
PREPARED STATEMENT OF HON. MATTHEW NIMETZ

Mr. Chairman, my name is Matthew Nimetz. I am a lawyer, practicing in New York City, after having served in 1980 as Under Secretary of State for Security Assistance, Science and Technology, and before that as Counselor of the Department of State. I am pleased to have been invited to testify today before the Foreign Relations Committee on the important question of how the Arms Export Control Act should be amended in order to take account of the Supreme Court's decision in INS. v. Chadha that legislative vetoes are unconstitutional. Let me start with a few general observations that, in my view, must form the basis of a sound long-term arms transfer policy.

First -- military strength will continue for the indefinite future to be a major touchstone of national power, and no government will ever jeopardize what it considers its fundamental security position by voluntarily permitting a deterioration in its military position vis-a-vis perceived adversaries. This is true for not only the two superpowers and regional powers, but also for smaller nations.

Second -- except for the superpowers, all states will continue to rely, to a greater or lesser extent, on foreign supply of major weapons systems, particularly aircraft, armor and missile systems. Obviously, this reliance becomes acute in times of tension.

Third -- because of the vulnerability of nations to the vagaries of their arms suppliers, an arms supply arrangement between two nations will become one test, if not the major test, of the state of the relationship. Critical issues will revolve around the sophistication of the weapons the supplier is willing to transfer, the quantity of items supplied, the training arrangements, the degree to which joint development and production is undertaken, the speed of deliveries, the terms of sale or credits involved -- all these will be measured and analyzed. This is another way of saying that the arms relationship very quickly becomes a barometer of the political relationship and vice versa.

Fourth -- the prime importance of weapons in modern international relations, combined with the dependence of the recipient state on the supplying state, makes the arms supply relationship difficult even between the closest of allies, with the recipient always seeking to maximize home production, to be entrusted with advanced technical information, to stockpile sufficient spare parts, to obtain reliable delivery, to maintain diverse source[s] of supply, and to negotiate advantageous pricing; while the supplier (in our case, the United States) quite obviously is interested in minimizing its commitments. There is, to put it briefly, a built-in conflict of interest between the recipient, which seeks reliability, and the supplier, which seeks flexibility.

Fifth -- because the arms supply relationships between the United States and our allies and friends are so critical and so sensitive, it is important that both the Executive and Legislative Branches work together to establish a broad consensus on basic policies and reasonable agreement on specific sales.

The questions presented by the Chadha case for me, as one who had responsibility for administering the system, is not how can we provide a new veto in the place of the old one, since no sale was ever in fact vetoed, but rather how can the governing law be amended to promote the articulation of sound foreign policy, to encourage consultation between the Executive and Legislative Branches, and to demonstrate to foreign countries (friends and adversaries) that we, the United States Government, can conduct our arms export program with a minimum of executive-legislative confrontation.

As I have noted, the Arms Export Control Act provided that the Congress could veto major arms sales (\$14 million for [major] defense equipment and \$50 million for articles and services) by passing a concurrent resolution within 30 days of receiving formal notification of the sale. In fact, no veto ever occurred. The importance of the provision was, in my view, that it provided the keystone for an important structure of notification and consultation that in the vast majority of cases resolved major differences. In my experience, sensitive sales were brought to the attention of Committee Chairmen and ranking minority members, and other concerned members and committee staffs, weeks and even months before formal notification would be required. On the basis of such consultations, leaders of a foreign nation could be told that the sale of certain defense items in certain quantities would encounter resistance on the Hill. Under such circumstances, a sale could be postponed, or reduced in size, or less advanced equipment substituted and so on.

The power of Congress to review arms sales is an important discipline on all who administer the system -- the State and Defense Departments, the White House and National Security Council staffs, Ambassadors in the field, and the manufacturers of defense equipment, as well as foreign military leaders. Foreign nations do not wish to be the subject of a major vote in the U.S. Congress, even when the sale is ultimately approved, and will often withdraw or modify a requested purchase after receiving the State Department's assessment of congressional attitudes. Those who administer the defense equipment transfer programs at home and abroad tend in general -- and there are exceptions -- to pay more attention to the arguments in favor of a major sale than to the rationale behind certain important restraining policies, e.g., the risk of compromising sensitive U.S. technology, the destabilizing effect of introducing advance systems in regions where rival powers maintain a delicate balance, and the effect on human rights and civilian rule in the recipient country.

By focusing on the sale, we have tended to neglect a key aspect of the problem: financing, particularly by developing countries, which must meet a growing debt service for goods which add nothing to their national product. Two years ago I testified before this Committee that in focusing on arms transfer we were neglecting what I called "a most important part of the problem -- how to finance them." It was obvious to me that the strain on the treasury of Egypt and Israel and many other important friends would be severe -- and this financing problem for them will, I predict once again, become a political problem for us.

I conclude from these general observations that now more than ever we need a serious arms export policy, a responsibly administered system and congressional scrutiny of and active participation in the entire process. However, I am not convinced that the system need[s] be held together by a

requirement that legislation be required for sales over a certain threshold. Let me outline my concerns about proposals that would require specific legislative approval for major arms sales.

