

The Legality of Military Responses to Terrorism

By

H. Lawrence Garrett, III
DOD General Counsel

[The following is a reprint of an address by Mr. Garrett to the Council on Foreign Affairs, University of Texas Law School, Austin, Texas, October 28, 1986. The address was published in *Defense Issues*, Vol. 2 No. 3, by the American Forces Information Service, Office of the Assistant Secretary of Defense (Public Affairs), Washington D.C.]

Thank you for this opportunity to comment on a subject that, in the words of the Secretary of Defense, has become one of the most vexing problems facing Americans and the world community today.

From 1973 through 1985, more than 6,500 terrorist incidents, including 150 lethal attacks against U.S. citizens accounting for 405 deaths, were recorded worldwide. The trail of carnage includes some 4,700 dead and more than 9,000 injured. Incidents have been steadily increasing since official statistics were first compiled in 1968 and have risen at an annual rate of 12 to 15 percent since 1972, with the trend to bloodier incidents with more fatalities. Attacks caused 20 fatalities in 1968 and more than 675 in 1983. During the past decade, a terrorist event has been directed against U.S. officials or installations abroad approximately once every 17 days. In the past 17 years, terrorists have killed as many U.S. diplomats as were killed in the previous 180 years.

In 1982, a total of 63 attacks were directed against U.S. military personnel, resulting in two deaths. In 1983, fewer (56) incidents occurred; however, 241 deaths resulted from one incident. The United States lost nearly as many personnel in the bombing of the U.S. Marine barracks in Beirut as the British lost in the entire Falklands Campaign.

WARFARE WITHOUT TERRITORY

In a recent article in the *Fletcher Forum*, Dr. James B. Motley described terrorism as warfare without territory, waged without armies as we know them. It is warfare without neutrals and with few or no innocent bystanders

Following the 1983 bombing of the Marine compound in Beirut, the Secretary of Defense convened a board of inquiry chaired by Admiral Robert Long, USN. The Long Commission concluded that the October 23, 1983 bombing of the Marine headquarters was a terrorist act sponsored by sovereign states or organized political entities for the purpose of defeating U.S. objectives in Lebanon; that the international terrorist acts endemic to the Middle East are indicative of an alarming worldwide phenomenon posing an increasing threat to U.S. personnel and facilities; that state-sponsored terrorism is an important part of the spectrum of warfare; and that an adequate response to this increasing threat requires an active national policy which seeks to deter attack or reduce its effectiveness.

Shortly after this terrorist attack President Reagan stated:

The United States will not be intimidated by terrorists. We have strong circumstantial evidence linking the perpetrators of this atrocity to others that have occurred against us in the recent past, including the bombing of our embassy in Beirut last April. Every effort will be made to find the criminals responsible for this act of terrorism so this despicable act will not go unpunished.

The president strongly hinted that once the perpetrators of the bombing were identified, prompt retaliatory action would follow.

TWO EVENTS

In April 1984, the Administration's intention to use force in responding to terrorism was confirmed by two events: the issuance of the still-classified Presidential directive on terrorism, and Secretary of State Shultz's remarks before the Trilateral Commission, where he called for a "bold U.S. response to state-sponsored terrorism."

But, in considering legally acceptable military responses to international terrorism, one must first attempt to define the term "terrorism."

One of the complexities of terrorism is the difficulty of establishing a precise definition. Neither the United Nations nor any other international organization has been able to agree upon a meaningful definition. Indeed, there is no single, agreed-upon U.S. government definition of terrorism.

A rather long-winded definition sets out the basic outlines for an understanding of terrorism:

Terrorism is the use of threat of violence for political purposes to create a state of fear which will cause individuals, groups, or governments to alter behavior or policies. A terrorist group does not relate to any one country. It does not require nor necessarily seek a popular basis of support. Its operations, organization, and movements are secret. Its activities do not conform to rules of law or warfare. Its targets are civilians, non-combatants, bystanders, or symbolic persons and places. Its victims generally have no role in either causing or correcting the grievance of the terrorists. Its methods are hostage-taking, aircraft piracy or sabotage, assassinations, threats, hoaxes, and indiscriminate bombings or shootings.

INVOKING THE LAW

Americans are particularly attracted to law as a means for repressing violence and are committed domestically and internationally to using law to control criminal conduct and to resolve disputes. We invoke the law repeatedly, almost instinctively, assuming that it regulates international conduct and, in particular, provides a system for bringing terrorists to justice.

However, the law thus far has had a poor record in dealing with international terrorism, especially state-supported terrorism. Some terrorists are killed or captured during the course of their crime, but few of those who evade these consequences are afterward found and arrested. The terrorist who is prosecuted is likely to be released far earlier than his sentence should require, often in exchange for hostages taken in a subsequent terrorist episode. Almost never is the state that supports the terrorist activities called to account for its acts or the acts of the terrorists.

The October 23, 1983, Beirut bombing precipitated renewed debate as to whether U.S. military forces were adequately prepared to deal with terrorism and whether the United States would use force either in anticipation of, or in response to, terrorism. The administration debated this point at length after the Beirut bombing. The April 3, 1984, Presidential directive and the

Secretary of State's remarks that same date signaled that henceforth the United States would use military force in self-defense against international terrorism.

