

MEMORANDUM

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Subject: Emergency Arms Sales to the Middle East: Context and Legislative History

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This memorandum was prepared to enable distribution to more than one congressional office.

This memorandum provides background information and legislative history related to the use of emergency authorities to sell arms abroad, with specific reference to the Trump Administration's May 2019 invocation of those authorities and three other past examples. Please contact the authors if you need further assistance. The content of this memorandum may be used to respond to other congressional requests or in other CRS products.

Overview

The Trump Administration's May 2019 invocation of an emergency waiver to immediately sell arms to Saudi Arabia, the United Arab Emirates, and Jordan without congressional review has drawn intense scrutiny from some Members of Congress and has raised fundamental questions about executive-legislative relations. This memorandum provides information on the sales notified by the Administration on May 24, 2019, the emergency justification under which they were notified (in the Arms Export Control Act, AECA), and the congressional response to them; the war in Yemen and congressional attempts to alter the U.S. role in it; other presidential authorities to waive congressional review of arms sales in case of an emergency; and discussion of possible options for Congress to consider. Additionally, it includes as appendices background on the legislative history of the AECA emergency waiver provisions and detailed analysis of three previous sales made using emergency waivers.

May 24, 2019 Notifications and Congressional Response

On May 24, 2019, the Trump Administration formally notified Congress of immediate foreign military sales and proposed export licenses for direct commercial sales of training, equipment, and weapons with a possible value of more than \$8 billion, including sales of precision guided munitions (PGMs) to Saudi Arabia and the United Arab Emirates (UAE), and the transfer of PGMs by the UAE to Jordan. Other notified sales include F-15 Engines and Support for Saudi Arabia and Javelin Anti-Tank Missiles and Patriot Guidance Enhanced Missiles for the UAE. For a complete list, see **Appendix A**.

In making the notifications, Secretary of State Michael Pompeo invoked emergency authority codified in sections 36(b)(1), 36(c)(2), 36(d)(2), and 3(d)(2) of the Arms Export Control Act (AECA), as amended (22

U.S.C. 2776). The AECA provides for 15- and 30-day congressional review periods for arms sales, leases, and transfers meeting specific value and recipient criteria.¹ However, if the President states in a formal notification to Congress that “an emergency exists” requiring the sale, export license, or technical assistance and manufacturing license of arms and related materiel, “in the national security interests of the United States,” that waives the requirements for congressional review, and the President is free to proceed with the sale, export, or licensing. The President must provide Congress at the time of this notification a “detailed justification” for his/her determination.

The current arms sales to Saudi Arabia, the UAE, and Jordan come amid heightened U.S.-Iranian tensions and renewed attacks by the Yemen-based Houthis against Saudi infrastructure.² In the justification for the use of emergency authority under the AECA, Secretary of State Pompeo wrote to Congress that:

Iranian malign activity poses a fundamental threat to the stability of the Middle East and to American security at home and abroad.... The rapidly-evolving security situation in the region requires an accelerated delivery of certain capabilities to U.S. partners in the region.... Such transfers, whether provided via the Foreign Military Sales system, or through the licensing of Direct Commercial Sales, must occur as quickly as possible in order to deter further Iranian adventurism in the Gulf and throughout the Middle East.

CRS has no information about whether any related sale agreements have already been signed or if any related materiel has been transported or delivered to the countries in question. Some Members have reacted with statements of concern. House Foreign Affairs Committee Ranking Member Michael McCaul (R-TX) stated that “the President’s decision to use an emergency waiver on these sales is unfortunate and will damage certain future congressional interactions.”³ Senate Foreign Relations Ranking Member Bob Menendez (D-NJ) said in a statement:

In trying to explain this move, the Administration failed to even identify which legal mechanism it thinks it is using, described years of malign Iranian behavior but failed to identify what actually constitutes an emergency today, and critically, failed to explain how these systems, many of which will take years to come online, would immediately benefit either the United States or our allies and thus merit such hasty action.⁴

On June 5, 2019, a bipartisan group of seven senators introduced 22 separate Joint Resolutions of Disapproval against the sales. One cosponsor, Sen. Lindsey Graham (R-SC), expressed in a statement his concern about “the precedent these arms sales would set by having the Administration go around legitimate concerns of Congress.”⁵

U.S. Arms Sales and the War in Yemen⁶

Since the start of the Saudi-led coalition’s military intervention in Yemen over four years ago, some Members of Congress have sought to condition, delay, or disapprove the sale of various arms, particularly PGMs, to Saudi Arabia and the United Arab Emirates.

¹ For more background on congressional review procedures, see CRS Report RL31675, *Arms Sales: Congressional Review Process*, by Paul K. Kerr and CRS In Focus IF11197, *U.S. Arms Sales and Human Rights: Legislative Basis and Frequently Asked Questions*, by Paul K. Kerr and Liana W. Rosen.

² For more, see CRS In Focus IF11212, *U.S.-Iran Tensions Escalate*, by Kenneth Katzman.

³ Rebecca Kheel, “Furious lawmakers aim to block Trump’s Saudi arms sales,” *The Hill*, May 29, 2019.

⁴ Menendez on Trump Admin’s Decision to Flout Congress’ Role in Approving Arm Sales to Saudi Arabia, UAE, May 24, 2019.

⁵ Joe Gould, “Graham, Menendez offer action to thwart Trump arms sales to Saudi, UAE and Jordan,” *Defense News*, June 5, 2019.

⁶ For more, see CRS Report R43960, *Yemen: Civil War and Regional Intervention*, by Jeremy M. Sharp and CRS Report R45046, *Congress and the War in Yemen: Oversight and Legislation 2015-2019*, by Jeremy M. Sharp and Christopher M. Blanchard.

From the outset, Saudi leaders sought material and military support from the United States for the campaign. In March 2015, President Obama authorized “the provision of logistical and intelligence support to GCC-led military operations.” U.S. mid-air refueling of coalition aircraft began in April 2015 and ended in November 2018. Congress has taken an active role in debating and overseeing U.S. policy in the Arabian Peninsula, considering legislative proposals seeking to reduce Yemeni civilian casualties resulting from the coalition's operations; improve deteriorating humanitarian conditions; end restrictions on the flow of goods and humanitarian aid; combat Iranian support for the Houthis; and/or support continued efforts by the Saudi-led coalition and the United States to counter Al Qaeda and Islamic State forces in Yemen.

Many Members have appeared to view the conflict through the prism of a broader regional rivalry between Saudi Arabia and Iran, and the U.S. effort to limit Iran’s malign regional influence. Other lawmakers have viewed the Yemen conflict as indicative of what they perceive as problems in the U.S.-Saudi relationship, a concern that deepened after the killing of Saudi journalist Jamal Khashoggi by Saudi government personnel in October 2018.

Congress has considered but has not enacted proposals to curtail or condition U.S. defense sales to Saudi Arabia. The President’s announcement follows Congress’s recent passage, and President Trump’s veto, of S.J.Res. 7, which would have directed the President to end U.S. military support for Saudi operations in Yemen. Since 2018, Senator Menendez had objected to the formal notification of planned direct commercial sales to Saudi Arabia and the United Arab Emirates, and, under established inter-branch arrangements, the Trump Administration had abstained from proceeding with the formal notification.⁷

Other Emergency Arms Sales Authorities

Beyond the emergency waiver provisions in the AECA, Congress has included emergency waivers in other statutes that govern the circumstances under which the president may sell arms abroad.

