . . consolidate and revise foreign assistance legislation relating to reimbursable military exports.”<sup>15</sup> The amendments contained in Title II of the International Security Assistance and Arms Export Control Act of 1976, together with the Foreign Military Sales Act present the most current consolidation and revision of U.S. law governing the sale of conventional weapons to foreign nations. Therefore, the Foreign Military Sales Act, and the amendments in Title II will be the focus of this inquiry. It should be noted that section 201 of Title II provides that the Foreign Military Sales Act is to be renamed the Arms Export Control Act. Because Title II amends the Foreign Military

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<sup>10</sup> 122 CONG. REC. S15526 (daily ed. Sept. 10, 1976) (remarks of Sen. Nelson).

<sup>11</sup> Loosbrock, *Keeping Foreign Military Sales in Perspective*, AIR FORCE, Feb., 1976, at 4-5. See also Gray, *Traffic Control for the Arms Trade*, 6 FOR. POL'Y 153 (1972).

<sup>12</sup> International Security Assistance and Arms Export Control Act of 1976, Pub. L. No. 94-329, 90 Stat. 729 (1976) [hereinafter cited as International Security Assistance and Arms Export Control Act of 1976].

<sup>13</sup> Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424 (1961).

<sup>14</sup> Foreign Military Sales Act, Pub. L. No. 90-629, 82 Stat. 1320 (1968) [hereinafter cited as Foreign Military Sales Act].

<sup>15</sup> *Id.*

tary Sales Act, the original Act and the amendments will be treated as one.<sup>16</sup>

This Note will examine the recently approved<sup>17</sup> \$3.8 billion sale of 160 F-16 fighter aircraft to Iran<sup>18</sup> as a case study of the operation of the Arms Export Control Act of 1976. The purposes of this examination are to determine: (1) What the United States policy is regarding conventional arms sales to underdeveloped nations; (2) how this policy has been implemented in the current, major sale of a sophisticated warplane to Iran; and, (3) what changes might be necessary to bring arms sales into line with the stated purposes and goals of the legislation.

The Arms Export Control Act of 1976, the authority under which the letter of offer for the purchase of the F-16 was approved, makes reference to the goal of achieving a world ". . . free from the scourge of war and the dangers and burdens of armaments. . . ."<sup>19</sup> Reflecting the continuing effort to realize this goal, the Act states an ongoing policy commitment of the United States ". . . to encourage regional arms control and disarmament agreements and to discourage arms races."<sup>20</sup> The Act stresses, however, that the cost and complexity of modern defense equipment may place intolerable burdens on the ability of a foreign country, particularly an underdeveloped nation, to meet ". . . all of its legitimate defense requirements from its own design and production base."<sup>21</sup> Recognizing this inability, the Act provides that the United States will enter into cooperative international relationships with friendly countries for the purpose of satisfying mutual defense requirements. To further facilitate the common defense the Act authorizes the United States Government to make sales of military equipment, subject to enumerated restraints.<sup>22</sup>

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<sup>16</sup> In the interest of clarity a textual reference to the Arms Export Control Act of 1976, the Arms Export Control Act or, simply, the Act will include both the Foreign Military Sales Act and the amendments presented in Title II. If a specific provision of the older law or an amendment under Title II is quoted, it will be cited as such.

<sup>17</sup> The notification of the letter for the sale to the Government of Iran was made by the President to the Speaker of the House and to the Chairman of the Senate Foreign Relations Committee on Sept. 1, 1976. Under amended section 36(b)(1) of the Arms Export Control Act of 1976 the letter was automatically approved in the absence of a concurrent resolution of Congress objecting to the sale.

<sup>18</sup> *Supra* note 10.

<sup>19</sup> Foreign Military Sales Act § 1.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

It seems that two important general policy statements are made in the Arms Export Control Act. First, there is a recognition of the need to restrain the sale of conventional arms, particularly where the sales may provoke a regional arms race, or bring about economic instability within the recipient country. Second, there is emphasis placed upon the desirability of allowing friendly nations to assess their own defense requirements and to assume a larger role in meeting these national defense requirements. To this end, the Act provides for foreign purchases of U.S. conventional arms. It seems clear that there is no notion in the statements of policy that arms shipments are evil *per se*, but that arms sales can only be made under close supervision.