LEGALLY JUSTIFIABLE

Military responses to acts of terrorism may be legally justifiable under the customary international law notion of self-defense. This is a form of the generic remedy of self-help. There are three preconditions:

- The target state must be guilty of a prior violation of international law against the claimant state;
- An attempt by the claimant state to obtain redress or protection by other means must be known to have been made and failed or to be inappropriate or impossible under the circumstances; and
- The claimant's use of force must be limited to the necessities of the case and proportionate to the wrong done by the target state.

The use of force in self-defense is permissible for the purpose of protecting the security of the state and its essential rights, in particular the rights of territorial integrity and political independence, upon which that security depends.

PROPORTIONAL TO THREAT

Fundamental to the right of self-defense is the notion that any use of armed force must be proportional to the threat posed. Proportionality entails a limitation of means and a limitation on time for the exercise of the right of national self-defense. Self-defense may not be used as a pretext for expanding a state's territory or its political control. So, too, the duration of the force must not exceed that necessary to return the situation to status quo.

In explaining the refusal of the U.S. government to support a resolution of the U.N. Security Council condemning Israeli actions for its strike against the PLO headquarters in Tunisia following the murders of three Israeli citizens by Palestinian terrorists, Ambassador Walters stated:

We speak of a pattern of violence, but we must be clear: it is terrorism that is the cause of this pattern, not responses to terrorist attacks. . . . We recognize and strongly support the principle that a state subjected to continuing terrorist attacks may respond with appropriate use of force to stop further attacks. This is an aspect of the inherent right of self-defense recognized in the U.N. charter. We support this principle regardless of attacker and regardless of victim.

International law regulates the use of force by a country in the territories of other states, whether to capture or attack terrorists or to rescue hostages located there, or against the states themselves for sponsoring terrorists or conspiring with them in specific terrorist activities.

In general, a nation may not enter upon another's territory without its consent. Similarly, a state may not stop, board, divert, or otherwise interfere with another's vessels or aircraft without some adequate basis. Finally, although the use of force against another country's territorial integrity or political independence is prohibited, self-defense is always permissible, provided that, as noted above, it is both necessary and proportionate to the threat addressed.

STRAITJACKET

These principles have been respected by the United States. If they were applied, however, in such a manner as to preclude *any* use of force for *any* purpose, international law would serve as a straitjacket for the U.S. and would insulate the perpetrators of international violence from any control or punishment for their crimes.

States also have duties to cooperate in preventing terrorists from using their territories in perpetrating criminal acts, and many governments have explicitly undertaken to extradite or prosecute terrorists guilty of hijacking, sabotage, and hostage-taking. These obligations cannot be disregarded in evaluating the propriety of anti-terrorist operations. Furthermore, under the U.N. charter, just as under customary international law, victims of terrorism are not powerless to defend themselves. The charter reaffirms the inherent right to use force in individual or collective self-defense against armed attack.

Since the days of President James Madison, the United States has repeatedly acted against armed bands that attacked Americans and then fled, seeking sanctuary in neighboring countries unwilling or powerless to prevent or punish their acts. With the acquiescence of the harboring state, as in the case of U.S. operations in Mexico to prevent the recurrence of Pancho Villa's terrorist attacks in the early part of this century, or without such permission, as in the case of Andrew Jackson's action to stop attacks from Spanish Florida, the United States has used its armed forces to bring an end to terrorist attacks on American citizens and interests.

LIBYAN RAID

The U.S. bombing raid launched against Libya on April 14, 1986, illustrated the need to use force as a last resort against states that sponsor terrorism. After terrorists attacked passengers in Rome and Vienna last December, killing 19 civilians, including five Americans, President Reagan affirmed the United States' intent to rely upon its right of self-defense.

By providing material support to terrorist groups which attack U.S. citizens, the President said, Libya has engaged in armed aggression against the United States under established principles of international law, just as if he [Libyan leader Muammar Al-Qaddafi] has used its own armed forces.

It should be remembered that Congress and the American people are hesitant to use military force, even in self-defense. Moreover, the applicability of U.S. statutory requirements can have a profound effect on the President's ability to deploy quickly and successfully counterterrorist forces. In particular, the Vietnam experience awakened Congress to the problem of what they considered undeclared "presidential" war.

After the Cambodian incursions of 1970, they [Congress] pursued legislation to curb presidential war powers. The result of this legislative effort was the War Powers Resolution. The resolution represents the first and most fundamental Congressional effort to move away from effecting its will simply through the "power of the purse." Instead, it has sought a position of "policy co-determination" with the executive. The intent of the legislation was to create through consultation a power-sharing of the foreign affairs decision-making mechanism, particularly troop deployments. In the words of Senator Javits at the time, the role of the resolution was to impose on the presidency "the necessity to stop, look, and listen and to take prudent counsel when a military operation is suggested."

APPLICABILITY OF RESOLUTION

The existence of the resolution and Congress's interest in its implementation required that the executive consider the resolution's applicability in planning the use of military force in counter-terrorist operations.