- Section 514 of the Foreign Assistance Act of 1961 (FAA), as amended (22 U.S.C. 2321h) allows U.S. defense articles stored in war reserve stocks to be transferred to a foreign government through the Foreign Military Sale program (FMS). During the summer 2006 war between Israel and Hezbollah, Israel requested that the United States expedite the delivery of precision-guided munitions to Israel. In order to accomplish this, the George W. Bush Administration did not use the AECA emergency authority but rather allowed Israel to access the U.S. munitions stockpile located in Israel, known as WRSA-Israel, pursuant to Section 514. Congress limits the value of assets transferred into WRSA stockpiles located in foreign countries in any fiscal year through authorizing legislation. The U.S. retains title to the WRSA stocks, though title must be subsequently transferred before the foreign country may use them.⁸
- Section 614(a) of the FAA (22 U.S.C. 2364(a)) also allows the President to, among other things, waive provisions of the AECA, the FAA, and any act authorizing or appropriating funds for use under either the AECA or FAA in order to make available, during each fiscal year, up to \$750 million in cash arms sales and up to \$250 million in funds. Not more than \$50 million of the \$250 million limitation may be made available to any single country in any fiscal year through this waiver authority unless the country is a “victim of active aggression.” Not more than \$500 million of cash sales (or cash sales and funds made available combined) may be provided under

⁷ See Senator Menendez Letter to Secretary of State Pompeo and Secretary of Defense James Mattis, June 28, 2018. Available at <https://www.foreign.senate.gov/download/rm-letter-to-pompeo-mattis-uae-yemen>.

⁸ At present, the United States and Israel have a bilateral agreement that governs the storage, maintenance, in-country transit, and other WRSA-related costs. In any future expedited procedure, reserve stocks managed by EUCOM could be transferred to Israel; then, U.S. officials would create an-after-the-fact Foreign Military Sale to account for the transferred equipment.

this waiver authority to any one country in any fiscal year. To waive the provisions of these acts related to arms sales, the President must determine and notify Congress in writing that it is “vital” to the “national security interests” of the United States to do so. Before exercising the authority granted in Section 614(a), the President must “consult with” and “provide a written policy justification to” the House Foreign Affairs and the Senate Foreign Relations Committees and House and Senate Appropriations Committees.

Issues for Congress

The Trump Administration’s use of AECA emergency authorities to sell or transfer arms to Saudi Arabia, the UAE, and Jordan raises several potential issues for Congress that echo matters considered in past instances of emergency transfers. These include:

Volatile Security Conditions and Competing Security Concerns. Many Members are concerned that continued Iranian weapons smuggling to the Houthis in Yemen has given a non-state actor not only improved ballistic missile capabilities, but also the ability to use unmanned aerial vehicles to threaten oil infrastructure and other critical sites in Saudi Arabia. At the same time, many Members also have demonstrated concern about the potential for U.S. arms transfers to Saudi Arabia and the United Arab Emirates to directly or indirectly harm civilians in Yemen. Still other Members may harbor concerns that the sale of U.S. defense articles and services contributes to regional arms races in the Middle East and/or may jeopardize U.S. and Israeli security interests in the event that U.S.-origin systems are lost, transferred on an unauthorized basis, or misused. Similar concerns have been raised in the context of each case discussed below (**Appendix C**). In considering how to balance these various security concerns and assessing alternatives, Congress could examine and debate whether Houthi attacks outside Yemen and alleged Iranian involvement in attacks on shipping constitute an emergency that warrants the immediate sale of each of the items in question, in the numbers, and at the pace proposed by the Administration. Congress could also consider how the transfer of such systems could affect regional security perceptions and how end use controls and training are integrated to reduce concerns about diversion and threats to U.S. partners.

Congressional Prerogatives and the Future of Inter-branch Consultation on Arms Sales. Laws governing foreign military sales have included the national security emergency exceptions cited by President Trump since legislation enacted in 1974 and revised in 1976 (**Appendix B**). At that time, Members debated how best to establish a role for Congress in reviewing and potentially blocking proposed foreign defense sales while accommodating instances where emergencies might require swift executive branch action. Debates during this period examined the arguments for and against using arms sales as a tool of U.S. foreign policy, the proper roles of the legislative and executive branches in these decisions, and the pros and cons of different terms and conditions for regulating the executive branch’s exercise of the powers delegated by Congress. Discussions included extensive debate over the inclusion of emergency exceptions to congressional arms sale review procedures.⁹ Congress provided and has

⁹ In a 1975 hearing, Senator Jacob Javits (D-NY) argued “We are now reaching for what I consider to be our basic constitutional authority in foreign affairs. We are not confined to arms sale. We can also tell the President when he makes war and when he does not. That is the war powers resolution. We are taking on a lot of power here. We have a lot of responsibility with it. But the fact is that we are doing it now. We require notice of various arms transactions and we are actually getting it, just as we require notice when the President has a heavy troop movement to a foreign country under the war powers resolution. We may not be able to stop him. We can only stop him if they are in a combat situation. But we certainly know about it and we can act to stop him even outside the war powers resolution. ...Do we all agree that the Congress should be sure that it has the power to stop an arms sale if that, too, is an expression of foreign policy?” Responding to a witness who suggested that Congress act so that arms sale assertions could not be easily circumvented by the executive branch, Senator Javits said, “...There it is like the war power. You have to make allowance, for emergencies and contingencies. ...we contend for power with the President, we must never forget Presidents have gotten it for decades. We must never forget the President, too, is elected, that he, too, has vast responsibilities,

sustained the emergency exception, but in each instance of its use, some Members have questioned the necessity and appropriateness of the exercise under the prevailing circumstances.

Potential Options for Congress

The provision of U.S. emergency assistance to Israel during the October 1973 war demonstrated the utility of emergency transfer provisions to many Members of Congress at the time, and directly informed the inclusion of emergency exception provisions in the AECA. Over time Congress has not acted to eliminate the emergency exception provisions in the AECA and other foreign policy legislation, perhaps reflecting an enduring recognition of the diplomatic, strategic, and political utility of the provisions. That said, some Members of Congress have objected to the instances in which Presidents of both parties have decided to assert the emergency authority or otherwise to propose arms sales to which substantial opposition existed. Proposals to reject emergency sales have not been enacted, but Congress has acted in the wake of emergency exception assertions to amend related information requirements or to otherwise condition or restrict related sales to government that have been granted emergency sales.