The main thrust of the limitations on the ability of individual foreign nations to purchase arms is contained in section 3, entitled "Eligibility."<sup>23</sup> No sale of any weapon or defense service<sup>24</sup> shall be made unless: (1) The President determines that world peace and United States security will be enhanced by the sale; (2) the recipient country agrees to make no transfer of any defense article sold without express prior consent of the President; and, (3) the recipient nation will provide adequate security for all weapons purchased.<sup>25</sup> Having defined the eligibility requirements for nations seeking to buy weapons from the United States, section 4 presents a limitation on the purposes for which the weapons may be used. Providing for internal security and national self-defense, as well as meeting the requirements of collective security arrangements are the only appropriate uses of purchased conventional weapons.

Complementing the restrictions on the eligibility of recipient nations to enter the market for United States arms, and restrictions on the use of purchased weapons are a body of restraints on the United States arms market itself. Section 21(a) authorizes the President to make sales of arms from Department of Defense stocks to any eligible foreign country if payment for the arms is to be made in United States dollars.<sup>26</sup> In the case of defense services sold to a foreign nation, amended section 21(c) prohibits United States personnel from performing duties of a combatant

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<sup>23</sup> *Id.* § 3.

<sup>24</sup> International Security Assistance and Arms Export Control Act of 1976 § 215(4). A defense service includes any ". . . service, test, inspection, repair, training, publication, technical or other assistance . . ."

<sup>25</sup> Foreign Military Sales Act § 3(a)(1), (2), (3).

<sup>26</sup> International Security Assistance and Arms Export Control Act of 1976 § 205.

nature. Duties of a combatant nature would include "... training, advising, or otherwise providing assistance regarding combat activities. . . ." <sup>27</sup> This provision seems to emphasize that the justification for allowing arms sales is to enable the recipient nation to meet legitimate defense requirements, not to give the recipient nation the ability to wage a war of aggression with the aid of purchased weapons and technical guidance. Like the provisions against resale of weapons by the recipient country contained in section 21(a), section 21(c) is intended to produce effective end-use control.

Section 22, entitled "Procurement for Cash Sales," directly governs the financial details of the sale of the F-16. Section 22 applies particularly to this sale because the F-16 is not an item in Department of Defense stocks, nor does Iran require credit financing for the purchase. Section 22(a) authorizes the President to enter into procurement contracts for the sale of weapons or defense services providing that the recipient country makes a dependable undertaking to meet the obligations of the contract. The requirements of a dependable undertaking are: (1) Protection from any loss of the United States on the contract; and, (2) an understanding that the recipient nation will release funds as required to meet contract payments or to compensate for costs resulting from cancellation.

As demonstrated, the Arms Export Control Act of 1976 imposes restrictions on the abilities of prospective recipient nations to buy and on the abilities of the United States Government to sell defense services and weapons. But these provisions would have little efficacy without new sections 21(f), 25 and 36. These three sections are action-forcing provisions in that they require that all sales made pursuant to the Act be disclosed to the public and the Congress. Under section 21(f) the public is to be informed of all arms sales "... to the fullest extent possible consistent with the national security of the United States." <sup>28</sup> Sections 25 and 36 impose requirements on the President to inform Congress before the sale of conventional weapons may proceed.

Paragraphs (1), (3), and (4) of section 25(a) require the President to give specific estimates of arms sales expected to occur as a part of his fiscal year proposal for security assistance programs. Paragraph (1) requires the President to report estimates of the amount of sales to be made to each country under sections 21 and

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

22. The report of estimates must include “. . . a detailed explanation of the foreign policy and United States security considerations involved in expected sales to each country.”<sup>29</sup> Under paragraph (3) the President is required to demonstrate how each sale “. . . will strengthen the security of the United States and promote world peace.”<sup>30</sup> Finally, paragraph (4) provides that the President must also prepare an arms control impact statement for each purchasing country. This impact statement should include an analysis of the effect of the sale on arms control efforts in the purchasing country and the region in general. Part (b) of paragraph (4) gives authority to the Speaker of the House and to the Chairman of the Senate Foreign Relations Committee to receive additional information from the President within 30 days of their request.