The War Powers Resolution was enacted in 1973 in order to ensure appropriate Congressional involvement in situations in which the United States may become engaged in hostilities with other states. To that end, the resolution sets forth certain requirements concerning consultation, reporting, and termination of the use of U.S. armed forces.

The consultation requirement is contained in Section 3. That section provides:

The President in every possible instance shall consult with Congress before introducing United States armed forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States armed forces are no longer engaged in hostilities or have been removed from such situations.

Section 4 of the resolution requires that the President submit within 48 hours a written report to the Congress if any of three specific circumstances occur (where war has not been declared). A report must be submitted when U.S. forces are introduced "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." These situations are those to which the consultation requirement of Section 3 also applies.

In addition, a report must be submitted when U.S. forces are introduced "into the territory, airspace, or waters of a foreign nation, while equipped for combat" (with certain specified exceptions), or when such forces are introduced "in numbers which substantially enlarge United States armed forces equipped for combat already located in a foreign nation. . . ."

TERMINATE USE OF FORCES

Section 5 of the resolution provides that within 60 days after a report is submitted or required to be submitted, the president must terminate the use of U.S. forces unless the Congress has declared war or specifically authorized the use of such forces, has extended the 60-day period, or is physically unable to meet as a result of an armed attack on the United States. The section also provides that the president must remove U.S. forces from engagement in hostilities abroad "if the Congress so directs by concurrent resolution."

In speaking for the Administration recently before the House Committee on Foreign Affairs, Judge Abraham Sofaer, legal advisor, Department of State, asked: "Even though consultation and reporting took place in regard to the April 14th operations against terrorist-related targets in Libya, does the War Powers Resolution apply to a case where U.S. forces take legitimate action in self-defense of U.S. interests in circumstances in which those forces have not come under direct attack themselves?"

In commenting on the requirements of that resolution, Judge Sofaer noted that:

The resolution itself makes clear that the resolution was not intended to alter the constitutional authority of the president. The president has constitutional power, as commander in chief and as the nation's principal authority for the conduct of foreign affairs, to direct and deploy U.S. forces in the exercise of self-defense, including the protection of American citizens from attacks abroad. Indeed, from the time of Jefferson

to the present, presidents have exercised their authority under the Constitution to use military force to protect American citizens abroad.

DOES NOT APPLY

At the same time, Judge Sofaer articulated this Administration's position that the resolution, in general, should not be construed to apply to counterterrorist units. The units are not conventional military forces. They operate in secrecy to carry out precise and limited tasks. Their activities are normally directed at non-governmental forces and are not intended to confront the military forces of a sovereign state.

The use of military force in combatting international terrorism is an accepted application of international law, even against other states, when it is used in self-defense to protect essential U.S. interests. We will continue to use it prudently but with complete resolution and without hesitation where U.S. lives are at stake and the international obligations owned by other nations are ignored.

However, we must never come to rely solely on the use of force. The use of force may only serve to harden ideologies and stiffen misguided resolve. Force must be used only as a last resort. We must convince the world by persuasion and by the example we set that, like hunger, pestilence, and social injustice, terrorism has no place in our world. The task is great and the chance for complete success appears slender, but the alternatives are grim. We must not fail.

The Export of Conventional Arms

[The following is a reprint of a report prepared by the Department of State and submitted to Congress on 17 September 1986, pursuant to Section 129 of the International Security and Development Cooperation Act of 1985 (P.L. 99-83, 8 August 1985). The report examines U.S. policies concerning the export of conventional arms and possible approaches to developing multilateral limitations on conventional arms sales.]

INTRODUCTION

The transfer of military weaponry from one country to another--by grant, loan, or sale--has been an accepted element of foreign policy from the inception of the nation-state system. Since World War II, when the United States became the industrial arsenal and major supplier for the allies, bilateral transfers between states have increased, and a truly international market in conventional arms has evolved. This, of course, brings with it both advantages and disadvantages for international security, bilateral relations between countries, economic development, and regional stability in general.

General Statistics

After a long period of growth, the volume of worldwide conventional arms deliveries, based on ACDA's *World Military Expenditures and Arms Transfers Report (WMEAT)*, 1985 edition, declined in 1983 and in 1984 from the all time high of \$38 billion (in constant 1982 dollars) reached in 1981 and maintained in 1982. Similarly, the arms imports of developing countries also declined from the peak reached in 1982, reflecting a decline in these countries' GNP growth rates, the worsening of their debt positions, the general commerce-inhibiting atmosphere of the world recession, and the completion of major military modernization programs. Worldwide and developing countries' arms imports may level off in the coming years rather than continue to decline.

The Soviet Union and the United States have for many years been the world's two largest arms exporters, but their dominant role as arms suppliers has declined sharply. Their combined share of the world arms market was about 70 percent in 1969 and 68 percent in 1979. During the years 1980-84, however, the combined share averaged only 55 percent, and in 1984 their share fell to less than 50 percent for the first time. Other suppliers have become increasingly important. The total number of arms exporters increased from 30 in 1973 to 44 in 1984, according to ACDA's 1985 *WMEAT Report*.