The AECA and other laws relating to arms sales currently do not define a specific congressional role in reviewing, approving, rejecting, or modifying immediate arms sales that are announced by the executive branch pursuant to a President's invocation of a national security emergency. Congress's options for responding to such an invocation consequently include but are not necessarily limited to the following, which are not mutually exclusive or listed in any particular order:

- **Take no action** and thus accept—whether tacitly and for the time being, or explicitly and for the future—the immediate arms sales and the precedents set by the current assertion of a national security emergency.
- **Request information** beyond what the Administration has already submitted about the immediate arms sales and/or the national security emergency.
- **Hold hearings** in an open or closed setting to receive testimony from Administration officials and other witnesses about the immediate arms sales and/or the national security emergency.
- **Pass (and override any veto of) legislation** that does one or more of the following:
 - **Authorize, condition, limit, delay, or prohibit arms transfers.** This can include legislation in appropriations acts prohibiting or setting terms for the use of appropriated funds or funds otherwise available to the executive branch for implementing the transfer of defense articles or services.
 - **Establish an abbreviated period for congressional review** of emergency arms sales prior to those sales taking effect, so as to allow for joint legislative-executive consideration of alternative tools and approaches.
 - **Clarify and codify procedures for congressional consideration of joint resolutions of disapproval** of emergency arms sales in one or both chambers in cases where a national security emergency has been invoked.
 - **Revise information requirements and submission guidelines** associated with invocation of national security emergency exceptions to obtain more detailed assessments of the nature of cited threats.
 - **Provide a more-specific definition of what constitutes an emergency** for the purposes of the AECA by amending the AECA.

and that he, too has a constitutional role we must preserve as we struggle to attain our own. I believe we can fashion at least an opportunity for us to act and still allow for emergency situations.” See Senate Foreign Relations Subcommittee on Foreign Assistance, Hearing on Foreign Assistance Authorization, June 17, 1975.

- **Make national security emergency exceptions only available** to specific countries and/or regions by amending the AECA and/or the Foreign Assistance Act of 1961, as amended.
- **Revoke the national security emergency exception.** This could involve removing the current emergency exception from some or all of the relevant sections of the AECA as a means of ensuring that all sales, no matter the circumstances, are presented for congressional review.
- **Take the Administration’s emergency invocation into account** when considering future Administration nominations, funding requests, and requests for legislative authorities or legislative relief on other matters.

Revising information requirements and submission guidelines could include, for example, directing the Director of National Intelligence, the Department of Defense, and/or the Department of State to submit detailed threat analyses and/or provide briefings to specified Members and/or committees within specified times prior to related transfers, on a classified basis if necessary. As discussed above, the current written justification submission requirement was added by Congress in the wake of the 1979 invocation of the national security emergency exception. Members also could require the more immediate and uniform publication of unclassified memoranda of justification, certifications, and related transmittals for Foreign Military Sales (FMS), Direct Commercial Sales (DCS), and other transfers or leases. The Defense Security Cooperation Agency makes public versions of FMS notifications available promptly. The State Department publishes DCS notices as directed in the Federal Register on a less timely basis. Members also could proactively and regularly submit arms sale-related unclassified documents to chamber or committee websites or to the Congressional Record (as some Members have done in the past) to ensure their immediate availability for congressional review beyond committees of jurisdiction.

Regarding the option of defining emergency circumstances, it can be noted that Congress, in providing for a limited exception to AECA review requirements under Section 614 of the Foreign Assistance Act, referred to “vital” national security interests as a means of indicating a higher standard, but declined to further define what the term “vital” entails. Possible criteria for consideration in defining key terms might be whether the identified emergency immediately and directly threatens the lives of U.S. citizens and/or the security of U.S. territory or property, or whether the identified emergency poses a longer term, indirect, or possible threat to U.S. partners or to U.S. interests and preferences.

Regarding the option of limiting the applicability or terms of national security emergency exceptions to specific countries and/or regions, it can be noted that the AECA has featured country-specific thresholds, requirements, and procedures for decades. In the past, Congress has periodically conditioned or restricted the provision of military assistance or the sale of defense articles and services to select countries or regions. Past precedent suggests that applying different requirements or authorities to specific countries and/or regions could have diplomatic implications and/or affect U.S. security relationships.¹⁰

Regarding the option of modifying or revoking the national security emergency exception, Congress could review the availability of other emergency authorities available to the President that would allow emergency arms sale transfers, such as Sections 506 [22 U.S.C. 2318] and 614 [22 U.S.C. 2364] of the Foreign Assistance Act of 1961, as amended. As discussed above, Congress has for decades provided emergency national security waiver exceptions to the President for certain arms transfers, drawdowns, and foreign assistance based on shared understandings of the national security environment, the roles and responsibilities of the branches, and expectations of mutual good faith and consultation.

¹⁰ See, for example, the discussion of Stinger anti-aircraft missile sales in **Appendix C**.

Appendix A. Sales Notified on May 24, 2019

Country	Transmittal	Item	Possible Value
Saudi Arabia	DDTC Transmittal 17-094	Paveway and Enhanced Paveway Weapon System for the Royal Saudi Air Force F-15, Tornado, and Eurofighter	\$1,571,055,396
UAE	DDTC Transmittal 17-079	Maverick AGM-65 Weapons System and the Paveway II, Paveway III, Enhanced Paveway II, and Enhanced Paveway III Weapons Systems	\$684,928,000
Saudi Arabia	DDTC Transmittal 17-128	Maintenance and training for F-15s	\$175,900,000
UAE	DDTC Transmittal 18-103	Integration of the FMU-152A/B Joint Programmable Bomb Fuze system	\$325,250,000
Jordan	DDTC Transmittal 17-126	500 Paveway II laser guided bombs	\$99,500,000
UAE	DDTC Transmittal 17-112	Aurora Fuzing System for the Paveway IV Precision Guided Bomb Program	\$209,000,000
UAE	DDTC Transmittal 18-030	100 M107A1, .50 caliber semi-automatic rifles and 100 sound suppressors	\$1,364,900
UAE	DDTC Transmittal 18-080	ScanEagle and Integrator Unmanned Aerial Systems and support for future Intelligence, Surveillance, and Reconnaissance (ISR) requirements	\$12,000,000
Saudi Arabia	DDTC Transmittal 18-029	Maintenance and repair services for F110 engines	\$549,000,000
Saudi Arabia	DDTC Transmittal 18-050	15,000 120mm M933A1 120mm mortar bombs	\$50,835,000
Saudi Arabia	DDTC Transmittal 18-110	KSA MOD Transformation Project	\$70,9399,999
Saudi Arabia	DDTC Transmittal 18-109	F / A 18E/F and derivative series aircraft panels	\$76,000,000
UAE	DDTC Transmittal 18-103	F100-GE-132 gas turbine engines for F-16s	\$1,000,000
UAE	DDTC Transmittal 19-001	Guidance Enhanced Missiles (GEM-T) (Patriot)	\$356,400,000
UAE	DSCA Transmittal 17-0B	Sensitivity upgrade for Apache 64E	-
UAE	DSCA Transmittal 17-39	RQ-21A Blackjack UAVs	\$80,000,000
UAE	DSCA Transmittal 17-70	Javelin Guided Missiles	\$102,000,000
UAE	DSCA Transmittal 17-73	Advanced Precision Kill Weapons System	\$900,000,000
Saudi Arabia	DSCA Transmittal 18-21	Aircraft Follow On and Support Services	\$800,000,000
Saudi Arabia	DSCA Transmittal 18-31	Continued Tactical Air Surveillance Support System	\$136,000,000
Saudi Arabia	DSCA Transmittal 19-01	Aircraft Follow On and Support Services	\$1,800,000,000
UAE	DSCA Transmittal 19-18	USMC Training for UAE Presidential Guard	\$100,000,000
Total Possible Value			\$8,101,173,295

Source: DSCA and DDTC notifications to congressional committees of jurisdiction.