1. Such legislation would put an additional mandatory requirement on a Congress that already bears too great a legislative burden. While I was Under Secretary, Congress was unable to enact a foreign assistance appropriation bill for security assistance for two successive years. Given the workload of this Committee and the House Foreign Affairs Committee, the risk of delays and postponements will be substantial, with serious consequences to the relationship with recipient countries, most of whom are close friends.

2. Even though a sale may be relatively non-controversial, the requirement that there be a full vote of the Congress will tend to call forth a referendum on the particular country involved, whether or not such a hearing is appropriate or useful. Every major sale to a Middle Eastern nation, I fear, would call forth a full scale debate on the myriad of problems there. Every major sale to Taiwan and Japan might engender controversies that are unnecessary and divisive. I wish to emphasize that I do not oppose full hearings on important foreign policy issues: such as arms sales. I do believe, though, that they should be planned deliberately by the Senate Congressional leadership and not forced upon the Congress by what may be a routine sale of aircraft, the construction of a facility abroad, or some other transfer of other defense equipment.

3. The strategic or political importance of a transfer of defense items is often unrelated to the dollar value of the sale. By hinging the statute on a dollar threshold, we will focus attention on size, but not political relationships or regional dynamics. Let me give a few examples. Major transfers to NATO and ANZUS allies, to Japan, to Israel and a few other close friends, are rarely controversial. These allies and friends depend on us and by and large there is executive-legislative and bipartisan consensus that we remain a reliable supplier of their defense requirements. Sales to these countries are often large and would thus require legislation. But a very much smaller sale -- say, in the \$10 to \$50 million range of defense equipment -- to another country might involve major foreign policy decisions. This has already occurred with respect to Central America. It would, in my opinion, occur if a sale of defense related equipment were to be proposed for Iraq, for Argentina, for the People's Republic of China or for South Africa. Thus, the size of the sale is often less important than the general context of the relationship between the United States and the recipients and the overall international situation affecting that country. A dollar threshold is, in my opinion, a rather blunt instrument that can obscure important issues and consume valuable legislative and executive time, energy and good will.

Instead of a threshold for required legislative approval of a sale, I would focus attention on the notification procedure. The 30-day period notification will, in my view, be too short once the legislative veto is removed from the books. I believe the Javits Amendment (§ 25 of the AECA) gives valuable information with respect to future sales, but assuming no legislative approval will be required for large sales, I believe that the Congress might reasonably increase to three weeks [sic] the formal notification period before a letter of offer (LOA) is formally issued, although perhaps that period could be reduced for items submitted under the Javits Amendment and for allied

countries or countries having a special arms supply relationship with the United States, such as Israel.

Moreover, I believe there should be firm informal understandings between the Executive Branch and the relevant committees that the committees obtain advance informal notification of proposed arms transfers that are important or sensitive, and that the Executive Branch will delay implementing such sales if the leadership of the committees ask for consultation. These informal arrangements are not binding by law, but in my experience they are critical to making our foreign policy work effectively. In the light of the Chadha case, I believe informal arrangements between the Executive and Legislative Branches are more important than ever.

Such a regime would give opponents of a particular sale sufficient time, in my view, to influence the Executive Branch or, if a confrontation is inevitable, to schedule hearings and hold a vote. Since the Executive Branch and the foreign country involved are most reluctant to have such a confrontation, the Congress still retains a most powerful instrument. Of course, the President can exercise the veto, but it would be a rare event indeed for him to use it under the circumstances; if he did, he would quite clearly have to accept full responsibility for the foreign policy consequences of the act. And, it should be noted, Congress has other instruments at its disposal such as the foreign assistance authorization and appropriation acts that are less amenable to Presidential veto.

No nation wants its all-important arms supply relationship to depend on a Presidential veto. And the Executive Branch should not desire such a situation. Every major sale requires back-up equipment, spare parts, ammunition, technical assistance. For these reasons I am quite certain that all parties to a controversial sale will strain to find accommodation rather than seek total vindication. For these reasons I believe a system based on notification and consultation, rather than formal approval of particular sales, is the preferable course. At least such a system should be tried. If there are frequent confrontations between the Executive and the Congress, then the Congress retains the power to change the governing law. For example, I would agree that if the President exercises his veto in order to implement an arms sale that the Congress formally disapproves, and does so three or four times in a ten-year period, then prior legislative authority [for] major sales is probably warranted.

Thank you very much for this opportunity to testify on this important issue.

STATEMENT OF GENERAL ERNEST GRAVES, CENTER FOR STRATEGIC AND
INTERNATIONAL STUDIES, GEORGETOWN UNIVERSITY, AND FORMER
DIRECTOR OF THE DEFENSE SECURITY ASSISTANCE AGENCY

During my tour as Director of DSAA, I appeared before this committee many times to testify on the sale of arms to allied and friendly governments.