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Last Updated: 11/09/2023

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file Iran
DRAFT 459085
C0071
FG036-11
FG006-12
FD0030

THE WHITE HOUSE

Office of the Press Secretary



Internal Transcript

January 20, 1987

TESTIMONY OF FORMER NATIONAL SECURITY ADVISOR
ROBERT C. MCFARLANE
BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE

January 16, 1987

Capitol Hill

CHAIRMAN PELL: Today, the second in a series of hearings in the various foreign policy aspects of the administration's strategic initiative toward Iran. The Foreign Relations Committee will hear Robert McFarlane, who was the National Security Adviser to the President at the inception of the Iran initiative.

Because the Iran initiative was conceived and executed by the National Security Council staff, to the exclusion of the State Department and other foreign policy agencies, our witness is very uniquely able to speak to the desire of the policy, to its goals, and to its initial implementation. Mr. McFarlane will also be able to enlighten the committee about the decision-making process that led to the initiative.

I'm disturbed, as are many of us, by the content of the Iran policy and, equally, by the process used to make that policy. Considering the course it did, the White House apparently failed to consider the possible adverse consequences of the Iran initiative. And these include the direct impact of the arms sale on Iraq's beleaguered defense; the impact of American arms sales on the effectiveness of Operation Staunch, the United States organized arms embargo of Iran; the impact of perceived United States' duplicity on the credibility of the United States security guarantees to Saudi Arabia and other Gulf Arab nations; the impact of a perceived arms-for-hostages deal on a counterterrorism program based on the declared maxim of not rewarding terrorism; the impact on United States prestige of a policy which has at least in its implementation held the United States up to a considerable degree of ridicule and scorn.

I'm no less concerned about the process by which the policy was made. The Iran initiative was undertaken without any input from the State Department's Iran experts and, apparently, without the benefit of our professional intelligence elements. It was carried out with only the minimal involvement of the Cabinet officer responsible for American policy, the Secretary of State, and with the disregard for the statutory role of Congress.

Had other foreign policy professionals been involved, the White House would surely have learned of the folly of using arms as a means to reach dubious moderates in the Iranian government. And by consulting with professionals, the White House might have better understood the potential damage of the Iran initiative to a much broader range of United States foreign policy and security interests. Had the Congress been consulted, the White House would have known in a far more timely fashion what it has now learned through bitter experience, that the American people will not accept a policy of providing arms to an Iran headed by the Ayatollah or by radical sponsors of terrorism like him.

I would ask the ranking Minority member if she has a statement.

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SENATOR KASSEBAUM: I don't have an opening statement.

CHAIRMAN PELL: Then, Mr. McFarlane, do you have an opening statement? And then we could move on to questioning.

MR. MCFARLANE: Thanks very much, Mr. Chairman. I have looked forward to the opportunity to come before the Committee on Foreign Relations. The legitimacy and understandability of the Committee's interest and the conceptual underpinnings of this initiative are very sound. As a consequence, I welcome the opportunity to provide the fullest possible account of the concept on which this proposal was based and of the specifics of its conduct over time, to include responding to your understandable interest in the process within our government.

It seems to me that the two central points at issue in gaining an understanding of the matter are, first of all, what was the concept? Was it in the national interest? And, secondly, was it feasible, assuming that it was in the national interest?

On the first point, the concept of trying to establish ties, a dialogue, with people in Iran who would be involved in the post-Khomeini government seems manifestly important, if not vital, to United States' interest. The vital character of that interest is expressed, as the Committee well understands, by the geography of Iran, sitting, as it does, between the Soviet Union, the Persian Gulf -- a position that has been a coveted avenue for commerce and for the projection of power for centuries.

The United States' interest in foreclosing Soviet access and the ability to project power that would be represented were the Soviet Union to have a prevailing influence in Iran is clear and is joined by our separate interest in the security of the oil flows in and out of the Persian Gulf -- oil flows which are key to the health of the international economy. We also have very negative concerns about Iranian current policy, and that is a deep-seated opposition to and resistance to their policies of supporting terrorism throughout the Middle East, which, at bottom, are directed toward the expulsion of the United States' presence, both diplomatic and commercial, and Western presence generally from the Middle East. We oppose this and we have throughout this initiative.