Section 36(a), as amended, requires the President to present a quarterly report to the Speaker of the House and to the Chairman of the Senate Foreign Relations Committee.<sup>31</sup> The report is to be presented within 30 days of the close of each quarter. The quarterly report must set forth, in part: (1) A list of all unaccepted letters of offer to sell defense equipment for any amount exceeding or equal to \$1 million; and, (2) a listing, by country, of all letters of offer that have been accepted and the total dollar value of the weapons or defense services sold. The advantage of these provisions is that a full record of unaccepted letters of offer as well as of all arms sales is maintained, continuously updated and regularly presented to the Congress.

The notice provisions of sections 36(a), 21(f) and 25 are essential elements of the effort to understand and direct the arms selling operations of the United States. But these provisions only call for the transmission of information relating to arms sales. Amended section 36(b)(1) may be the most significant part of the Arms Export Control Act of 1976 because it is designed to give Congress the ultimate authority to stop the issuance of a letter of offer to a purchasing nation. In order to secure an approved letter of offer either for the sale of weapons or defense services valued at \$25 million or more, or for the sale of major defense equipment worth \$7 million or more, the President must provide a “certification” to the Speaker of the House and to the

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<sup>29</sup> *Id.* § 209(a). See Appendix A.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* § 211(a).

Chairman of the Senate Foreign Relations Committee.<sup>32</sup> Following delivery of the certification, Congress has 30 calendar days in which to review the certification. If, before the expiration of the 30 calendar day period, Congress adopts a concurrent resolution of objection to the sale the letter of offer for the sale will not be issued. The President may override this resolution only if the certification states that an emergency exists requiring the sale as a means of protecting the security interests of the United States.

It seems essential to recognize that the Arms Export Control Act does not state any specific dollar limitation on *cash* sales of conventional arms to eligible foreign nations.<sup>33</sup> It is also significant that the Act contains no restriction against cash sales of the most advanced conventional weapons.<sup>34</sup> A nation which currently satisfies the eligibility requirements of section 3 and which has sufficient funds to pay cash for weapons may proceed to the limits of those funds. It is the responsibility of Congress, acting on information supplied at the direction of the President, to pass on the wisdom of the sale. Therefore, the extent to which the Arms Export Control Act can succeed in controlling arms sales is a measure of the diligence of the President in ensuring that the full information is given to Congress and of the ability of Congress to evaluate that information.

The sale of the F-16 to Iran is a major sale, but not the first. Statistics indicate that Iran is the best customer for United States arms in the Mideast. U.S. sales of weapons to Iran have expanded from \$113 million in 1970 to a high of more than \$3.9 billion in 1974.<sup>35</sup> The Shah of Iran makes the final decisions on all arms purchases.<sup>36</sup> The Shah is a pilot himself, and seems to

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<sup>32</sup> *Id.* See Appendix B.

<sup>33</sup> International Security Assistance and Arms Export Control Act of 1976 § 202(a)(1). This section provides that sales of arms and defense services are not to "exceed current levels" in any fiscal year. However, if one considers the size of the sales now being approved a restriction to current levels seems like no restriction at all. The provision adds nothing to the ability of the law to control the makings of arms sale decisions. Further, the provision states a sense of Congress. As such the limitation does not carry the force of law.

<sup>34</sup> Foreign Military Sales Act § 4. There are limitations on credit sales of sophisticated weapons.

<sup>35</sup> Center for Defense Information, *U.S. Arms to the Persian Gulf: \$10 Billion Since 1973*, THE DEFENSE MONITOR, May, 1975, at 2.