Appendix B. Legislative Background on AECA Emergency Waiver

Provisions of law establishing congressional review procedures for proposed arms sales have their origin in an amendment offered in June 1973 by the late Senator Gaylord Nelson (D-WI) and an alternative amendment and bill offered that year by the late Representative Jonathan Bingham (D-NY). As originally conceived and adopted by the Senate, the Nelson Amendment did not provide for an emergency exception to the new congressional review procedures it proposed to create.¹¹ Bingham's original amendment and bill also did not contain an emergency waiver provision.¹² Subsequent CRS analysis of the legislative history of the provisions found that the "major force" behind the enactment of new review procedures

...was congressional concern with the growth of arms sales by the United States, their importance and impact as a tool of American foreign policy and the belief that then existing reporting procedures respecting arms sales did not provide the Congress with all the information necessary to exercise effective oversight over foreign military cash sales. What Congress hoped to gain was an institutionalized mechanism that would ..."give the Congress the opportunity to study the circumstances surrounding each major sale, and to assess the foreign policy impact of each such transaction." Such a mechanism was necessary, according to Senator Nelson, because the executive branch, in the absence of one, simply presented Congress with "accomplished facts" regarding arms transfers.¹³

At the time, the executive branch provided Congress with prospective estimates of foreign military sales on an annual basis,¹⁴ and transmitted details concerning individual foreign cash sales of defense articles and services to Congress in a classified format after the President had decided to proceed with the negotiation and implementation of the sales. Congress set annual limits on military grant aid and foreign credit sales, but did not establish limits for cash sales.

¹¹ S. Amdt. 253 to the Foreign Assistance Act of 1973 (S.1443), adopted in Senate Vote No. 225, 44 Yeas – 43 Nays, June 25, 1973. See *Congressional Record*, vol. 119, (June 25, 1973), pp. 21152-21153.

¹² Representative Bingham was aware and spoke favorably in committee and on the House floor about Senator Nelson's efforts in the Senate. See Bingham amendment text, remarks, and amendment consideration in *Congressional Record*, vol. 119, (July 26, 1973), pp. 26207-26208. In August 1973, Representative Bingham introduced H.R.9778, "to provide for notification of Congress and, where necessary, congressional veto of major sales of arms to foreign nations." The bill was rejected on the House floor.

¹³ Richard F. Grimmett, "The Legislative Veto and U.S. Arms Sales," Congressional Research Service, September 24, 1979. In introducing his 1974 amendment, Senator Nelson argued: "At this time there is no formal procedure by which Congress can participate in determining the merits of these arms deals before they are finalized. Nor is there any way for Congress to exert effective oversight authority and monitor the impact of these deals after they are negotiated. These foreign military sales constitute major foreign policy decisions involving the United States in military activities without sufficient deliberation. This has gotten us into trouble in the past and could easily do so again. These matters require serious deliberation by the Congress and should not be left exclusively to the executive branch. If Congress is serious about reasserting congressional participation in foreign affairs and exercising its full responsibility in the formulation of American foreign policy, reviewing foreign military sales is the best place to start." Senator Nelson, Senate debate, *Congressional Record*, vol. 120, (June 6, 1974), pp. 17943-17950.

¹⁴ Section 36(b) of the Foreign Military Sales Act of 1968 (P.L. 90-629) required "semiannual reports of all exports during the preceding six months of significant defense articles on the United States munitions list to any foreign government, international organization, or other foreign recipient or purchaser, by the United States under this Act or any other authority, or by any individual, corporation, partnership, or other association doing business in the United States." Section 36(b) further required the executive branch to include in any appropriations presentation materials (requests) relevant to the Act's foreign military sales authorities "annual tables disclosing the dollar value of cash and credit foreign military sales orders, commitments to order, and estimated future orders under this Act and estimates of commercial sales orders and commitments to order received directly from any country or international organization by any individual, corporation, partnership, or other association doing business in the United States. The data reported shall be set forth on a country-by-country basis and shall be summarized on an economically developed country-economically less developed country basis." These provisions were subsequently amended and are reflected in 22 U.S.C. 2765(a)(1), the section of the AECA providing for "the Javits report."

After the Nelson and Bingham proposals were considered in summer 1973, Congress debated emergency arms transfers to Israel in the context of the crisis sparked by the October 1973 Arab-Israeli war. During the war, the U.S. Department of Defense drew from U.S. inventories to rush arms shipments to Israel on a credit basis. In December 1973, Congress authorized \$2.2 billion in U.S. emergency military assistance and/or foreign military sales credits for Israel in part to cover costs for the October war shipments.¹⁵ Conferees removed the Nelson Amendment from the final version of the Foreign Assistance Act of 1973, which was enacted in December 1973.¹⁶

Members and executive branch officials cited the experience of the October 1973 war during consideration of modified arms sale review and waiver proposals debated and enacted in 1974, with individuals in both branches stating that the war had demonstrated a need for some emergency exceptions to any new congressional arms sale review and disapproval procedures.

When Senator Nelson and Representative Bingham introduced modified versions of their arms sale review proposals in 1974, they each included unique models for providing national security waiver authority to the President. As introduced, Senator Nelson's initial 1974 proposal would have authorized the President to "waive the requirement for congressional deliberation for 30 days," allowing the President, "if he wishes to continue arms shipments after those 30 days" to do so, provided that "he must at the same time file a report concerning those future arms transactions."¹⁷

The Nixon and Ford Administrations opposed the Nelson and Bingham amendments, questioning the constitutionality of their legislative veto provisions (which were later overturned by the Supreme Court's decision in *INS v. Chadha*), and describing the review procedures as burdensome and likely to cause undesirable delays in transactions that could have serious implications for U.S. relations with foreign governments. In a memorandum prepared by the Defense Security Assistance Agency in June 1974, officials argued that the 30-day waiver limitation proposed by Senator Nelson

...could prove to be substantially detrimental to the national interest of the United States. For example, if the amendment had been in force at the time of the October [1973] war in the Middle East and a waiver made by the President at the outset of the war, it is not inconceivable that the Arab belligerents would, in the knowledge that no significant arms sales could be made to Israel by the United States Government after the end of the 30-day waiver for the succeeding 30 days, have refused a cease-fire or that Israel, because of the impending 30-day embargo period, would have substantially increased the scale of the hostilities during the first 30 days. [Note: Nelson's proposal would have required a 30-day review period for subsequent sales after any 30-day emergency waiver expired, but would not have embargoed further sales indefinitely.]¹⁸

The version of Bingham's waiver proposal adopted in October by the House Foreign Affairs Committee was not time bound, but provided for the President to be able to waive the review requirements "if in his advance notification he certifies that an emergency exists which requires such sale in the national security interests of the United States."¹⁹ According to the committee report on the bill, "the October 1973 war in the Middle East is one example of such an emergency which would have justified the employment of the

¹⁵ P.L. 93-199.

¹⁶ U.S. Congress, Conference Committee, Foreign Assistance Act of 1973, conference report to accompany S. 1443, 93rd Cong., 1st sess., S.Rept. 93-664, November 27, 1973; and, P.L. 93-189.

¹⁷ Senator Gaylord Nelson, Remarks on S.Amdt. 1399 to S.3394, the Foreign Assistance Act of 1974, *Congressional Record*, vol. 120, (June 6, 1974), p. 17944.

¹⁸ DSAA memorandum included in the record of House Committee on Foreign Affairs hearing on Fiscal Year 1975 Foreign Assistance Request, June 18, 1975.