Consequently, I don't think that there are serious disagreement here in the Committee, in fact, with the concept, the desirability, indeed, of trying to avoid a vacuum in the relationship with Iran and, indeed, probable agreement on the point, the desirability over time, if possible, in moving from this condition of hostility which has dominated the past seven years and toward one of normalcy.

The second question is equally serious, and that is if it was desirable, was it feasible? Are there really people in Iran who are oriented toward change?

The basis for that judgment was one which one can disagree about, but it certainly has a logic to it. Specifically, if one tries to put oneself in the position of an Iranian official today, concerned for the welfare of his country, and simply looks at the spectrum of external and internal problems they face, there is a compelling case that there surely ought to be people in Iran who want to change.

To the west he sees a war that has already cost some one million casualties with no end in sight. To the north he sees an ominous Soviet presence of almost 30 divisions becoming more menacing and capable each day. To the east he sees a Soviet presence and occupation of Afghanistan, with pressures on Pakistan and the possibilities that Iran indeed, were that successful, could be next. In short, considerable external turmoil.

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Internally, that same Iranian official would see the results of that external stress creating internal turmoil. And specifically the loss of much of their export -- oil export production and distribution facilities in the war has had the effect of reducing exports to about 20 percent or less of what they were before the war. And that means less foreign exchange -- fewer dollars -- and a lesser ability to import the key requirements to sustain the population. And that official would see outside his very office the tens of thousands of peasants and others for whom he cannot provide. In short, Mr. Chairman, I assert that there was a logic to believing that their ought to be self-interested politicians in Iran concerned for stability in their own country, and for providing for their people, that would be interested in change.

Now I know that a case can be made that that is not true -- that there are no such people -- call it with a Western logical turn of mind, and that the people in the government are preoccupied with the promotion of a theocratic crusade throughout the Middle East. Surely there are such people, but such people are not naive about the ability of themselves to stay in government and govern with the pressures that they face.

Witnesses before this committee have asserted that instead of trying to identify whether there are such people, that the course of our own government should have been to ignore Iran. I assert that that is misguided, Mr. Chairman. The responsibilities of government -- of this government -- are to try to protect American interests, and surely those interests are not defended if we ignore the very clear decline and chaos occurring in one of the most geostrategically important countries of the world -- a country vulnerable to the Soviet Union, vulnerable to the decline of its economy, able to affect American presence and influence dramatically through terrorism. In short, to have ignored Iran, to have done nothing, while safe, would have been irresponsible.

The balance of the committee's focus -- and it's a very legitimate one -- is, then, if the concept was sound, if there was a logic to expecting that there are such people in Iran who ought to want to change, was its conduct carried out in a fashion that served the national interest? I'm here to the committee today to respond, but would answer at the outset, that the Chairman's own questions this morning concerning the involvement of appropriate Cabinet officers, was fully satisfied throughout the time I was in government, it has been clear from the beginning that the President in any important decision of this kind needed to have the advice and counsel of all of his Cabinet officers with an interest, and he did. That the risks were considerable, that the possible gains were also important.

Weighing the advice of his Cabinet officers -- the Secretary of State, Defense, the Director of Central Intelligence -- the President decided that it was important that we not ignore and cop out from a condition that dramatically affects the security of the United States. He tried. Efforts don't always succeed. And I cannot account for events that occurred in 1986.

In closing, I would say that the responsibility of government to seek to promote our national interests and to avoid allowing vulnerabilities to worsen, as surely they would have, is important.

I look forward to responding to your questions.

CHAIRMAN PELL: Thank you very much, indeed, Mr. McFarlane. Thank you again for being with us and your frankness and willingness to respond.

I guess what you are saying in your statement is that the rationale for this whole thing or this policy was to develop an

opening with the officials and that the release of the hostages was a biproduct. Is that what you are saying, or are you saying that they had equal importance?