<sup>36</sup> From a statement of the Shah, as reported in 122 CONG. REC. S15526 (daily ed. Sept. 10, 1976).

take a particular interest in military jet aircraft.<sup>37</sup> However, United States sales of conventional weapons to Iran run the gamut of available types of conventional weaponry, including missiles, tanks, artillery, fixed wing aircraft, helicopters, and warships.<sup>38</sup>

The F-16 is billed as the "swing force fighter of the 80's."<sup>39</sup> Technically designated as an air combat fighter, the F-16 is a product of the Air Force lightweight fighter program.<sup>40</sup> The F-16 has been judged an outstanding performer, combining high speed and superior maneuverability, advanced avionics and ordnance delivery systems, and, surprisingly, a low cost.<sup>41</sup> Projected figures indicate a unit price in the area of \$6 million compared to a cost of \$15 million each for the McDonnell Douglas F-15, another air combat fighter.<sup>42</sup>

The proposal to issue a letter of offer for the sale of the F-16 to Iran was but one item in a massive certification reported to Congress on September 1, 1976.<sup>43</sup> The September 1 report contained 37 individual letters of offer for the sale of \$6.024 billion in conventional weapons to 11 foreign nations.<sup>44</sup> The proposed letters of offer were received with alarm by some members of the Congress, owing to the size of the reported proposals and the timing of their delivery. Senator Bumpers commented:

Waiting until so late in the legislative session — to deluge the Congress with this gargantuan commitment — tells us one of two things: Either arms sales are indeed out of control as most critics believe, or the administration is utilizing the tactic of swamping the Congress with proposed sales all at one time in hopes that we will find the task of careful examination within the required thirty days impossible.<sup>45</sup>

It should also be noted that the Labor Day recess and weekends, during which there were no sessions, resulted in even fewer days

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<sup>37</sup> Military jets, particularly fighters and fighter bombers, represented the largest portions of Iran's military purchases: \$2.71 billion from 1970 to 1974. Center for Defense Information, *supra* note 35, at 5.

<sup>38</sup> *Id.* Iran has also been given permission to purchase the newest DD 993 modified *Spruance Class* destroyer.

<sup>39</sup> Carroll, *F-16: The Swing Force Fighter of the 80's*, AIR FORCE, Oct., 1976, at 33.

<sup>40</sup> *Id.* See also Rider, *Y-F-16 Pilot Report*, AIR FORCE, Oct., 1976, at 33.

<sup>41</sup> Carroll, *supra* note 34, at 31.

<sup>42</sup> *Id.*

<sup>43</sup> *Supra* note 10.

<sup>44</sup> *Id.*

<sup>45</sup> 122 CONG. REC. S15543 (daily ed. Sept. 10, 1976) (remarks of Sen. Bumpers).

available for consideration of the proposals. Assuming Congress could devote every available day exclusively to consideration of the proposals, which it could not, the available time seems insufficient. It is unlikely that there was enough time to allow for the kind of effective review of arms sales that is required by the Arms Export Control Act. The facts relating to the timing of the notification of Congress support the conclusion that the sale of the F-16 to Iran may have been approved with little more than a rubber stamp.

There is also evidence suggesting that Congress would not have had enough information to fully review the F-16 sale even if there had been sufficient time. The first hearing on the proposed sale of the F-16 to Iran took place before the Subcommittee on Foreign Assistance of the Senate Foreign Relations Committee on September 16, 1976. In his opening statement, Senator Humphrey sharply criticized the Executive Branch for its failure to provide information to the Committee.<sup>46</sup> Senator Humphrey went on to charge that much of the information that had been received was so superficial that it could “. . . not be regarded as a serious response to the Committee’s inquiries.”<sup>47</sup> Senator Humphrey concluded that this absence of cooperation indicated “. . . an almost total lack of respect on the part of the Executive Branch for the Committee’s role in considering arms sales matters.”<sup>48</sup>

Senator Humphrey’s statements are not the only indication that the Executive Branch may not have met the obligation imposed by the Arms Export Control Act of 1976. Senator Nelson stated that the justifications for the letters of offer in the September 1 report were “flimsy” and “. . . totally inappropriate to the magnitude of the impact these sales would have on U.S. security and peace in the world.”<sup>49</sup> The Senator emphasized that the paucity of information delivered seemed particularly unacceptable given the resources at the command of the President:

