

1977

Arms Transfers by the United States: Merchant of Death or Arsenal of Democracy

Archibald S. Alexander

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [Commercial Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Archibald S. Alexander, Arms Transfers by the United States: Merchant of Death or Arsenal of Democracy, 10 *Vanderbilt Law Review* 249 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol10/iss2/2>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Journal of Transnational Law by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

ARMS TRANSFERS BY THE UNITED STATES: MERCHANT OF DEATH OR ARSENAL OF DEMOCRACY

Archibald S. Alexander*

TABLE OF CONTENTS

I.	INTRODUCTION	249
II.	THE LEGAL FRAMEWORK	250
	A. <i>International Agreements</i>	250
	B. <i>Domestic Legislation</i>	251
III.	INTERNATIONAL SECURITY ASSISTANCE & ARMS EXPORT CONTROL ACT OF 1976	252
	A. <i>Title I: Military Assistance Program</i>	252
	B. <i>Title II: Arms Export Controls</i>	253
	C. <i>Title III: General Limitations</i>	257
	D. <i>Title IV: Provisions Relating to Specific Regions or Countries</i>	258
	E. <i>Title V: Miscellaneous Authorizations</i>	260
	F. <i>Title VI: Miscellaneous Provisions</i>	260
IV.	PROCEDURE FOR ARMS TRANSFERS	261
	A. <i>Present Procedure</i>	261
	B. <i>Inadequacies of the Present Procedure</i>	262
V.	THE PROS AND CONS OF ARMS TRANSFERS	263
	A. <i>The Proponent's Arguments</i>	263
	B. <i>The Opponent's Arguments</i>	264
VI.	CONCLUSIONS	265

I. INTRODUCTION

Controversial events of the last few years have presented the American public with the question whether arms transfers by the United States have gotten out of hand. Has our country become the chief "merchant of death," as believed by many at the time of Senator Nye's investigation soon after World War I, or is it the "arsenal of democracy," as generally believed during and after World War II? This article deals with transfers of all kinds of non-nuclear arms from or by the United States, and it examines all

* President and a Director, Arms Control Association. A.B., 1928, Princeton; J.D., 1931, Harvard.

types of transfers including grants, transfers on credit, government to government sales, and commercial transactions in which the seller is part of the private sector of the United States. There is an analysis of statutory law and applicable international agreements, followed by a description of the machinery that the United States Government uses to make decisions regarding transfers. The statistics are then discussed, focusing primarily on the current programs, but seeking to discern trends. There is a discussion of United States foreign affairs and military policy involved in arms transfers and a consideration of economic factors. In conclusion there are some comments about the future.

II. THE LEGAL FRAMEWORK

A. *International Agreements*

Of the numerous international arms control agreements, treaties, and protocols, only some have been effective; others have been disregarded by nations considering it in their national interest to do so. The agreements that have been wholly or partially effective include: the Antarctic Treaty, effective in 1961; the Treaty of Tlatelolco, effective in 1971, forbidding nuclear weapons in most of Latin America; the Limited Test Ban Treaty of 1963, which entered into force in 1963 and prohibited nuclear testing in the atmosphere, outer space, or under water; the Non-Proliferation Treaty, effective in 1970, designed to prevent the spread of nuclear weapons; various strategic arms limitation agreements between the United States and the U.S.S.R.; the Geneva Protocol of 1925, which was probably disregarded in World War II, adhered to by the United States in 1975; subsequent bacteriological and chemical warfare treaties prohibiting use or manufacture of these types of weapons; and the Seabed Arms Control Treaty, which entered into force in 1972.

International agreements that have been honored primarily in the breach include several relating to the arming of countries in Southeast Asia and the Western embargo against the People's Republic of China (PRC) during the Korean War. An embargo on Rhodesia, imposed by the United Nations Organization in 1968, and an embargo on Cuba, imposed by most of the countries of North and South America, were increasingly disregarded by many nations. Soon after the establishment of the State of Israel, the United Kingdom, France, and the United States reached a relatively informal understanding designed to limit arms transfers to the Middle East. This understanding was effective for several years, until about 1956, when Egypt nationalized the Suez Canal.

The British, French, and Israelis attempted to capture the Canal, and Egypt and other Middle Eastern countries turned to the Soviet Union for arms.

B. *Domestic Legislation*

The law of arms transfers has recently been evolving more rapidly as Congress and the public become increasingly aware of the magnitude of the United States arms trade. The latest comprehensive congressional legislation is the International Security Assistance and Arms Export Control Act of 1976.¹ This act carries forward the trends present in earlier amendments to the Foreign Assistance Act of 1961² and related statutes.