MR. MCFARLANE: From the beginning my own view of this undertaking was that its central purpose was to enable us to restore some kind of discourse with sensible elements in Iran that in the post-Khomeini period could lead -- might lead -- to a more stable relationship. The relationship to hostages in my mind was this, that in order for this concept to have any validity, the people with whom we dealt could not be simply people of no consequence with no influence in the government. To fulfill our purposes, they needed to be people that could change things.

Now a measure of that at the outset had to be, could they in fact effect the release of the hostages? For if they couldn't even do that, surely we couldn't expect that the larger issues of changing Iranian policy could be taken on. So in my mind the relationship was that. It was a measure of two things -- first, the good faith of the people with whom we were dealing and, secondly, their competence, their influence.

CHAIRMAN PELL: And obviously it was based on the thought that, while the hostages were being held in Lebanon -- wherever they were -- that the mastermind controlling their fate were the Iranians. Would that be a correct assessment?

MR. MCFARLANE: Clearly there was a linkage between Iran and the captors in Lebanon. I wouldn't say that it was so rigid as to enable the Iranian officials to dictate the actions of the captors, but there was a relationship and influence.

CHAIRMAN PELL: I wonder in the formulation of this policy, if thought was given to the fact that it would eventually, in all likelihood, as everything does, become public and what the assessment of that risk was?

MR. MCFARLANE: Well, it seemed to me from the beginning that in the best case, assuming things worked, and the people with whom we dealt dealt in good faith, which meant wanting to change over time the policies of the government, that was certain to engender opposition from the more radical factions. And it seemed to me that we had to anticipate that within at least three months time, was my estimate, there would be, if things worked out, a leak, a disclosure from opponents. And it seemed to me that we ought to have in mind that at the end of three month's time we should make a decision as to whether or not the original idea was proving out -- that is, that there were such people and they were able to influence events, and in that event to carry it on and to go ahead and engage with the Congress and acknowledge that this was going to become a public matter.

Now, on the other hand, if we determine that these people were well-meaning but not yet able to really influence change, then we should have terminated it. And basically, I acted within that approach.

CHAIRMAN PELL: I guess what I find puzzling is the thought that anybody in that government of Khomeini could be considered a moderate or a reasonable, that the people who might be moderate would be outside the government and hence we'd have no power, while the people in the government were all of a pretty extremist viewpoint. That, I gather, was not your view -- that you thought there were moderate elements within the government.

MR. MCFARLANE: I did, Mr. Chairman, and I did because it seemed to me that in a system which is not a democracy but authoritarian, that those within the government out of self-interest personally have an interest in staying in the government, and to do that, have to be responsive in some measure to pressures of their

constituency. In short, that this transition period has been underway probably in the minds of high Iranian officials for the last two years, and that those albeit sitting officials devoted to supporting policy in some measure are not immune to recognizing the problems they face in wanting to change.

CHAIRMAN PELL: I think it would be of interest to us how mechanically you would make contact with these so-called "moderates," when I would think they would expose themselves to having their heads chopped off for being in contact with you.

MR. MCFARLANE: That's a very good point, Mr. Chairman, and that in fact was a source of some credibility to the good intentions or good faith of the people we dealt with specifically. For four years, there had been Iranians of various coloration come to the United States government, to the State Department, to the CIA, to the White House occasionally, and make claims as to their own bona fides. None of them seemed to me to be more than rather self-serving people of no influence and questionable good faith.

However, when we were advised by a third country that has been thoroughly vetted, Israel, that they believe, they had identified people who were officials as well as people out of the government. The central focus of our questioning was, how do you know about their intentions? What makes you think that they are not simply self-serving opportunists trying to exploit you and us? And I believe that while it would be better done in closed session, it was clear that before this was ever brought to our attention, the efforts of Israel to validate the legitimacy of these people was very thorough. And I say that in the context of these people having indeed made themselves very vulnerable, and enabling -- putting themselves in extremely compromising positions, which if disclosed today could put them in a very risky state. But I'd be glad to cover that more in closed session.