[T]he [E]xecutive [B]ranch is well supplied with manpower in the arms sale field who are working in various offices, bureaus, and divisions of the different services of the Pentagon and in the State Department, National Security Council,

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<sup>46</sup> *Hearings on the Proposed Sale of 160 F-16 Aircraft to the Government of Iran Before the Subcommittee on Foreign Assistance of the Senate Foreign Relations Committee, 94th Cong., 2d Sess. (Sept. 16, 1976) (Statement of Sen. Humphrey) [hereinafter cited as the Humphrey Statement].*

<sup>47</sup> *Id.* at 3.

<sup>48</sup> *Id.*

<sup>49</sup> *Supra* note 10.

Office of Management and Budget, and Arms Control and Disarmament Agency.<sup>50</sup>

The Senator also made reference to two unfinished reports: The National Security Staff Memorandum on arms sales and a comprehensive study on the Persian Gulf region, neither of which had been completed at the time the F-16 sale was considered. Calling attention to the 1975 restriction on arms sales to Israel pending a program reassessment, Senator Nelson expressed concern that despite the lack of any comprehensive analysis demonstrated by the Executive Branch, massive sales to the Persian Gulf were still being proposed.<sup>51</sup>

The disquietude in the Senate Foreign Relations Committee as expressed by the statements of Senator Humphrey reflects a concern that, regardless of the Arms Export Control Act, sales of conventional weaponry to foreign nations are not being fully examined and justified. The concern that the law is not producing its intended results seems more pressing in view of the U.S. sales of conventional weapons to Iran. The most complete examination of the history of United States arms sales to Iran is the Staff Report to the Subcommittee on Foreign Assistance.<sup>52</sup> The report examines the evolution of present arms sales and indicates a major turning point was reached in May of 1972. At that time, President Nixon assured the Shah of Iran virtual *carte blanche* to purchase weapons from the United States.

The President informed the Shah (1) that the U.S. would sell Iran the F-14 or F-15 aircraft; and (2) that in the future, the U.S. would, in general, sell Iran *any conventional weapons system that it wanted*. The decisions were confirmed in instructions to the bureaucracy.<sup>53</sup> (emphasis added)

The decision to allow the Shah of Iran a free hand to purchase weapons from the United States was made to further President Nixon's "twin pillar" policy of assuring a stable Mideast through United States defense sales and cooperation with Iran and Saudi Arabia. The Nixon Administration decided to rely on local powers in the Mideast rather than an increased U.S. military presence to fill the security gap opened by the exit of the British in 1968.<sup>54</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> REPORT ON U.S. MILITARY SALES TO IRAN BY THE STAFF OF SUBCOMM. ON FOREIGN ASSISTANCE OF SENATE COMM. ON FOREIGN RELATIONS, 94th Cong., 2d Sess. (Comm. Print 1976) [hereinafter cited as SUBCOMM. REP.].

<sup>53</sup> *Id.* at 5. Italics mine.

<sup>54</sup> *Id.*

The 1972 decision of President Nixon to remove restrictions on conventional arms sales to Iran has brought about a tremendous increase in arms sales to Iran.

Although these decisions are consistent with the "twin pillar" policy, they marked the beginning of an arms sale boom to Iran. The bureaucracy ceased its careful scrutiny of requests by Iran except for the most sophisticated systems involving release of state-of-the-art and highly classified technology. The dramatic increase in oil prices in 1973 provided Iran with the means to buy what it wanted.<sup>55</sup>

Further, the original decision to exclude arms sales to Iran from normal scrutiny has never been reconsidered in light of the oil price increase.<sup>56</sup> The Foreign Assistance Subcommittee Staff Report concludes that arms sales to Iran were "poorly managed" and "out of control" for at least 3 years.<sup>57</sup> There seems to be nothing in the facts relating to the approval of the F-16 sale to Iran which suggests that there has been any change, regardless of the Arms Export Control Act of 1976. Congress did not pass a concurrent resolution objecting to the sale within 30 calendar days. The letter of offer for the \$3.8 billion sale was approved *automatically*.