An important document is the 1974 Committee Print of the House Committee on Foreign Affairs entitled "The International Transfer of Conventional Arms." This document, which consists of a report to the Congress by the Arms Control and Disarmament Agency (ACDA)⁴ describing the period from 1961 through 1971, was submitted to the Congress in response to the Roth Amendment to the Foreign Relations Authorization Act of 1972.⁵ As an Appendix, the Print contained valuable and sometimes critical comments on the ACDA report by Charles R. Gellner of the Congressional Research Service.

After Congress, the news media, and at least certain sectors of the United States public had had the opportunity to analyze the 1974 ACDA report, there followed hearings and a report by the Senate Committee on Foreign Relations.⁶ Although legislation embodying the recommendations of the Committee was vetoed by President Ford, the report is of special interest because its Appendix contains an "index of legislative veto provisions." One of the issues presented by recent congressional action in the arms transfer field is the constitutionality of the "legislative veto" authorized by

1. 90 Stat. 729 (1976).

2. 22 U.S.C. § 2301 (1970).

3. U.S. ARMS CONTROL AND DISARMAMENT AGENCY, 93d CONG., 2D SESS., REPORT TO CONGRESS ON THE INTERNATIONAL TRANSFER OF CONVENTIONAL ARMS (Comm. Print 1974).

4. The Departments of State and Defense assisted in the preparation of this report.

5. 22 U.S.C. § 2571 (Supp. II, 1970).

6. SENATE COMM. ON FOREIGN RELATIONS, INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976, S. REP. NO. 605, 94th CONG., 2D SESS. (1976).

Sections 211 and 305 of the International Security Assistance and Arms Export Control Act of 1976,⁷ which became effective on July 1, 1976.

The foregoing summary of recent legislative action gives some idea of the complex evolution of the present law. This evolution exemplifies the changing nature of the roles of the executive and legislative branches of the United States Government. The formation of the North Atlantic Treaty Organization (NATO) and the commencement of the Korean War triggered the development of broad policies on foreign military assistance and detailed plans for arms transfers by the executive branch. During the 1950s and 1960s the Congress generally approved the policy determinations of the executive branch and provided the necessary funding. In the 1960s Congress continued to allow large transfers of arms and credits to the government of South Vietnam and to other countries in the Far East. The hostilities in the Middle East in 1967 and 1973, the oil embargo of 1973, and the later oil price increases by the Organization of Petroleum Exporting Countries (OPEC) were also reasons for continued congressional acquiescence in the executive branch actions. The following summary of the International Security Assistance and Arms Export Control Act of 1976 will provide a basis for understanding the present statutory setting for arms transfers.⁸

III. INTERNATIONAL SECURITY ASSISTANCE & ARMS EXPORT CONTROL ACT OF 1976

A. *Title I: Military Assistance Program*

1. *Authorization.*—Appropriation of \$196 million is authorized for 1976, and \$177 million for 1977, for limited military assistance *grants* for limited purposes, together with smaller amounts for “administrative and other related purposes” (section 101). There is a limitation on the amounts (which aggregate more than the totals authorized) that may be allocated to eight individual countries out of the foregoing total amounts. Two of these countries are Greece and Turkey, and the others are in Asia or the Middle East.

7. The Act should be read in conjunction with the Joint Committee Print entitled “Legislation on Foreign Relations, with Explanatory Notes.” HOUSE COMM. ON INTERNATIONAL RELATIONS & SENATE COMM. ON FOREIGN RELATIONS, 94TH CONG., 2D SESS., LEGISLATION ON FOREIGN RELATIONS (Comm. Print 1976).

8. 90 Stat. 729 (1976). In the following discussion all sections analyzed are from the 1976 Arms Export Control Act unless otherwise noted.

2. *Special Authority.*—The Act permits the President to order articles and “defense services” from the Department of Defense, provided he first determines and reports to Congress: (1) “that an unforeseen emergency exists which requires immediate military assistance to a foreign country or international organization;” (2) “that a failure to respond immediately to that emergency will result in serious harm to vital United States security interests;” and (3) that there is no other provision of law under which the emergency can be met (section 102). For any fiscal year, the total value of articles and services under this section may not exceed \$67.5 million.

3. *Stockpiling of Defense Articles for Foreign Countries.*—Section 103 provides for planned stockpiling of defense articles for foreign countries up to an aggregate value of \$93.75 million for the period July 1, 1975, to September 30, 1976, and \$125 million for the 1977 fiscal year.