¹⁹ U.S. Congress, House Committee on Foreign Affairs, Foreign Assistance Act of 1974, report to accompany H.R. 17234, 93rd Cong., 2nd sess., H.Rept. 93-1471, p. 48.

waiver provision of this subsection, had it been in effect.”²⁰ More broadly, the committee report echoed arguments made by Nelson and Bingham that

Present reporting procedures do not provide the Congress with all of the information needed to exercise effective oversight over foreign military cash sales. Foreign military sales are an important tool of U.S. foreign policy and in many cases have a direct impact upon our relations with both the purchasing country and on its neighboring countries as well. While enactment of this provision will not automatically trigger congressional action, it will give the Congress the opportunity to study the circumstances surrounding each major sale, and to assess the foreign policy impact of each such transaction.²¹

Nelson’s proposal was not adopted as introduced by the Senate or reflected in the Senate Foreign Relations Committee’s markup of the Senate bill. Nevertheless, in December 1974, Senator Nelson and 13 other Senators proposed and the Senate adopted by unanimous consent a modified amendment to the Senate version of the bill providing for congressional review of arms sales and a simplified waiver provision.²² This revised amendment stated that the new arms sale review requirements would “not apply if the President transmits to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate a statement of waiver in the national security interests of the United States.”

In supporting this amendment on the floor, Senator Nelson said, “In an emergency situation, the amendment provides a special waiver to cover circumstances such as occurred during the October conflict in the Middle East.” Later in the same debate he added, “in case of emergency such as the Middle East situation a year ago, the President does not need to submit the sale to Congress for its approval or disapproval, but he must report in writing to Congress why he is waiving the congressional veto requirement. He must delineate and explain the sale and what the emergency is.”

Congress considered the House and Senate proposals in December 1974 and enacted a conference version as Section 45 of the Foreign Assistance Act of 1974.²³ The enacted version retained an emergency waiver for the President, but did not include the 30 day limit on emergency transfers originally offered by Senator Nelson. The review procedures and emergency exception authority enacted in 1974 were preserved when the International Security and Arms Export Control Act further revised the Foreign Military Sales Act in 1976. The core review and emergency exception provisions enacted in 1974 have been amended over time, but both remain in effect as the framework for legislative-executive consultation on arms sales.

²⁰ Ibid, p. 48.

²¹ Ibid, p. 49.

²² Senators Nelson (D-WI), Hathaway, Mr. Abourezk, Mr. Tunney, Mr. Church (D-ID), Mr. Hughes (D-CA), Mr. Clark (D-IA), Mr. Mondale (D-), Mr. Cranston, Mr. Proxmire (D-WI), Mr. Muskie, Mr. Hart, Mr. Eagleton, and Kennedy (D-MA) co-sponsored the amendment (S.Amdt. 2002 to S.3394). Senate debate, S.Amdt. 20002 to S.3394, the Foreign Assistance Act of 1974, *Congressional Record*, vol. 120, (December 4, 1974), pp. 38072-38077.

²³ U.S. Congress, Conference Committee, Foreign Assistance Act of 1974, conference report to accompany S.3394, 93rd Cong., 2nd sess., S.Rept.93-1610, December 17, 1974; and, P.L. 93-559.

Appendix C. Past Presidential Usage of Emergency Authorities: Three Case Studies

Past Administrations have used AECA emergency authorities to immediately sell arms to foreign partners, generating debate in Congress over the cases in question and the broader availability and use of the authorities by the executive branch.

March 1979: North Yemen

On March 7, 1979, President Jimmy Carter formally notified Congress that an emergency existed that required the United States to sell arms to North Yemen; the presidential determination cited section 36(b)(1) of the AECA. Congressional consideration of and reaction to that emergency decision, the first such invocation of that provision, demonstrated a number of concerns that arguably are relevant today.

South Yemen won independence from Great Britain in 1967, and was governed by the Yemeni Socialist Party after 1970 as the People's Democratic Republic of Yemen (PDRY). The PDRY had tense but generally normal relations with its more populous northern neighbor, the Yemen Arab Republic (YAR). Saudi Arabia became the main patron of North Yemen following the departure of Egyptian forces from the country, in opposition to the Soviet-supported PDRY. After months of escalating political crises, cross border fighting between the two Yemens came to a head in early 1979 with some limited deployments into North Yemen by South Yemeni forces. Amid Cold War tensions, and in the wake of the collapse of the Shah's U.S.-supported government in Iran and his departure from the country on January 16, 1979, some U.S. policymakers feared that North Yemen might be a new front for U.S.-Soviet competition and a potential threat to Saudi security. According to one contemporaneous account, both U.S. and Saudi policymakers viewed events in Yemen as "a further Soviet probe of American intentions and resolve in the Middle East" and "a place where the United States had to 'draw the line.'"²⁴

The administration delivered to Congress informal notice of the proposed sale of \$400 million in arms for North Yemen to respond to South Yemeni incursions on February 16, 1979, though reports of the Administration's plans had surfaced days earlier. In response to those reports, some Members argued that such a sale would "violate the intent and the spirit of the Arms Export Control Act."²⁵ On February 26, 1979, House Foreign Affairs Europe and Middle East Subcommittee Chairman Lee Hamilton (D-IN) stated that "I hope we are not reacting to [the Iranian revolution] by increasing arms sales to friends elsewhere in the region... They need reassurance of our political support, but, in this process, arms sales should not be the principal instrument" of that support.²⁶

President Carter signed the determination notifying Congress of the emergency sale on March 7, 1979; certain Members were informed that day and the formal notification was publicly relayed on March 8.²⁷ The sale was comprised of 12 F-5E aircraft; 64 M60-A1 tanks; 50 M113-A1 armored personnel carriers (APCs); and related support, training, and munitions, all paid for by Saudi Arabia. Citing section 36(b)(1) of the AECA, President Carter declared that an emergency existed which required the sales to North Yemen in the interest of U.S. national security, waiving the thirty-day congressional review period.

²⁴ Bernard Reich, David Pollack, and Sally Ann Baynard, "The Iranian Revolution and Its Effects on the Middle East," in "Economic Consequences of the Revolution in Iran: A Compendium of Papers Submitted to the Joint Economic Committee, Congress of the United States," November 19, 1979, p. 197.

²⁵ Representative Benjamin Rosenthal (D-NY), Extensions of Remarks, *Congressional Record* 125 (1979), p. 2581.

²⁶ Extensions of Remarks, *Congressional Record* 125 (1979), p. 3376.

²⁷ President Determination No. 79-6 of March 7, 1979, 44 Fed. Reg. 18633 (March 29, 1979).

Rep. Hamilton then convened a subcommittee hearing on the arms transfers, which took place on March 12, 1979. In his testimony, Deputy Assistance Secretary of State for Near Eastern and South Asian Affairs William Crawford stated that the determination was made to notify Congress of the proposed \$400 million package in September 1978, but “the notifications to Congress were held until after the recess” and that the renewed fighting which broke out on February 23 constituted an emergency “which requires waiver of the Congressional review period for those items of equipment which were already before Congress on an informal notification basis.” Along with the arms sales, Crawford cited a number of other Administration steps to respond to the crisis, including the potential transfer of U.S. origin equipment to North Yemen from Saudi Arabia and Jordan and the deployment of a carrier task force to the area.