The facts surrounding the F-16 sale are irreconcilable with the previously discussed policy statements of the Arms Export Control Act. The Act requires that arms sales be approved only after thoughtful, informed decision-making. In the approval of the sale of the F-16, the decision-making was rushed and based on inadequate information. Therefore, Congress could not provide the overview that the Act is designed to ensure. The F-16 approval so directly contradicts the policies expressed in the Arms Export Control Act that one might well ask if the avowed commitment of the United States to the control of conventional arms sales is more than a façade. If the United States is committed to the stated policies of the Arms Export Control Act, these policy goals might be achieved more effectively by changing the law.

The Arms Export Control Act requires the Executive Branch to inform Congress regarding conventional arms sales. Congress is responsible for reviewing the information. As discussed previously, the success of the Act must be measured by the com-

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<sup>55</sup> *Id.* at 6.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at XII.

pleteness of the information received by Congress and by the ability of Congress to evaluate the information fully within 30 calendar days. If Congress is pressed for time, it is possible that incomplete or unverified information will go unchallenged in the haste. Three changes in the Arms Export Control Act might alleviate this problem. The first change would be to extend the time limit for consideration of the letters of offer from 30 calendar days to 30 *session* days. This would eliminate the problems arising from a certification being delivered immediately before a recess. Regardless of the timing of delivery, arms sales would receive 30 full days of review.

A second means of ensuring full review would be to limit the number of letters of offer that could be reported at one time. As indicated the September 1, 1976, report to Congress contained proposals for the sale of 37 weapons to 11 foreign nations, for a total of \$6.024 billion. A provision limiting the size of the report by number of weapons to be sold, number of individual nations intending to purchase, or dollar amount would protect the Congress from becoming swamped in arms sale proposals.

The third change would be the most significant. Presently the burden rests on Congress to raise objections to a letter of offer or to request additional information from the Executive Branch. In the absence of a request for additional information, or a concurrent resolution of objection, the letter of offer passes without challenge. The proposed change would involve shifting this burden directly to the Executive Branch, providing that all letters of offer subject to amended section 36(b) will be presumed *disapproved* until justified. Under the proposed change the Executive Branch would be required to obtain a concurrent resolution of approval from Congress in order to proceed with the sale. If this change were made, the Executive Branch would more likely be held to its obligation under the Act to provide adequate information to Congress. Any incentive to hinder a full review of a letter of offer would be eliminated by this shifting of the burden.

Arguments can be made against the adoption of any of these three proposals for change. The first of these arguments might be that the change would sacrifice the flexibility presently existing in the field of arms sales, making these sales a less useful instrument of foreign policy. Further, increasing the time and effort required to process a letter of offer might hinder the conduct of foreign policy by casting doubt on the reliability of the United States as a supplier of conventional weapons.

It should be noted that the specific requirements relating to the substance and quality of certifications and reports would not be altered by any of the proposals for change. The only change would be the extent to which the Executive Branch would be encouraged to diligently meet existing requirements. Appropriation requests for the United States defense budget carry no presumption of approval. There seems to be little justification for giving foreign sales of conventional arms a higher priority. Further, Senator Humphrey has pointed out that the automatic reporting requirements written into the Act had been kept to a minimum to allow the President greater flexibility, but that the lack of cooperation of the Executive Branch had hindered the review process rather than helped it.<sup>58</sup> The assertion that the proposals for change would reflect negatively on the reliability of the United States as a supplier raises two considerations. First, it seems doubtful that reliability, by itself, is a virtue. Reliability is desirable only if it follows a careful, informed decision to sell conventional weapons to the particular country in question. The reliable, uncontrolled delivery of weapons to a foreign nation lends no credibility to an assertion by the United States that it is committed to a policy of arms export control. Second, it is suggested that reliability may not be as important as candor in dealing with prospective purchasing nations. Thus, informing the Shah of Iran of inherent economic and technical problems that might militate against the purchase of a highly sophisticated weapon might enhance a friendly relationship.<sup>59</sup>