The erosion of U.S./Soviet dominance has been influenced by three groups of arms exporters in the last twenty years. First, Warsaw Pact countries other than the Soviet Union have controlled between about 4 and 8 percent of the arms market. Second, the market share of NATO countries other than the United States has nearly doubled, rising from an average annual share of about 15 percent from 1963 through 1977 to an average annual market share of about 24 percent since then. The combined value of arms transfer agreements by the four major Western European suppliers (France, the United Kingdom, West Germany, and Italy) with the Third World in 1985 exceeded that of the largest single supplier--the Soviet Union.

Finally, the export market share of countries outside of NATO and the Warsaw Pact expanded dramatically, rising from an annual average of about 5 percent during the period 1973-1977 to 12 percent during the period 1980-1983. In 1984 their share reached 19 percent. Prominent suppliers

among these countries were China, Spain, South Korea, North Korea, Finland, Switzerland, Yugoslavia, Pakistan, Israel, Austria, Brazil, and Sweden.

ARMS EXPORT MARKET SHARES 1963-1984 (in percentages)

[Source: 1985 ACDA Data]

<u>Year</u>	<u>U.S.</u>	<u>Non-U.S. NATO</u>	<u>USSR</u>	<u>Non-USSR Pact</u>	<u>Others</u>	<u>U.S. & USSR</u>
1963	36.9	18.6	37.6	4.5	2.4	74.5
1964	35.3	20.3	34.5	8.3	1.7	69.7
1965	39.1	11.8	34.2	8.2	6.7	73.4
1966	40.6	12.0	35.6	6.8	4.9	76.2
1967	44.1	7.0	38.0	6.9	4.0	82.1
1968	50.3	11.5	29.8	4.8	3.6	80.1
1969	59.7	13.2	18.8	4.7	3.6	78.5
1970	53.3	12.0	25.8	4.6	4.2	79.1
1971	53.5	11.3	25.2	4.6	5.4	78.7
1972	38.4	19.1	27.9	4.4	10.2	66.3
1973	39.4	14.7	38.7	4.2	2.9	78.2
1974	41.0	15.8	33.6	5.7	3.8	74.6
1975	38.0	16.6	31.0	6.4	8.0	69.0
1976	35.3	19.8	31.7	5.4	7.7	67.1
1977	34.0	18.8	33.5	6.5	7.2	67.5
1978	27.9	23.4	33.1	8.0	7.5	61.0
1979	21.9	18.4	45.6	6.5	7.7	67.5
1980	22.0	25.4	39.3	5.3	8.0	61.3
1981	23.5	29.0	30.7	6.0	10.8	54.2
1982	24.4	22.9	29.6	7.9	15.2	54.0
1983	28.4	25.8	26.2	6.6	13.0	54.6
1984	22.0	24.3	26.9	8.0	18.8	48.9

SUPPLIER PRACTICES AND POLICIES

The Soviet Union

The Soviet Union continues to be the largest arms supplier on a worldwide basis and in terms of exports to developing countries. During the period 1981-1984, Soviet exports (deliveries) to developing countries amounted to about \$38 billion, based on ACDA's 1985 *WMEAT* Report, compared to \$21 billion by the United States. The USSR has been the largest exporter to all of the developing regions except East Asia. It has also been the leading exporter of most major weapons systems such as combat aircraft, armor, and warships. The Soviet Union provides very little economic aid to developing countries. Instead, it uses arms transfers as a major instrument for extending its influence, exploiting local conflicts, and earning hard currency.

The Soviet Union has focused its arms sales on strategically located countries such as Libya, Algeria, Iraq, Syria, and India. In Sub-Saharan Africa, Ethiopia has been the largest recipient. In East Asia, it has been Vietnam, and in Latin America, it has been Cuba. The USSR has also provided, by way of Cuba, support to Nicaragua and insurgent groups elsewhere. Soviet arms transfers to Cuba and Nicaragua over the past few years have been far greater than U.S. arms transfers to all of Latin America. (Since 1980, USSR exports to Cuba have been \$4 billion; Soviet bloc exports to Nicaragua have been about \$600 million, as reported in the 1986 DOD/State Report, *The Challenge to Democracy in Central America*.)

Apart from its use of arms transfers to extend its influence, the Soviet Union has, in the case of oil-rich customers, used arms transfers to acquire hard currency--about 25 percent of its total earnings.

The United States

The United States believes that conventional arms transfers, used in a judicious manner, play an important part in promoting international and regional stability and in enhancing the security of friends and allies. At the same time, this Administration retains a genuine interest in arms transfer restraint. The two concepts, of course, are not mutually exclusive. In fact, they can jointly form the basis for a highly responsible and responsive policy.

Specifically, the conventional arms transfer policy announced by President Reagan in July 1981 recognizes that arms transfers, judiciously used, can:

- help deter aggression by enhancing the defense capabilities and preparedness of allies and friends;
- increase our own armed forces' effectiveness by improving the ability of the U.S., in concert with its friends and allies, to respond to threats to vital free world interests;
- demonstrate that the United States has an enduring interest in the security of its friends and partners, and that it will not allow them to be at a military disadvantage;
- foster regional and internal stability, thus encouraging peaceful resolution of disputes and evolutionary change (in such areas as the Middle East and Latin America); and
- help enhance U.S. defense production capabilities and efficiency.