The hearing focused largely on two related questions: the precise justification for the emergency declaration and the ability of North Yemeni forces to utilize U.S. equipment that had been expedited. Under questioning, Administration officials testified that there were no Yemeni pilots qualified to fly F-5Es, and that training Yemeni pilots to use them, as well as the tanks and APCs, would take “several weeks to several months.” Some subcommittee members spoke in support of the president’s decision, citing the importance of demonstrating “decisive leadership” and acknowledging that “it is important, of course, that proper procedure should be followed, but it is far more important that our national interest should be secured.” Most, however, expressed reservations over U.S. interests being potentially “dictated” by Saudi Arabia, and questioned the wisdom of sending U.S. equipment to such a fragile and unstable partner (citing the example of revolutionary Iran).²⁸

In response to the notification, on March 15, 1979, Rep. Leon Panetta (D-CA) introduced H.Con.Res. 78, which stated that the March 12 hearing “failed to substantiate the existence of a national security emergency,” and expressed Congress’s objection to the sale. In introducing the measure, Rep. Panetta stated, “If the Congress simply stands by and fails to demand that the administration fully justify the emergency nature of this transfer of arms and men, it will set a dangerous precedent for this and future administrations seeking to bypass the requirements of the law.”²⁹ The resolution would not have blocked the sale, but “requested” that it be delayed for thirty days. No action on the resolution was taken, and Congress did not take any action to block the sale. In October 1979, it did adopt a House provision amending the AECA to require that the President provide a “detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the letter of offer” in future uses of the emergency authority (Section 19(c) of the International Security Assistance Act of 1979, P.L. 96-92). That provision remains in effect today.

The arms transfers reportedly went forward as planned, though the conflict came to an end in late March 1979 with the signing of a ceasefire between the two Yemens. Members’ prior concerns about the ability of North Yemeni forces to absorb and utilize the equipment were apparently well-founded, given 1980 testimony from the former U.S. military attaché in North Yemen. In a hearing before the House Foreign Affairs Europe and Middle East Subcommittee, Lt. Col. (Ret.) John Ruskiewicz stated that as of the fall of 1979, “none of this equipment had been deployed, nothing had happened with it,” further alleging that North Yemeni President Ali Abdullah Saleh “had taken this equipment and controlled it for the purpose of keeping himself in power.” Ruskiewicz explicitly linked the U.S. decision to Saudi anxieties in the aftermath of Iran’s Islamic Revolution, stating that “we subordinated our policy toward North Yemen to that of Saudi Arabia in the interest of economy and in our desire to see Saudi Arabia as the strong man of the region.”³⁰

²⁸ “Proposed Arms Transfers to the Yemen Arab Republic,” Hearing before the Subcommittee on Europe and the Middle East of the Committee on Foreign Affairs, House of Representatives, March 12, 1979.

²⁹ Congressional Record – House, *Congressional Record* 125 (1979), p. 5328.

³⁰ “U.S. Interests in, and Policies toward, the Persian Gulf, 1980,” Hearing before the Subcommittee on Europe and the Middle East of the Committee on Foreign Affairs, House of Representatives, March 5, 1980.

May 1984: Saudi Arabia

During the early 1980s, the Reagan Administration sought to use arms sales to signal U.S. commitment to the security of Arab countries in the face of regional and global security threats and as an inducement to secure Arab support for U.S. efforts to achieve Arab-Israeli peace. The Iran-Iraq war destabilized the security situation in the Persian Gulf region and placed the United States in a difficult strategic position. On the one hand, U.S. policy sought to remain neutral in the conflict and avoid accepting security responsibility for directly defending the other Arab states of the Gulf region from threats emanating from the conflict. On the other hand, the Arab Gulf states were financially supporting Iraqi war efforts while expressing growing concern about the possible military threats to their security posed by both Iraq and Iran.

On February 29, 1984, the Reagan Administration formally notified Congress of its intent to sell Saudi Arabia 400 Stinger Man Portable Air Defense (MANPADS) missile systems, including 1200 total missiles, related support, spare parts, and training.³¹ On March 1, the Administration formally notified Congress of its intent to sell Jordan 315 Stinger systems, including 1613 total missiles, related support, spare parts, and training.³² The Administration used the normal notification procedures under Section 36(b) of the AECA, providing Congress with the opportunity to review the sales for 30 days.

Congressional reaction to the proposed sales was largely negative, as Members expressed strong concerns about the possibility of the loss or diversion of Stingers to terrorists and noted Jordan's then unwillingness to recognize Israel and directly engage in peace talks.³³ Administration officials also argued that end-use controls would obviate diversion concerns. Two bills that would have prohibited the sales were introduced (H.R.5129 and H.R.5140), the latter with bipartisan co-sponsorship. Amid vocal congressional opposition to the proposed sales, the Reagan Administration withdrew them from consideration on March 22.

In April and May, a series of security incidents involving attacks on oil facilities and tankers in the Persian Gulf demonstrated the volatility in the region. On May 22, Saudi authorities requested that the United States promptly provide Stinger missile systems to assist in air defense operations. On May 25, 1984, the Reagan Administration's National Security Planning Group met and decided to ship 200 Stinger missile systems with 400 missiles total "with a waiver determination to be signed after they had reached Saudi Arabia in order to preserve security."³⁴

According to Assistant Secretary of State for Near Eastern and South Asian Affairs Richard Murphy, "key congressmen" were informed of the Administration's plans in the early afternoon of Sunday, May 27, and shipments to Saudi Arabia began later that day. The missile systems arrived in Saudi Arabia on May 28 (Memorial Day, 1984) and remained in U.S. custody until President Reagan signed the national security waiver determination on May 29. The notification was formally delivered to Congress on May 30, while Congress was in recess. The justification stated:

The Iran-Iraq war has escalated in recent days, and neutral shipping has been attacked with increasing frequency and in an ever-widening area in international waters in the Gulf. The Arab

³¹ Transmittal Number 84-31.

³² Transmittal Number 84-32. The Administration acknowledged that Jordanian support for peace efforts was "essential" in its memorandum of justification and argued that the sales would support peacemaking by demonstrating U.S. commitment to Jordan's security.

³³ Some Members of Congress had previously expressed opposition to possible sales of Stinger missiles to Jordan, and legislation was introduced in the House (H.R. 2992) and Senate (S.Res.72) linking authorization of advanced air defense system sales to Jordan to Jordanian support for the peace process.

³⁴ Testimony of Richard W. Murphy, Assistant Secretary of State for Near Eastern and South Asian Affairs before the House Foreign Affairs Subcommittee on Europe and the Middle East, June 11, 1984.

states of the Gulf as well as the United States are attempting to defuse the situation through diplomatic means. Further escalation could threaten Saudi Arabia. This escalation of the war could deny vital oil supplies to much of the free world, including particularly our allies in Western Europe and East Asia....Because the Stinger system can be deployed in the field shortly after delivery, an immediate transfer to Saudi Arabia of this system is an appropriate response to the current crisis and will enhance Saudi air defenses. By providing a deterrent against hostile actions, this transfer lowers the risk of broader conflict.³⁵

The Administration also announced plans to deploy U.S. AWACS aircraft and an aerial refueling tanker to the Gulf to support regional security operations and assure U.S. partners.