The loss of the economic advantages for U.S. balance of payments might be advanced as a reason for rejecting proposals for more control over conventional arms sales. As a corollary to the first assertion, one might point to the advantage of reduced weapons procurement costs for the United States as a result of longer production runs due to foreign sales. This argument assumes an ordering of United States policy priorities that is incorrect. There is no indication in the policy statements of the Arms Export Control Act that a favorable balance of payments or a decreased procurement cost is to be offered as a justification for United States arms sales. Sales are authorized to enable recipient nations to meet legitimate defense needs, without placing a burden on their national economies.<sup>60</sup> It is true that adoption

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<sup>58</sup> The *Humphrey Statement*, *supra* note 46, at 2.

<sup>59</sup> SUBCOMM. REP., *supra* note 52, at 50.

<sup>60</sup> FOREIGN MILITARY SALES ACT § 1.

of the proposals for change might lessen the economic advantages of arms sales. But U.S. economic advantage is made subordinate to the goal of bringing about control of the sale of conventional weapons, as expressed in the Arms Export Control Act.

The facts of the sale of the F-16 indicate that, despite the Arms Export Control Act of 1976, the United States is not yet prepared to assume its promised role as leader in the campaign to put an end to the massive, indiscriminate trade in conventional implements of war.

HENRY E. BILLINGSLEY, II\*

## APPENDIX A

### ANNUAL ESTIMATE AND JUSTIFICATION FOR SALES PROGRAM

SEC. 209. (a) Immediately after section 24 of the Foreign Military Sales Act, add the following new section:

"SEC. 25. ANNUAL ESTIMATE AND JUSTIFICATION FOR SALES PROGRAM. — (a) The President shall transmit to the Congress, as a part of the presentation materials for security assistance programs proposed for each fiscal year, a report which sets forth —

"(1) an estimate of the amount of sales expected to be made to each country under sections 21 and 22 of this Act, including a detailed explanation of the foreign policy and United States national security considerations involved in expected sales to each country;

"(2) an estimate of the amount of credits and guaranties expected to be extended to each country under sections 23 and 24 of this Act;

"(3) a list of all findings which are in effect on the date of such transmission made by the President pursuant to section 3(a)(1) of this Act, together with a full and complete justification for each such finding, explaining how sales to each country with respect to which such finding has been made will strengthen the security of the United States and promote world peace; and

"(4) an arms control impact statement for each purchasing country, including (A) an analysis of the relationship between expected sales to each country and arms control efforts relating to that country, and (B) the impact of such expected sales on the stability of the region that includes the purchasing country.

"(b) Not later than thirty days following the receipt of a request made by the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives for additional information with respect to any estimate submitted pursuant to subsection (a), the President shall submit such information to such committee.

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“(c) The President shall make every effort to submit all of the information required by this section wholly in unclassified form. In the event the President submits any such information in classified form, he shall submit such classified information in an addendum and shall also submit simultaneously a detailed summary, in unclassified form, of such classified information.”

(b) Section 634(d) of the Foreign Assistance Act of 1961 is amended by striking out “and military sales under this or any other Act” in the fourth sentence.

## APPENDIX B

### REPORTS ON COMMERCIAL AND GOVERNMENTAL MILITARY EXPORTS; CONGRESSIONAL ACTION

SEC. 211. (a) Section 36 of the Foreign Military Sales Act is amended to read as follows:

“(b)(1) In the case of any letter of offer to sell any defense articles or services under this Act for \$25,000,000 or more, or any major defense equipment for \$7,000,000 or more, before such letter of offer is issued, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a numbered certification with respect to such offer to sell containing the information specified in clauses (i) through (iv) of subsection (a). In addition, the President shall, upon the request of such committee or the Committee on International Relations of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request —

“(A) a detailed description of the defense articles or services to be offered, including a brief description of the capabilities of any defense article to be offered;

“(B) an estimate of the number of officers and employees of the United States Government and of United States civilian contract personnel expected to be needed in such country to carry out the proposed sale;