4. *Termination of Military Assistance Advisory Groups and Missions.*—Section 104 forbids the creation of any foreign military assistance advisory group or similar organization after September 30, 1977, unless specifically approved by Congress. In addition, not more than three members of the United States armed forces may be assigned to the head of each United States diplomatic mission in connection with “international military education and training.”

5. *Termination of Authority to Furnish Military Assistance.*—Section 105 partially terminates the furnishing of military assistance by grants—*i.e.*, for little or no consideration—as of September 30, 1977, and completely terminates such grants as of September 30, 1980.

6. *International Military Education and Training.*—Section 106 authorizes the appropriation of \$27 million for fiscal year 1976 and \$30.2 million for fiscal year 1977 for military education and training of foreigners through attendance at military educational and training facilities or special courses of instruction in observation and orientation, whether in the United States or abroad. Overseas military education and training are authorized only when “reported and justified” by the President to Congress.

B. *Title II: Arms Export Controls*

1. *Arms Sales Policy.*—Section 201 changes the title of “The Foreign Military Sales Act” to “Arms Export Control Act.” Section 202 strikes out the last paragraph in the congressional statement of policy in the Foreign Military Sales Act, which had advo-

cated an increased commercial role and less United States Government participation in arms and defense service transfers. Instead, the following two paragraphs were substituted:

It shall be the policy of the United States to exert leadership in the world community to bring about arrangements for reducing the international trade in implements of war and to lessen the danger of outbreak of regional conflict and the burdens of armaments. United States programs for or procedures governing the export, sale, and grant of defense articles and defense services to foreign countries and international organizations shall be administered in a manner which will carry out this policy.

It is the sense of the Congress that the President should seek to initiate multilateral discussions for the purpose of reaching agreements among the principal arms suppliers and arms purchasers and other countries with respect to the control of the international trade in armaments. It is further the sense of Congress that the President should work actively with all nations to check and control the international sale and distribution of conventional weapons of death and destruction and to encourage regional arms control arrangements. In furtherance of this policy, the President should undertake a concerted effort to convene an international conference of major arms-supplying and arms-purchasing nations which shall consider measures to limit conventional arms transfers in the interest of international peace and stability.

Earlier passages in the statement of policy objectives reiterate language in the Arms Control and Disarmament Act providing that "an ultimate goal of the United States continues to be a world which is free from the scourge of war and the dangers and burdens of armaments," and assert that regional arms control and disarmament agreements are to be encouraged and arms races discouraged. These passages also provide that sales and guaranties are not to be approved if "they would have the effect of arming military dictators who are denying the growth of fundamental rights or social progress to their own people," though this limitation may be waived by the President if "he determines it would be important to the security of the United States and promptly so reports" to the Congress.

In this section Congress indicates the direction which the whole statutory scheme for arms transfers is now taking. It should, however, be read in conjunction with part of the Foreign Assistance Act, 22 U.S.C. § 2301.⁹ The troublesome ambivalence of the na-

9. Foreign Assistance Act of 1961, 22 U.S.C. § 2301 (1970).

tional objectives appears clearly when these two sections are contrasted. The two inconsistent objectives are the reduction of the risk of war, the encouragement of "regional arms control and disarmament agreements," and the discouragement of "arms races," on the one hand, and the support of alliances, particularly NATO, the encouragement of democracy and free enterprise abroad, and the protection of other countries against "international Communism" on the other. Many of the difficulties and inconsistencies of the arms transfer program arise when these differing policies are implemented.

2. *Transfer of Defense Services.*—Section 203 requires the President to justify any transaction involving training and "defense services" by a finding that the transaction "will strengthen the security of the United States and promote world peace."

3. *Approval for Transfer of Defense Articles.*—Section 204 adds new provisions requiring the President, before consenting to transfer of "a defense article, or related training or other defense service," whether by sale or grant, to give 30-day notice to Congress, describing what is to be transferred, the recipient, the reasons for the transfer, and the intended date thereof.

4. *Sales From Stocks.*—Section 205 deals with sales of defense articles and services for U.S. dollars from Department of Defense stocks "to any eligible country or international organization." It provides that after September 30, 1976, there may be included in the price of defense articles or services charges for administrative services and "a proportionate amount of any non-recurring costs of research, development, and production of major defense equipment." Section 206 prohibits sales of defense articles and services that have a significant adverse effect on the combat readiness of the armed forces of the United States. The President is required to transmit to the Congress a statement including "a full description of the impact which the proposed sale will have on the armed forces of the United States."