Under the President's policy, each request for arms is carefully evaluated, primarily in terms of its net contribution to enhanced deterrence and defense. A wide range of factors, including arms control factors, are considered in evaluating prospective transfers. These include: whether the transfer is consistent with U.S. interest in maintaining stability within each region; whether the proposed transfer can be absorbed without overburdening the recipient's military support system or financial resources; and whether possible detrimental effects of the transfer are more than counterbalanced by positive contributions to U.S. and regional interests and objectives. Requests for coproduction or transfer of sensitive technology receive special scrutiny. Recognizing that first-line systems may not be appropriate to the needs of all countries, careful consideration is also given to alternatives, including adaptations of U.S. military equipment.

Arms transfers produce substantial returns to the U.S. and complement our efforts to improve our own national defense. Thus, the United States delivers over 90 percent of its total arms exports to those regions where it has longstanding treaty arrangements or security commitments, such as the NATO countries, East Asia, and the Middle East. U.S. transfers have been instrumental in improving stability in Latin America, preventing the spread of the Iran-Iraq war, and strengthening the posture of our friends and allies in Europe, Asia, and Africa. In this same vein, conflicts have also been mitigated or contained in the Western Sahara, Chad, the Ogaden region between Ethiopia and Somalia, Yemen, the Persian Gulf, and Thailand. Where such transfers to friends and allies are financed by security assistance funding, the economic burdens we bear are more than offset by the political and security benefits. It is far more cost-effective for indigenous forces to protect their own freedom and the range of interests we share with them than for the United States to attempt these missions. It should be noted, however, that there has been a steady decline in the volume of U.S. Foreign Military Sales (FMS/government-to-government) agreements (for both U.S. funded and non-funded programs) over the last few years from \$18.4 billion

in fiscal year 1982 to \$11.7 billion in fiscal year 1985. The volume of FMS agreements is expected to decline even further in fiscal year 1986. [Overall new FMS agreements in FY 1986 fell to \$7.1 billion.]

Europe

Apart from the Soviet Union and the United States, the largest exporters are located in Western Europe--France, the United Kingdom, West Germany, and Italy. These suppliers are driven primarily by economic motivations. A vigorous arms transfer program becomes an important source of recouping weapons research and development investments, reducing unit costs to domestic militaries through longer production runs, and enhancing the viability of indigenous defense industries. This is particularly true in the case of more sophisticated weapons. Exports also earn hard currency, help offset a negative balance of payments, and maintain a high level of domestic employment. Europeans view domestic arms industries and arms exports as essential to the viability of their economies. In some cases they export over 50 percent of their defense production. Arms transfers also help the major European suppliers to sustain political influence in developing countries, particularly in their former colonies.

A number of other Western European countries are becoming significant small arms or arms technology-related exporters--countries such as Spain, Yugoslavia, Switzerland, Finland, Austria, Belgium, Sweden, East Germany, and Hungary. Although these countries do not, by and large, export finished major weapons systems, they do produce high-technology subsystems (avionics, radars, sighting devices and the like) which are incorporated into the arms of other producers or retrofitted by countries upgrading their major arms.

The arms industries of the Warsaw Pact countries outside the USSR have also grown in size and their weapons exports have increased. These industries are integrated with those of the Soviet Union and can supply many types of Soviet-model arms. In some cases they may furnish arms in situations when the Soviets, for political reasons, do not wish to supply arms directly. For example, the USSR's Warsaw Pact allies have provided arms to Iran during the Iran-Iraq war, while the Soviets have not.

Although the bulk of East European production remains within the Warsaw Pact, East European arms deliveries to developing countries have increased, primarily to the Middle East. Based on ACDA's 1985 edition of the *WMEAT* Report, the largest exporters have been Czechoslovakia and Poland. Romania has been the third largest East European exporter. The East Europeans can be expected to continue their arms exports to developing countries in support of Soviet political objectives and as a means of earning hard currency.

Other Suppliers

Outside Europe, more and more developing countries (e.g., Brazil, Israel, North and South Korea) are producing military equipment and competing for a share of the arms market. Most appear to be doing so mainly to secure hard currency to offset their international debt burdens and to achieve arms independence from supplier countries. A number of these relatively new suppliers are quite capable of providing less sophisticated equipment based on existing technologies that is mission effective, easy to maintain, and sometimes priced below U.S., Soviet, and European offerings.

Over the last few years, the PRC [People's Republic of China] has also entered the ranks of major arms exporters and merchants, having become the sixth largest in the 1980s. China has placed a new emphasis on its sale of military equipment for hard currency to fund its own military modernization programs. This is a change in earlier direction of the PRC's program from gifts to poorer states in Africa and Asia to sales to wealthier countries, particularly in the Middle East.

RECIPIENT ATTITUDES

Since only a limited number of developing countries can produce their own weapons, particularly advanced weapons, the developing world as a whole accounts for about 80 percent of world arms imports. The Near East was, and continues to be, the major arms recipient region, with imports accounting for about 40 percent of world arms transfers. During the period 1979-1983, the leading arms importing countries in the world were Iraq, Saudi Arabia, Libya, Syria, Egypt, and Iran. Africa has been the second largest recipient region in the developing world, and East Asia the third.