On June 5, Saudi F-15 fighter aircraft operating with the support of U.S. aircraft shot down two Iranian F-4 fighter aircraft that had encroached on Saudi airspace. That day, the Senate Appropriations Subcommittee of Foreign Operations held a hearing at which several Senators from both the majority and minority criticized the Administration's use of the emergency authority to affect the Stinger sale, questioned whether U.S. decisions would result in escalation in the Iran-Iraq war or unwanted U.S. commitments to Gulf security, and reiterated concerns expressed earlier regarding missile diversion. Senator Robert Kasten, Jr. (R-WI) in presiding over the hearing said,

If nothing else comes out of this hearing, I think that you, as representatives of the administration, the State Department and Defense Department, should be aware of the damage which I believe you have done by using special emergency authority over a holiday weekend with Congress out of town. At the very least you have abused the consulting process. For my own part and from the point of view of this committee, I can tell you such consultations will have little meaning to us in the future. You must understand as a consequence of your action, you have jeopardized not only the emergency authority you used in this case, but probably other emergency authority available to the Administration in the Foreign Assistance Act and the Arms Export Control Act. We will be exploring ways to remedy legislatively the problems that I believe have been created. In addition, I believe your action is yet another argument for those in Congress who wish to enact very restrictive legislation on future arms sales. In other words, you are playing right into the hands of people who have been opposing arms sales, squeezing the administration down to less and less flexibility because of these kinds of actions.³⁶

Administration officials reiterated that they had consulted congressional leadership offices prior to the transfers and emphasized their respect for a congressional role in reviewing proposed arms sales. In explaining the Reagan Administration's view of the logic for the sale, Under Secretary of State for Political Affairs Michael Armacost underscored the escalation of attacks in the Gulf and said,

Iran must understand that the desire we, our allies, and the states in the region have for a peaceful solution of the Iran-Iraq war is not a reaction born of weakness. Statements without action to support them have no deterrent effect and may invite aggression. Provision of the Stingers and the [aerial refueling] tanker are firm proof of our support for the principles we have been declaring.³⁷

On June 11, the House Foreign Affairs Subcommittee on the Middle East and Europe held a hearing at which Members expressed concerns similar to those raised in the Senate. Subcommittee Chairman Lee Hamilton (D-IN) said, "I don't have any doubt...that there was some escalation of the war and some increase in danger, but what I do not see is that an emergency existed in terms of the national security interests of the United States because of those increased attacks." Questioning why the Administration

³⁵ *Congressional Record*, June 6, 1984, p. 15064 – Notification of Stinger Sale to Saudi Arabia: Defense Security Assistance Agency Document I-222451/84, Letter from Lt. General Philip C. Gast to Senate Foreign Relations Committee Chairman Charles H. Percy, May 30, 1984.

³⁶ Senate Appropriations Subcommittee on Foreign Operations, Hearing on Sales Of Stinger Missiles To Saudi Arabia, S.Hrg. 98-1057, June 5, 1984.

³⁷ *Ibid.*

had not chosen to meet a current Kuwaiti request for Stingers with an emergency transfer, Representative Stephen Solarz (D-NY) said to Assistant Secretary Murphy,

If the threat to Kuwait is essentially the same as the threat to Saudi Arabia, and we are taking our time in figuring out what to do in response to the Kuwaiti request, it implies that the emergency may not have been as great as we contended it was with respect to the Saudi request. You, in effect, justified an end run around the Congress on the grounds that there was a real emergency, and pursuant to the law the President had the right in such an emergency to directly send the arms. We are told at the same time the threat is just as great to Kuwait, yet you haven't exercised the emergency authority, yet we are also told that Kuwait lacked this capacity just as Saudi Arabia lacked it. I don't see what the difference is. It seems to me that the time we have taken, properly so, to evaluate the Kuwaiti request, suggests that the emergency may not have been as great as we contended.³⁸

Reagan Administration officials responded by reiterating the Administration's description of the emergency conditions it felt necessitated the transfer and by restating the Administration's respect for congressional review of arms sale decisions. The officials stated that sales to Saudi Arabia were facilitated by the fact that the United States had already vetted the possible transfer of Stingers to Saudi Arabia as part of the Foreign Military Sales request withdrawn in March, unlike the Kuwaiti request that remained under study. The question of further Stinger transfers to the Gulf remained a salient issue for the balance of the Iran-Iraq war, and, on June 12, a bipartisan group of Representatives wrote to President Reagan opposing further Stinger transfers to Saudi Arabia. Congress later acted to condition and restrict sales of Stingers to the Gulf region³⁹ and temporarily prohibited all U.S. weapons sales to Qatar after it was revealed that Qatar had procured Stinger missiles on the black market from stocks diverted from those supplied by the United States to Afghan rebels.⁴⁰

August 1990: Saudi Arabia

When Iraq invaded Kuwait on August 2, 1990, and moved thousands of its troops to the border of Saudi Arabia, President George H.W. Bush declared that Iraqi forces posed an imminent threat to the Kingdom of Saudi Arabia and immediately deployed, at the invitation of the late Saudi King Fahd, several thousand U.S. troops to the kingdom and the Gulf.⁴¹ Within this regional context, some Members of Congress became more willing to support executive branch latitude in expediting arms sales to the kingdom. Previously, some Members had closely scrutinized sales of advanced U.S. weaponry to Gulf states,

³⁸ Solarz later introduced a proposal to require affirmative congressional action to authorize arms sales meeting existing review criteria under the AECA (H.R.5759).

³⁹ See Sections 558 and 580 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (P.L. 101-167), waived by President George H.W. Bush in August 1990 to transfer Stinger missiles to Saudi Arabia on an emergency basis (see below).

⁴⁰ In the late 1980s, the United States and Qatar engaged in a prolonged diplomatic dispute regarding Qatar's black market procurement of U.S.-made Stinger anti-aircraft missiles. The dispute froze planned economic and military cooperation, and Congress approved a ban on arms sales to Qatar (§566(d), P.L. 100-461) until the months leading up to the 1991 Gulf War, when Qatar allowed coalition forces to operate from Qatari territory and agreed to destroy the missiles in question. The ban was formally repealed by the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1991 (§568(b), P.L. 101-513). The conference report on H.R. 5114, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (H.Rept. 101-968) inserted Senate language (Amendment No. 144) that repealed the ban based on information provided by the Secretary of Defense "that it is in the national interest to reestablish United States-Qatari security relations because of their support for United States troops in the Middle East." Qatar defended its procurement of the missiles in protest of the sale of similar missiles by the United States to Bahrain, with which Qatar had an unresolved border dispute until 2001. Elaine Sciolino, "Qatar Rejects U.S. Demand For Return of Illicit Stingers," *New York Times*, June 28, 1988; Patrick E. Tyler, "U.S. Drawn Into Gulf Dispute—Stray Stingers Tied To Qatar-Bahrain Tiff," *Washington Post*, October 6, 1988.