5. *Annual Estimate and Justification for Sales Program.*—Section 209 requires the President to transmit to Congress an annual estimate of anticipated sales to each country and an explanation of the foreign policy and national security considerations involved. In addition, he must transmit for each recipient country "an arms control impact statement," which must include "an analysis of the relationship between expected sales to each country and arms control efforts relating to that country" and "the impact of such expected sales on the stability of the region" where the recipient is located. This section also requires the President to

submit additional information requested by the Senate Committee on Foreign Relations or the House Committee on International Relations within 30 days of receipt of the request; and the President is required "to make every effort" to treat information submitted as unclassified.

6. *Military Sales Authorization.*—Section 210 limits foreign military sales to not more than \$1,039,000,000 for fiscal year 1976 and \$740 million for fiscal year 1977. It also permits credit sales of not more than \$2,374,700,000 for fiscal year 1976, "of which not less than \$1,500,000,000 shall be available only for Israel," and "of not more than \$2,022,100,000 shall be available only for Israel." Half of the amounts due from Israel on these credit sales need not be repaid, and repayment of the balance is to be "in not less than twenty years, following a grace period of ten years."

7. *Reports on Commercial and Governmental Military Exports.*—Section 211 requires quarterly reports, unclassified, with certain exceptions, by the President to the Congress, listing all letters of offers to sell and all export "licenses and approvals" for commercially sold articles of "any major defense equipment" for \$1 million or more. Before issuance of letters 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" information thereon must be submitted by the President to the Congress, including, if requested by Congress, "an analysis of the arms control impact pertinent to such offer to sell, prepared in consultation with the Secretary of Defense."¹⁰ Within 30 calendar days after receiving this information, the Congress may adopt a concurrent resolution objecting to the sale, which is thereby prohibited unless the President states that an emergency exists. A similar provision governs sales by corporations or individuals, but it lacks the concurrent resolution "veto power." Information regarding American personnel—military or civilian—who would be involved in a foreign country in connection with or as a result of

10. This provision is similar to 89 Stat. 756 (1975), the Foreign Relations Authorization Act, Fiscal Year 1976, effective Nov. 29, 1975, which added to § 414 of the Mutual Security Act of 1954, 22 U.S.C. § 1934 (1970), paragraphs emphasizing "coordination" with the Director of ACDA. It requires decisions whether to issue export licenses to "take into account the Director's opinion as to whether the export of an article will contribute to an arms race, or increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements."

the sale must be contained in the information provided to the Congress.

8. *Miscellaneous.*—Sections 212 through 215 contain provisions for: (1) controls of licenses of both exports and imports of arms by Americans in the private sector; (2) cancellation of contracts “if the national interest so requires;” (3) inclusion of administrative expenses of the United States Government “primarily for the benefit of any foreign country,” in the sales prices; and (4) reports on foreign sales including “excess defense articles.” Section 216 contains definitions.

C. *Title III: General Limitations*

1. *Human Rights.*—Section 301 articulates the policy of the United States favoring “respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” This policy is made applicable to security assistance programs. Upon receipt of requested information from the executive branch, the Congress may adopt a joint resolution “terminating, restricting, or continuing security assistance” for any particular country. “[T]orture or cruel, inhuman, or degrading treatment or punishment” and “prolonged detention without charges and trial” are among the human rights violations to which this section applies.

Section 302 is aimed at any foreign country which prevents “any United States person . . . from participating in the furnishing of defense articles or defense services . . . on the basis of race, religion, national origin, or sex.” Upon receipt of information from the executive branch, the Congress may adopt a joint resolution terminating or restricting a transaction or sale.

Section 303 requires the President to terminate the foreign assistance or arms transfer program to any government “which aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism,” except in cases in which the President justifies to Congress that the national security of the United States requires otherwise.

2. *Ineligibility.*—Section 304 makes any country that breaks an arms transfer agreement limiting the use of arms or services to particular purposes ineligible for assistance. Among the breaches resulting in ineligibility are (1) the unauthorized use of arms or services, (2) the transfer of arms or services to the control of others without the consent of the President, and (3) the failure to keep the articles received secure.

Section 305 prohibits economic or military assistance to any

country that "delivers nuclear reprocessing or enrichment equipment, materials, or technology to any other country," or receives the same, unless multilateral or International Atomic Energy safeguards are agreed to. Again, the Congress may terminate or restrict assistance to any country in violation of section 305 by joint resolution.