ARMS IMPORTS (in percentages)

[Source: 1985 ACDA Data]

	World Share		Real Growth Rate ¹	
	1973	1983	1973-83	1980-83
WORLD	100.0	100.0	5.7	0.4
Developed	24.9	22.1	1.3	2.0
Developing	75.1	77.9	7.0	0.0
REGION				
Africa	3.4	12.9	18.1	-9.4
East Asia	31.8	9.3	1.9	-11.2
Europe, all	26.7	20.2	0.4	0.2
NATO Europe	8.7	10.6	4.4	4.5
Warsaw Pact	4.0	7.4	5.8	-3.4
Other Europe	2.8	2.2	2.6	-6.4
Latin America	4.2	6.8	12.8	5.5
Middle East	27.4	42.6	9.2	8.6
North America	2.3	2.8	5.0	18.9
Oceania	0.8	1.1	8.1	-4.5
South Asia	3.3	4.3	11.6	-6.2
ORGANIZATION				
NATO, all	10.9	13.4	4.4	6.8
Warsaw Pact	4.0	7.4	5.8	-3.4
OPEC	11.9	34.6	14.1	8.5
OECD	14.3	18.5	6.0	5.1

¹Average real growth is calculated in constant 1982 dollars as a compound rate and fitted to all years.

Over the past few years, of course, the general recession, the worsening foreign debt position of many recipients, and the reduced oil revenues of the traditionally large arms purchasing countries of the Persian Gulf have resulted in a decline in the arms imports of most developing nations. However, despite their economic difficulties, many of the developing countries perceive continuing threats to their security, and therefore still seek arms as a priority requirement. Thus, the recent decline in these states' arms imports, as is the case with worldwide arms imports, probably reflects a leveling off after a period of peak demand rather than a continuing trend.

Arms recipients are seeking more sophisticated military equipment as well as greater economic benefits from their arms purchases. Their desires extend beyond weapon acquisitions to the purchases of arms production technology transfers and offset arrangements--a clear sign that

recipients have also acquired a greater appreciation for their economic bargaining position vis-a-vis suppliers.

Nations making significant purchases of military equipment increasingly demand industrial or commercial compensation as a condition of their purchase. These arrangements are designed to offset the budgetary or associated costs resulting from a foreign buy. Offset arrangements between two countries often involve coproduction, licensed production, technology transfer, or counter-trade.

In sum, supplier countries and recipients alike are increasingly striving, under the current conditions of economic stringency, to bring into equilibrium economic and national security needs, and thus pursue the most advantageous trade-defense arrangements available when negotiating and implementing arms transfers.

THE ECONOMIC IMPACT OF ARMS IMPORTS

The domestic economic impact of military purchases from foreign suppliers is largely determined by a country's overall economic situation, its government's economic policies, and the financing policies of the suppliers.

Foreign military purchases need not be economically harmful. They can stimulate economic growth by generating demand for local goods needed to support the mission for which the foreign military purchases are made, creating infrastructures available to both civilian and military uses, and providing access to valuable but otherwise unobtainable foreign training and technology. Purchases made with foreign grant funds or on a concessional loan basis can allow the recipient to devote more of its own resources to economic development than it would do in the absence of such aid, especially when a government perceives a threat that requires military spending as an important national priority.

Foreign arms purchases can be harmful to the purchaser's economy when the costs of such purchases are large relative to the money devoted to domestic economic development or when the purchasing government does not exploit the domestic economic opportunities afforded by the purchases. In a few cases, military-related debt constitutes an important portion of a debt-troubled country's total debt service. In the case of third world debt, less than three percent overall is attributable to U.S.-provided financing for arms acquisitions. In certain countries, however, the role of arms purchases in the national debt picture is considerably greater. Major examples in this category include Israel and Egypt which have been forced to finance prior conflicts while striving to build upon the Camp David accords to bring peace to the Middle East. But even in these two countries, FMS debt constitutes less than one-fifth of total annual debt service requirement.

Arms suppliers can help countries avoid such problems by thoroughly assessing the impact of potential arms sales on the purchaser's economy and providing a mix of economic and military assistance appropriate to the recipient country's particular needs. The U.S. does this, as exemplified by action such as the Administration's development and nurturing of a bipartisan consensus to reduce the total national debt burdens of friends and allies through such mechanisms as concessional rate credits and an expanded MAP (grant) program. Few other suppliers make similar efforts, at least to the same degree.

Finally, it should be noted that failure to counter serious security threats can lead to national and regional instability and even war. Both are far more costly and harmful to an economy than prudent defense spending.

PAST ARMS TRANSFER LIMITATION EFFORTS

Regional Arms Control Arrangements

For many years the United States has encouraged the development of regional arrangements among recipients to limit their conventional arms. Such arrangements can contribute to increased stability and reduce the risk of war if they are carefully designed to ensure the security of all participants; to avoid jeopardizing existing security arrangements; and to contain measures of verification adequate to create the necessary confidence that the undertaking is being observed by all parties.