“(C) the name of each contractor expected to provide the defense article or defense service proposed to be sold (if known on the date of transmittal of such statement);

“(D) an analysis of the arms control impact pertinent to such offer to sell, prepared in consultation with the Secretary of Defense;

“(E) the reasons why the foreign country or international organization to which the sale is proposed to be made needs the defense articles or services which are the subject of such sale and a description of how such country or organization intends to use such defense articles or services;

“(F) an analysis by the President of the impact of the proposed sale on the military stocks and the military preparedness of the United States;

“(G) the reasons why the proposed sale is in the national interest of the United States;

“(H) an analysis by the President of the impact of the proposed sale on the military capabilities of the foreign country or international organization to which such sale would be made;

“(I) an analysis by the President of how the proposed sale would affect the relative military strengths of countries in the region to which the defense articles or services which are the subject of such sale would be delivered and whether other countries in the region have comparable kinds and amounts of defense articles or services;

“(J) an estimate of the levels of trained personnel and maintenance facilities of the foreign country or international organization to which the sale would be made which are needed and available to utilize effectively the defense articles or services proposed to be sold;

“(K) an analysis of the extent to which comparable kinds and amounts of defense articles or services are available from other countries;

“(L) an analysis of the impact of the proposed sale on United States relations with the countries in the region to which the defense articles or services which are the subject of such sale would be delivered; and

“(M) a detailed description of any agreement proposed to be entered into by the United States for the purchase or acquisition by the United States of defense articles, services, or equipment, or other articles, services, or equipment of the foreign country or international organization in connection with, or as consideration for, such letter of offer, including an analysis of the impact of such proposed agreement upon United States business concerns which might otherwise have provided such articles, services, or equipment to the United States, an estimate of the costs to be incurred by the United States in connection with such agreement compared with costs which would otherwise have been incurred, an estimate of the economic impact and unemployment which would result from entering into such proposed agreement, and an analysis of whether such costs and such domestic economic impact justify entering into such proposed agreement.

A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (ii) and the details of the description specified in clause (iii) of subsection (a) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States. The letter of offer shall not be issued if the Congress, within thirty calendar days after receiving such certification, adopts a concurrent resolution stating that it objects to the proposed sale, unless the President states in his certification that an emergency exists which requires such sale in the national security interests of the United States.

“(2) Any such resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

“(3) For the purpose of expediting the consideration and adoption of concurrent resolutions under this subsection, a motion to proceed to the consideration of any such resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

“(c) In the case of an application by a person (other than with regard to a sale under section 21 or section 22 of this Act) for a license for the export of any major defense equipment sold under a contract in the amount of \$7,000,000 or more or of defense articles or defense services sold under a contract in the amount of \$25,000,000 or more, not less than 30 days before issuing such license the President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate an unclassified numbered certification with respect to such application specifying (1) the foreign country or international organization to which such export will be made, (2) the dollar amount of the items to be exported, and (3) a description of the items to be exported. In addition, the President shall, upon the request of such committee or the Committee on International Relations of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request, a description of the capabilities of the items to be exported, an estimate of the total number of United States personnel expected to be needed in the foreign country concerned in connection with the items to be exported and an analysis of the arms control impact pertinent to such application, prepared in consultation with the Secretary of Defense. A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in paragraph (2) and the details of the description specified in paragraph (3) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States.

“(d) In the case of an approval under section 38 of this Act of a United States commercial technical assistance or manufacturing licensing agreement for or in a country not a member of the North Atlantic Treaty Organization which involves the manufacture abroad of any item of significant combat equipment on the United States Munitions List, before such approval is given, the President shall submit a certification with respect to such proposed commercial agreement in a manner similar to the certification required under subsection (c) containing comparable information, except that the last sentence of such subsection shall not apply to certifications submitted pursuant to this subsection.”

(b) The amendment made by subsection (a) of this section shall apply with respect to letters of offer for which a certification is transmitted pursuant to section 36(b) of the Arms Export Control Act on or after the date of enactment of this Act and to export licenses for which an application is filed under section 38 of such Act on or after such date.