D. *Title IV: Provisions Relating to Specific Regions or Countries*

1. *The Middle East.*—Congress expects that the United States will determine "Middle East Policy as circumstances may require," so that nothing agreed to in connection with the Early Warning System in Sinai or under the present Act is to be construed as a commitment beyond the limited area of the Sinai system (section 401).

2. *Cyprus.*—The authorization for aid to Cyprian refugees has been increased from \$30 million to \$40 million (section 402).

3. *Turkey.*—The President may, for fiscal years 1976 and 1977, suspend provisions that forbid the transfer of defense articles and defense services to Turkey to the extent he determines necessary "to enable Turkey to fulfill her defense responsibilities" as a member of NATO. No more than \$125 million worth of transfers may be authorized for each of the fiscal years. The President's suspension power exists only if Turkey "observes the cease-fire on Cyprus, does not increase its military forces or its civilian population on Cyprus, and does not transfer to Cyprus any United States supplied arms, ammunition, or implements of war" (section 403).

4. *Angola.*—Assistance which would help "any nation, group, organization, movement, or individual to conduct military or paramilitary operations in Angola" is forbidden (section 404). Congress believes that Soviet intervention in Angola, including the support of Cuban armed forces there, is inconsistent with "detente," the 1975 Helsinki Agreement, and "the spirit of recent bilateral agreements" between the Soviet Union and the United States (section 405).

5. *Chile.*—Section 406 forbids the furnishing of arms, military assistance, credits, military education, or training to Chile. Provision is made, however, for economic assistance of \$27.5 million for the period from July 1, 1976, through September 30, 1977. This amount may be doubled if the President certifies in writing to the Congress that Chile does not engage in "a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punish-

ment, prolonged detention without charges or trial, or other flagrant denials of the right to life, liberty, or security of the person," has permitted unimpeded investigation by "internationally recognized commissions on human rights," and "has taken steps to inform the families of prisoners of the condition of and charges against such prisoners."

6. *The Indian Ocean*.—Section 407 states "that the President should undertake to enter into negotiations with the Soviet Union intended to achieve an agreement limiting the deployment of naval, air, and land forces" of the two countries "in the Indian Ocean and littoral countries."

7. *Mexico*.—Section 408 calls upon the President to try to insure that international cooperation "to restrict traffic in dangerous drugs" is consistent with respect for fundamental human rights. Reference is made to concern "over treatment of United States citizens detained in Mexico."

8. *Portugal*.—Section 409 recommends that the President act to alleviate the emergency food needs in Portugal.

9. *Lebanon*.—Section 410 deplores the situation in Lebanon, including the possibility that it will be exploited to the detriment of Israel. Sections 414 and 416 authorize \$15 million for housing reconstruction in Lebanon and \$20 million for the "relief and rehabilitation of refugees and other needy people in Lebanon."

10. *Korea*.—Section 411 asks the President to transmit to Congress a report reviewing the Korean progress in modernizing its armed forces "so as to achieve military self-sufficiency by 1980," the role of the United States "in mutual security efforts" in Korea, and the prospects of "phased reduction of United States Armed Forces assigned to duty" in Korea. Section 412 reads as follows:

The Congress views with distress the erosion of important civil liberties in the Republic of Korea and requests that the President communicate this concern in forceful terms to the Government of the Republic of Korea within sixty days after enactment.

11. *Indochina*.—Existing law dealing with assistance to Indochina, except for provisions regarding contracts funded or approved for funding by the Agency for International Development prior to June 30, 1975, has been repealed (section 413).

12. *Italy*.—Section 415 authorizes an appropriation of \$25 million for fiscal year 1976 to furnish assistance "for the relief and rehabilitation of the people who have been victimized by the recent earthquake in Italy."

E. *Title V: Miscellaneous Authorizations*

1. *Security Supporting Assistance.*—Section 501 authorizes appropriation by the President of \$1,766,200,000 for fiscal year 1976 and \$1,860,000,000 for fiscal year 1977 for security supporting assistance. Of the 1976 amount, not less than \$65 million is available only for Greece, \$730 million is available only for Israel, and \$705 million is available only for Egypt. Of the total \$1.86 billion for fiscal year 1977, not less than the following amounts are available: Israel, \$785 million; Egypt, \$750 million; Zambia, \$27.5 million; and Zaïre, \$27.5 million. In the case of Zambia and Zaïre, no funds may be used for “military, guerrilla or paramilitary activities in either such country or in any other country.”