⁴¹ "Bush Sends U.S. Force to Saudi Arabia as Kingdom Agrees to Confront Iraq; Seeks Joint Action," *New York Times*, August 8, 1990.

characterizing them as adversely affecting Israel's security,⁴² and had enacted legislation to limit sales of certain items to Saudi Arabia.⁴³ As an example of how Iraq's threat to Saudi Arabia changed some Members' stances on this issue, one House Foreign Affairs Committee Member who had previously been critical of U.S. arms sales to Saudi Arabia said at the time, "During this crisis, when American troops are in the region, Congress will provide the President with whatever he believes is necessary to protect American lives."⁴⁴

Thus, on August 26, 1990, after having previously waived an existing restriction on arms sales to Saudi Arabia (see footnote 39), President Bush notified Congress that, pursuant to section 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776(b)(1), an emergency existed that required the United States to sell 150 M60A3 tanks and 24 F-15C/D aircraft to Saudi Arabia for a total value at the time of approximately \$2.2 billion.⁴⁵ These items were transferred immediately from existing U.S. stockpiles to the kingdom.⁴⁶ At the same time, President Bush waived limits that then were in place in foreign operations appropriations law on (1) the transfer of Stinger missiles to Gulf states, and (2) depleted uranium anti-tank ammunition to foreign recipients globally.⁴⁷

However, just a month later, in September 1990, when President George H.W. Bush proposed a new series of arms sales to Saudi Arabia, Congress returned to "normal order" in reviewing Saudi arms sales, while some Members also reverted to questioning whether sales of sophisticated weaponry to the kingdom would threaten Israel's security.⁴⁸ After the notification, Members of Congress continued to question the proposed sale, expressing concern over several issues, including its effect on the regional arms balance, Israel's security, and whether future Saudi governments would continue to be reliable U.S. partners.⁴⁹ On October 17, 1990, Congressmen David Obey and Mel Levine introduced a resolution (H.J.Res. 674) to disapprove of the Administration's proposed sales, with Congressman Obey stating:

⁴² See, CRS Issue Brief IB91007, *Arms Sales to Saudi Arabia: Current Status*, February 20, 1991, by Richard F. Grimmett.

⁴³ Section 1306 of Public Law 100-456, referred to as the Metzenbaum amendment, after its author, Senator Howard Metzenbaum (D-Ohio), entered into force on September 29, 1988. It placed conditions on the sale or transfer of F-15 aircraft to Saudi Arabia, including, among other things, that Saudi Arabia shall not possess more than 60 F-15 aircraft at any time. On August 8, 1990, then Secretary of Defense Richard Cheney stated at a press conference that the President had waived the Metzenbaum amendment. Subsequently, on August 9, 1990, President Bush issued to Congress the formal certification necessary by law to waive the restrictions contained in the Metzenbaum amendment. See, Memorandum of August 8, 1990, The President's National Interest Certification for Sale of F-15s to Saudi Arabia, Memorandum for the Secretary of State, "Pursuant to the authority vested in me by section 1306(b) of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456), I hereby certify that it is in the national interest of the United States to waive section 1306(a) of that act."

⁴⁴ Representative Mel Levine, quoted in "U.S. Speeding Arms to Arab Allies," *New York Times*, August 15, 1990.

⁴⁵ Presidential Determination 90-36, p. 13/37695. Available online at: [<https://www.govinfo.gov/content/pkg/FR-1990-09-13/pdf/FR-1990-09-13.pdf>]

⁴⁶ "U.S. to sell Saudis 385 of Best Tanks," *New York Times*, September 8, 1990.

⁴⁷ In authorizing sales to Saudi Arabia "notwithstanding other provisions of law," the President invoked Section 614(a)(2) of the Foreign Assistance Act (FAA) of 1961, 22 U.S.C. 2364(a)(2), to nullify existing provisions in foreign operations legislation restricting the sale of both depleted uranium anti-tank ammunition (Section 558 of P.L.101-167) and stinger missiles to Gulf states (Section 580 of P.L.101-167).

⁴⁸ See, Subcommittee on Arms Control, International Security, and Science, and on Europe and the Middle East, House Committee on Foreign Affairs, "Proposed Sales to Saudi Arabia in Association with the Conduct of Operation Desert Storm," October 31, 1990. The notification consisted of up to \$7.3 billion in equipment and training in sales to Saudi Arabia (and Bahrain), including 235 M-1A2 tanks, 200 Bradley fighting vehicles, 207 M-113 armored personnel carriers, 12 AH-64 Apache attack helicopters, 155 Hellfire missiles, 24 spare Hellfire launchers, and Patriot Air Defense systems. The proposal, though sizeable in its own right, had been scaled down from previous Defense Department proposals exceeding \$21 billion due to Congressional concern over the previous proposals' broad scope. "Saudi Arms Proposal Raises Questions on the Hill," *Washington Post*, September 28, 1990.

⁴⁹ "U.S. Officials call Arms Package for Saudis Vital," *New York Times*, October 4, 1990.

I think there are two problems with the administration's sale. No. 1, the way it is designed, it will unquestionably fuel the arms race in the Middle East to an unprecedented degree. Second, the administration, frankly, does not have a clue as to what its long-term plans are for dealing with the escalation of military weaponry in the Middle East. They have no idea of what the pressures are going to be on the foreign aid bill for additional increases in spending over the next 5 years because of that sale. Under those circumstances, I think it ought to be scaled back. The focus of the items which we will try to disapprove will be on the items that have nothing whatsoever to do with the Desert Shield operation, weapons which will not even be delivered for a significant period of time after next year.⁵⁰

The resolution received the support of 89 co-sponsors (85 Democrats and 4 Republicans). In the Senate, Senators Cranston, Packwood, Simon, and Specter also moved to file a resolution of disapproval. However, the resolution stalled for at least three reasons. First, its introduction just prior to the adjournment of the 101st Congress left little time for congressional consideration.⁵¹ Second, many lawmakers reportedly were uneasy over any expression of national disunity during a large-scale deployment of U.S. forces to the Gulf.⁵² Finally, the Bush Administration assured lawmakers that it would increase U.S. support for Israel to ensure its qualitative edge in weapons technology.

As a result of these assurances, some Members of Congress were able amend foreign aid legislation to add special security assistance benefits for Israel, some of which remain in place today.⁵³ In P.L. 101-513 (which became law on November 5, 1990), the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Congress included a number of provisions favorable to Israel. For example, it was the first time that appropriations legislation provided for Israel to receive Foreign Military Financing (FMF) aid in a lump sum during the first month of the fiscal year. This provision has appeared routinely in annual appropriations legislation since then, allowing Israel to invest its annual FMF aid in U.S. Treasury notes and earn interest.⁵⁴ Also, P.L. 101-513 provided that up to \$200 million of Israel's Economic Support Fund (ESF) aid (at the time, Israel received economic assistance) for FY1991 could be used for military purposes during Operation Desert Shield, notwithstanding Section 531(e) of the Foreign Assistance Act of 1961 which prohibited such use. Additionally, Section 599B of P.L. 101-513 provided that the President could allow Israel to draw on defense articles and services of the Department of Defense, as well as military education and training, up to an aggregate value of \$700 million. Congress also granted the President authority in P.L. 101-513 to modify, and under certain conditions, to cancel Egypt's military debt.

⁵⁰ Introduction to Disapprove Arms Sale to Saudi Arabia, 136 Cong Rec H 10501, October 18, 1990 Congress-Session: 101- 2 Reference Volume: Vol. 136 No. 141 Pg. H10501.

⁵¹ "Cranston seeks to Block Some Saudi Arms" *UPI*, October 12, 1990.

⁵² "Despite Its Misgivings, Congress Permits Persian Gulf Arms Sale," *Washington Post*, October 29, 1990.

⁵³ See, Foreign Operations, Export Financing, and Related Programs Appropriations, Fiscal Year 1991, Congressional Record citation: Volume 136, Number 145, Page Cong Rec S 16344, October 22, 1990.

⁵⁴ See CRS Report RL33222, *U.S. Foreign Aid to Israel*, by Jeremy M. Sharp.