In Latin America, there have been a number of initiatives aimed at such regionally-based controls. In 1974, Argentina, Panama, and the six Andean countries (Bolivia, Chile, Colombia, Ecuador, Peru, and Venezuela) signed the Ayacucho Declaration expressing their intention to seek limitations on their arms acquisitions. They reiterated this pledge in 1978. Mexico also convened a conference of Latin American and Caribbean countries in 1978 to consider conventional arms limitation. In 1985, Peru took the initiative in proposing that the parties move forward on an arms limitation agreement, although there have been no concrete result in this regard to date. The Central American nations are also trying to reach agreement on arms limitations as an element of the Contadora peace process. Without effective and mutually agreed inspection regimes, however, such efforts are not likely to succeed.

U.S.-Soviet Conventional Arms Transfer (CAT) Talks

In a 1977 presidential initiative, an effort was made by the United States to gain the support of other major suppliers for an international arms transfer restraint regime. The United States first approached the major NATO allies, who made it clear that they would want assurances of Soviet readiness to accept any restraint before they could consider specific restraint measures themselves. In this context, they rightly pointed out that Soviet cooperation was fundamental to the success of any multilateral restraint effort, since the Soviets are the world's principal supplier, particularly to countries hostile or potentially hostile to many Western allies and friends.

Following these discussions with the Europeans, the United States in late 1977 began a major effort to interest the Soviet Union in a far-reaching arms transfer restraint regime. Between December 1977 and December 1978, the United States and the Soviet Union held four rounds of bilateral talks on restraint of conventional arms transfers (CAT Talks). By the end of the fourth round, both sides had tabled proposals containing draft political/legal and military/technical criteria which might govern arms transfers globally. The two sides were unable, however, to move forward on the regional application of the proposed criteria because they were unable to agree on candidate regions for restraint. No agreement was reached on the agenda and timing of a fifth round. Thus, the U.S.-Soviet talks ended without concrete results, and Soviet arms transfers continued to proliferate worldwide, while the United States continued to exercise prudence in its international arms transfers.

Other Arms Transfer Restraint Efforts

The other efforts to date to develop a global or broadly-based regime to limit conventional arms transfers have been inconclusive. In June 1978, the United Nations Special Session on Disarmament called for international discussions between suppliers and recipients on arms transfer restraint, but there was no serious follow-up, largely because of lack of interest in the idea on the part of many nonaligned countries.

Conventional arms transfer issues have also been discussed in general terms within the Committee on Disarmament in Geneva, but there has not been sufficient commonality of interest nor priority accorded to the issue in that forum to move toward meaningful multilateral negotiations.

LESSONS OF THE PAST

As has been noted earlier, both the production base and the markets for conventional armaments are widely dispersed. Past discussions and negotiations indicate clearly that far-reaching arrangements to control levels of weapon sales or arms transfers on a global or regional basis are not likely to be effective without the cooperation of the Soviet Union and other significant suppliers at a minimum, as well as that of the recipients.

In light of the very large number of suppliers as well as the diverse and sometimes conflicting, political, security, and economic objectives they pursue, it is highly doubtful that any single supplier or select group of suppliers has a realistic prospect of being able to impose an effective restraint regime.

The cooperation of recipient states is also essential for a comprehensive arms transfer restraint regime to work. As long as the demand for new and refurbished military equipment remains strong and the international tensions generating that demand remain unabated, arms suppliers alone will not be able to induce restraint. This is evidenced all too clearly by the fact that whenever the topic of arms transfer limitations has been raised, many recipient nations (e.g., Nigeria, India, Yugoslavia) speak out strongly in opposition. They claim that any restraint regime would constitute discrimination, since they do not have the indigenous capacity or technological capability to produce their own arms. Their only alternatives to providing for their self-defense and security, they maintain, are to acquire arms from other countries or to rely on someone else for defense.

PROSPECTS FOR THE FUTURE

Despite the problems of the past and obstacles to new breakthroughs, the United States remains committed to the search for international cooperation towards arms transfer restraints. We continue efforts to identify and take advantage of opportunities, working with others, to bring about practical, verifiable controls whenever such controls hold promise of contributing to regional stability and international security.

Cooperation Among Major Suppliers

There has been little or no serious interest in arms transfer limitations demonstrated by the Soviet Union or, for that matter, by most other arms producers. Therefore, immediate negotiations with France, the Soviet Union, and other suppliers to establish a comprehensive regime to limit the transfers of conventional arms to less developed countries is not likely to be fruitful at this time.

Given our past experience in attempting to develop a broadly-based arms transfer restraint regime and the failure of the CAT talks in 1978, we believe that a more promising and effective approach to reducing international arms transfers would be to focus on the resolution of regional conflicts. We must deal with the underlying motivations for arms acquisition and give more thought to regional security and confidence-building measures designed to reduce the pressures to buy arms. These efforts can help to provide a realistic political context for bringing about limitations on arms transfers.

In his address to the U.N. General Assembly on October 24, 1985, President Reagan proposed that a process of negotiation be established among the warring parties in Afghanistan, Cambodia, Ethiopia, Angola, and Nicaragua to bring about an improvement in internal conditions. Once these negotiations take hold and the parties directly involved are making progress, *representatives of the United States and the Soviet Union should address how best to support the ongoing talks among the warring parties. "In every case the primary task is to promote this goal: verified elimination of the foreign military presence and restraint on the flow of outside arms."* We

hope that the Soviets will respond positively to this initiative, which offers the best prospect of addressing arms transfer restraint in specific country and regional contexts.