2. *Middle East Special Requirement Fund.*—Section 502 authorizes \$50 million for fiscal year 1976 and \$35 million for fiscal year 1977 for the Middle East Special Requirement Fund, available to assist Egypt and Israel in connection with carrying out and paying for the Sinai Early Warning System, and for United States contributions of \$12 million in each of those years towards the deficit of the United Nations Relief and Works Agency for Palestine refugees in the Middle East. Except section 507, which authorizes “such sums as may be necessary for the fiscal year 1977 to carry out international agreements or other arrangements for the use by United States Armed Forces of military facilities in Spain, Greece, or Turkey,” the other sections of Title V do not directly relate to arms transfers.

F. *Title VI: Miscellaneous Provisions*

Section 601 deals with expedited procedure in the Senate in case a joint, concurrent, or other resolution regarding arms transfers is considered. Section 604 requires the President to report in considerable detail, “each payment, contribution, gift, commission, or fee” in connection with government-to-government sales of defense articles or services, and also in connection with commercial sales thereof.

Section 607 requires the President to submit to Congress a report on “information which substantiates that officials of a foreign country receiving international security assistance” accepted “illegal or otherwise improper payments” from an American corporation in return for a contract to buy defense articles or services, or extorted or tried to extort something of value for granting a permit to do business in that country. The report must recommend whether the United States should continue the assistance program for that country.

IV. PROCEDURE FOR ARMS TRANSFERS

A complex process precedes any particular arms transfer by or from the United States. In most cases, the process begins with three participants: the manufacturer or owner of the article, the foreign government, and the American military personnel assigned to the particular country as members of the Military Assistance Advisory Group. If the transfer includes "defense services," an American corporation may not be involved, although frequently the services involve training, maintenance, or spare parts in connection with weapons, such as aircraft, tanks or naval vessels, originating in the United States.

A. *Present Procedure*

In the case of weapons sales, the American manufacturer seeking to increase sales often provides the chief initial stimulus for the negotiation of a weapons transfer. Also participating at a fairly early stage are the regional bureaus and country desks at the State Department and the military assistance group members serving overseas.

When agreement has been reached between the purchasing country and the American manufacturer on the details of a particular transfer, the transfer must be approved by the United States Government. Although the determination of overall policy and the final decision on a particular transfer are made by the Secretary of State, the Secretary of Defense is responsible for fitting the weapon to the need. Recently, Congress has added the requirement of statements as to the impact on arms control and disarmament, which are the responsibility of the State Department and the Arms Control and Disarmament Agency, but which must be "prepared in consultation with the Secretary of Defense." In addition, in the case of "any major defense equipment sold under a contract in the amount of \$7,000,000 or more," and in the case of "defense articles or defense services sold under a contract in an amount of \$25,000,000 or more" there must be advance notice to the Speaker of the House and to the Chairman of the Senate Committee on Foreign Relations before issuance of an export license. By concurrent resolution Congress may, within 30 calendar days of the receipt of such a notice, forbid the transfer.

The initial procedure calls for a paper describing the proposed transfer, which is circulated to the Department of Defense, the Department of State, and the Arms Control and Disarmament Agency. If there is disagreement among the groups on the acceptability of the proposed transfer, the final decision is made by the

Secretary of State or his representative, unless the matter is of sufficient importance to go before the National Security Council or the President.

B. *Inadequacies of the Present Procedure*

This procedure is inadequate. Although there are published statements of principles to be applied, most decisions appear to be made *ad hoc*, in response to the pressures of the moment. Admittedly, each program and each country involve particular circumstances, but overall programs like those in recent years for Iran and Saudi Arabia (described below) raise difficult problems if measured against what is desirable in the long run. The State Department arms transfer policy has been unsupported by any coherent, long-term plan. Rather, it stems from pragmatic short-term efforts to maintain a balance of world power.

The Arms Control and Disarmament Agency has played a minor role in spite of new laws giving it the right to participate. In August 1976, ACDA submitted to Congress eleven classified impact statements on major weapons programs, including the cruise missile, the B-1 bomber, the Trident submarine, and advanced missiles and shells.¹¹ The eleven statements were largely repetitions of earlier descriptions of technical characteristics of the weapons. Only one statement was more than a page long. Congressman Aspin of Colorado, a Democrat and a member of House Armed Services Committee, described the statements as "totally useless because they are absurdly superficial."¹²

The executive branch must report any major arms transfer program to the Congress, which may ask for additional information. Sometimes there is informal discussion between members of Congress or committee staff and the executive branch, which may result in a modification. Examples of modification occurred as to transfers of Hawk missiles to Jordan (the amount transferred was reduced), the transfer of C-130s to Egypt, and a program of air-to-air and air-to-ground missiles for Saudi Arabia.¹³

11. N.Y. Times, Sept. 12, 1976, § 1, at 30, col. 4.

12. *Id.* See also SCIENCE, Oct. 1, 1976, at 36; DEFENSE SPACE DAILY, Sept. 27, 1976, at 141.

13. As to the last-mentioned case, there had been an earlier agreement to transfer for cash to Saudi Arabia 1,000 Maverick TV-guided missiles or bombs. A second installment of 1,500 Mavericks was proposed by the executive branch. Negotiations between the legislative and executive branches, after the notice procedure, obtained a reduction to 650. Subsequently, the Senate Committee on

V. THE PROS AND CONS OF ARMS TRANSFERS

A. *The Proponent's Arguments*

Some of the arguments made in favor of arms transfers are listed here.

1. Production in excess of the orders placed for the United States military services is likely to increase corporate profits, provide employment, and produce other advantages resulting from greater volume.

2. Under present legislation, the cost of the items that the United States purchases for itself will be reduced by the share of research and development and production costs included in the purchase price paid by the foreign government.

3. Production beyond the needs of the United States military services may bring lower unit costs and longer maintenance of the production line, providing a greater period during which additional units may be purchased.

4. The foreign government and its military services want an adequate defense capability and more advanced equipment, preferably the most advanced available, for reasons of prestige as well as of utility.

5. An improvement in the American balance of payments will result from cash sales, and there may be more secure access to needed raw materials, particularly petroleum. The oil embargo and subsequent price increases imposed by the Organization of Petroleum Exporting Countries (OPEC) obviously motivated greater American arms sales. Unfortunately, the dependence of the United States and many of its allies (*e.g.*, NATO and Japan) on petroleum as a source of energy has been increasing.

6. In areas of confrontation, such as the Middle East, and the adjacent OPEC countries, United States foreign policy requires the bolstering of the defense capability of certain states. There are foreign policy motivations, including ensuring access to petroleum and containment of Communism, for arms transfers to each Middle Eastern country.

Foreign Relations voted eight to six to block the sale of 650. After intense lobbying by representatives of the executive branch, reported to include Vice-President Rockefeller, and oil and manufacturing corporations which are doing business with Saudi Arabia, and, of course, the pro-Israel lobbyists on the other side, the Committee vote was reversed, ensuring for all practical purposes that the program for 650 Mavericks would not be stopped. *Washington Post*, Sept. 28, 1976, at A1, col. 4; *Washington Post*, Sept. 2, 1976, at A10, col. 1.

7. A foreign country will tend to be more friendly to the United States if arms, spare parts, training, and, perhaps, maintenance are carried out by American personnel.

In addition to these arguments there is the fear that if the United States does not supply an item, a substitute, even if not of equal quality, will be obtained from another arms exporting country. The Soviet Union, France, Great Britain, and, to a smaller extent, other Communist and Free World countries have become substantial exporters of arms. If the Soviet Union, the People's Republic of China, or another Communist country supplies arms, and perhaps spare parts, maintenance and training, the acquiring country, especially if in the "Third World," may be drawn into the Communist orbit.

B. *The Opponent's Arguments*

1. Given reasonable notice and advance planning, the companies and the localities involved in defense production can usually convert employees and facilities to production of non-military items; the manufacture of civilian products is fundamentally more useful to society than the production of articles designed to destroy people and goods.

2. If sophisticated equipment is transferred (and sophistication is a relative matter, depending on country and region), there may be an increase in the risk of conflict; and if one develops, it is likely to be more severe.

3. Some purchases may set off a local arms race with neighboring countries.

4. The recipient, particularly if a developing country, may have insufficient resources for the social needs of its people—for example, in the fields of education, health, and welfare; therefore, it should not increase military spending.

5. Arming neighboring countries that are hostile to one another may increase the probability and severity of hostilities, resulting in a greater risk of interruption of petroleum supplies and of Communist intervention.