In this connection, the U.S. interest in a regional approach is also reflected in our support for the development of a comprehensive, verifiable peace treaty for Central America based on the full and simultaneous implementation of the Document of 21 Objectives subscribed to by the Central American countries and the Contadora Group. These include noninterference in the affairs of one's neighbors, national reconciliation through serious dialogue with domestic opposition groups, free elections and democracy, *removal of foreign military personnel, and a reduction of armaments.*

U.S. - Western European Cooperation

Efforts to develop a broadly-based cooperative arrangement on the part of the United States and Western European suppliers to control levels of sophisticated weapon sales on a global or regional basis are not likely to be effective without the cooperation of the Soviet Union and other Communist bloc suppliers. To date there is no demonstrated Soviet interest in such limitations. As previously discussed, the Western European suppliers believe that Soviet cooperation is essential to a worthwhile restraint regime, given the Soviet Union's status as the largest individual supplier and the increasing importance of their East European allies (e.g., Czechoslovakia, Poland, and Romania) as arms exporters. The United States concurs with this European assessment.

The difficulties of reaching agreement with Western European suppliers on such a broadly-based restraint regime are compounded by the difference in approaches to arms transfers. While U.S. arms transfers are directed toward enhancing the security of friends and allies and maintaining stability, arms transfers by many of the Western European suppliers are driven largely by the economic motivations cited earlier, including the reduction of military production costs, the balance of payment considerations, and the levels of domestic employment.

Finally, the number of arms suppliers capable of providing reasonably sophisticated arms further complicates the problem of developing an effective broadly-based restraint regime among the United States and Western European suppliers. As pointed out earlier, the total number of arms exporters increased by nearly 50 percent from 1973 to 1983.

SUCCESSFUL COOPERATION

Although a broad-based, far-reaching cooperative arrangement on the part of the U.S. and Western European suppliers to control the levels of sophisticated weapons sales is not likely to be feasible, particularly in the absence of an understanding with the Soviet Union, the United States has sought to take advantage of available opportunities to advance practical international controls both through cooperation with western suppliers and the use of existing international mechanisms.

COCOM and Bilateral Cooperation

We cooperate with our major allies through the Coordinating Committee (COCOM) in controlling the flow of militarily-critical parts and technology to China and to the Soviet Union and its allies. We also cooperate with our NATO allies in controlling sales territories in the case of coproduced weapons.

In certain cases where proposed arms transfers may have a potentially adverse effect on stability, we consult bilaterally with our major allies and others through diplomatic channels. For example, we have actively sought the cooperation of other governments in cutting off the flow of arms to countries such as Libya and Iran. We may also consult with other suppliers on exports of

particular types of weapons or technology to particular destinations where there is a danger of exacerbating tensions or a risk of misuse of the equipment.

The United States will continue to seek the cooperation of its Western European allies whenever fruitful opportunities arise to implement practical arms transfer controls which will contribute to the security of friends and allies and enhance regional stability.

United Nations Fora

The United States currently participates in deliberations within the United Nations framework which consider the issues of conventional arms control--in particular the 40-nation Geneva Conference on Disarmament and the United Nations Disarmament Commission (UNDC).

The Conference on Disarmament (CD) is the principal multilateral negotiating forum for international arms control arrangements. Since 1980, the CD has been working on the text of a Comprehensive Program of Disarmament (CPD) that would serve as directional, but nonbinding, guidance for states to follow in reducing both their nuclear and conventional arsenals.

The United Nations and its subsidiary organization, the Disarmament Commission (UNDC), are also involved to some degree in this area. Specifically, since 1984, the UNDC has been discussing basic issues concerning nuclear and conventional disarmament in its Contact Group of the Committee of the Whole. This Contact Group has prepared a series of recommendations on conventional arms limitations and regional disarmament for the UNGA [United Nations General Assembly], but to date these have caused disagreement within the broader UNDC, which is expected to continue working on them in 1987.

The First Committee of the UNGA also convenes in New York every autumn to consider, and make recommendations on, disarmament issues referred to it by the UNGA. In 1985, the 40th session of the UNGA adopted over seventy resolutions on arms control that the First Committee had recommended after prolonged debate. Among those supported by the United States were: resolution 40/84, which condemns the use of "excessively injurious" conventional weapons; resolutions 40/91A and B, which deal with the reduction of national military budgets; resolution 40/94A, which encourages regional efforts on conventional disarmament; and resolution 40/152D, which endorses the CD's work on the CPD.

At the present time there is not sufficient common interest in arms transfer limitations among arms suppliers and recipients to reach agreement through the Committee on Disarmament or other international fora. Most members of these bodies, whether they are arms suppliers or recipients, have shown little or no interest in such limitations. Past efforts to raise the subject in international fora have met with particularly strong resistance by arms recipients as being discriminatory against countries which do not have the capacity to produce their own arms. However, the United States stands ready to cooperate in practical efforts to develop effective, verifiable conventional arms control arrangements which enhance stability and reduce the risk of war.