6. There is an appreciable risk to the United States and its allies in the furnishing of arms to countries that may not remain friendly or abide by restrictions on transfers of weapons to countries not authorized to receive them.¹⁴

14. There have been examples recently in the Middle East of the use of weapons received from NATO countries, including the United States, by countries engaged in war against our close ally, Israel. And there have been instances as

7. The presence of United States personnel, whether civilian or military, brings a risk of their unwanted involvement. For instance, three American civilians, employed by Rockwell International of California, were ambushed and shot to death by Iranian rebels in August 1976.¹⁵

8. There are risks that some of the countries acquiring American weapons, particularly sophisticated attack weapons, may become involved in a war that could require our military intervention. If Iran were to become embroiled with the Soviet Union, Iraq, or Afghanistan, a serious problem would arise for the United States. Israel faces varying degrees of hostility from Saudi Arabia, Egypt, Syria and Jordan. American weapons are being transferred to some of those Arab countries as well as to Israel.

VI. CONCLUSION

The preceding discussion has given some indication of the great size and breadth of the United States arms transfer program and has presented some arguments for and against such a vast program. Thorough reconsideration of this program has begun, and some moves to alter and perhaps diminish it have been made. There is a new law, but the new executive branch personnel and organization, at least in the Department of State, have not sufficiently been tested. The effect of the congressional "veto power" is not yet clear. President Carter will certainly influence future programs. The energy question, as well as OPEC price changes, could affect the pressure on the United States to offset balance of payments deficits caused by petroleum purchases with sales of arms for cash.

One must hope that we will not continue with mindless arms sales. "The present policy clearly creates unacceptable risks of American military involvement that may, if not quickly checked, be beyond the control of Congress or future Administrations."¹⁶

It is difficult to form a valid general opinion about arms transfers because applicable considerations differ in particular cases, de-

far back as 1949, in the case of China, when large quantities of arms supplied by the United States have been captured by Communist countries and used against American or friendly forces. This occurred in China before the Korean War and recently in Indo-China.

15. N.Y. Times, Aug. 30, 1976, at 1, col. 1. As of February 1976, there were reported to be 1,435 United States Department of Defense personnel assigned to Iran, with 1,941 dependents accompanying them. *Id.*

16. N.Y. Times, Aug. 11, 1976, at 34, col. 1.

pending upon, among other things, (a) which country is involved, (b) the situation at the time of the transfer program, (c) the region and neighbors of the country, and (d) the quantity and degree of sophistication of the arms to be transferred.

In any one case, there will be American foreign and defense policy considerations, economic considerations for both the United States and the recipient country, the question of the degree of dependence by the recipient upon the United States as its arms supplier, and the availability and nature of other potential sellers. Different and special factors apply to a NATO ally, to Israel, to suppliers of oil and other critical commodities, to Iran and Saudi Arabia and other countries in that part of the world, which are believed to constitute barriers against Soviet or other Communist expansion in the free or uncommitted world, and to Japan and West Germany, which are subject to treaty limitations on the right to manufacture arms domestically.

The United States generally has been motivated by a strong streak of idealism. It has often supplied large amounts of food and other necessities to less fortunate countries, particularly in times of disaster or crisis. Notable examples are the relief program for Western Europe immediately after World War I, and the Marshall Plan, not long after World War II.¹⁷ Is the sale of large quantities of expensive weaponry consistent with the moral standards of the United States? During the war between India and Pakistan, both sides used weapons made by the United States as well as weapons from other Western countries and from the Soviet Union and its allies. In past hostilities between Israel and nearby countries, we have heavily and generously armed Israel as well as her opponents. The American contribution to the casualties is troubling to many.

It is also repugnant to many Americans to observe the United States supplying arms to governments that are unsavory by our standards. It sometimes seems as if the unsavory becomes savory when it appears to be on our side as against Communism. So far, we have not supplied Communist countries, except unintentionally on occasions like the defeat of Chiang Kai-shek by the Chinese Communists, when the latter captured enormous stocks of American arms that we had supplied to Chiang Kai-shek, or like the defeat of our recent allies in Indochina.

To reduce arms transfers, the following steps must be taken:

1. American consumption of energy in the form of petroleum products must be reduced through conservation and the develop-

17. The Marshall Plan help was financial and technical and was accompanied by substantial help for the defense of Western European countries, chiefly through NATO.

ment of alternative sources of energy, with due regard to problems of pollution and safety. This will eliminate the principal economic pressure for arms transfers.

2. The United States should actively seek an international agreement curtailing arms transfers. The other nations should first include other non-Communist suppliers, such as NATO allies and Israel; and then a proposal should be made to the Soviet Union and its allies and to the People's Republic of China. No encouragement should be given to the development of indigenous arms production in the "Third World" countries.