CHAIRMAN PELL: Thank you. Did I hear you correctly when you said that this possibility in these individuals were brought to our attention by the Israeli government -- by the Israelis?

MR. MCFARLANE: That's correct.

CHAIRMAN PELL: Would you feel free in this open session to say who in the Israeli government, or was it private individuals, not members of the government?

MR. MCFARLANE: It is a matter of public record acknowledged by Mr. Kimke who was at the time the Director General of the Israeli Foreign Ministry and a man with whom I had dealt -- a man for whom I have enormous respect, of considerable intellect and complete integrity.

CHAIRMAN PELL: Thank you. The policy that we had of discouraging our allies from giving arms to Iran, and then our own policy in doing this, how did you resolve that from a policy viewpoint in your minds? How could you have these two things in contrast to each other make sense?

MR. MCFARLANE: I think that's the most difficult matter for Americans to understand, and it is reasonable that it is found difficult. When the matter was presented to the President in July of 1985, that ambiguity was stressed, that here we have a case in which the United States would be engaging in providing arms to individuals who are opposed to policy of terrorism, who wish to end the war with Iraq, who wish to have a reasonable discourse with the United States and restore their own economy.

However, they are Iranian, and the perception in the United States is that Iran is a monolithic, very extreme, brutal, radical country, and we have foreclosed providing arms to that country. And it was made clear to the President that to ask

Americans to distinguish between providing arms to that country and doing as we did, to provide arms to individuals of a different point of view is very hard. The idea that you could deal with people who are Iranian and associated with a state policy of terrorism, but who might not be themselves supportive of that policy is very hard for Americans to understand. But it is on that premise that the President reached the decision to go ahead. And that is that if these people could demonstrate their opposition to terrorism and express their bona fides to end the war, and make clear that they had influence to do it, and only then, could we provide arms, but only in quantities that couldn't affect the outcome of the war with Iraq, or be used for terrorist purposes.

But you're quite right, that is very difficult for Americans to distinguish, and looking at Iran as one single terroristic society.

CHAIRMAN PELL: Thank you very much, Mr. McFarlane. My time has expired. I think we should limit ourselves to ten minutes, and with the small number of us here, we should be able to have a second round if we so desire.

Senator Kassebaum?

SENATOR KASSEBAUM: Thank you, Mr. Chairman. Mr. McFarlane, there are many questions I would like to ask. I feel they do come under the purview of the Select Committees and the Independent Counsel. So I will try and restrain myself and draw upon your expertise to ask about your analysis of some of the future consequences in the Middle East, and particularly regarding Iran and Iraq. What do you think are the consequences of our recent actions on the military balance between Iran and Iraq?

MR. MCFARLANE: Senator Kassebaum, it seems to me that the military consequence is inconsequential. That is --

SENATOR KASSEBAUM: Is inconsequential?

MR. MCFARLANE: Inconsequential. The dominating factor of the conduct of this war between Iran and Iraq has been great ineptitude on both sides. And that is not to say that weapons are not a factor, they certainly are. However, the specifics of what was provided in the circumstances faced today in the area of Shatt-al-Arab as well as the northern central fronts could not affect a strategic difference in the outcome.

SENATOR KASSEBAUM: Do you see this as a stalemate situation?

MR. MCFARLANE: Yes, I do. It seems to me that it's very unlikely that either side, based on a record of seven years of employment and tactics pursued, of doctrine pursued, seemed to have an understanding of how to take advantage of benefits that each has that ought to have been able -- each side to be far more effective than it has been. The tactical aviation of Iraq, the sheer numbers of Iran, so forth, superior technology. But none of those factors have been effectively brought to bear.

SENATOR KASSEBAUM: Well, I certainly would agree with your comment that we shouldn't ignore Iran, but wouldn't we have been better off, perhaps, to have tried to explore a greater diplomatic effort to bring about some conversations between Iran and Iraq? Was that closed to us? Was that option closed, or was it ever explored?

MR. MCFARLANE: That's a very good point, indeed. That was a central purpose of this. The --

SENATOR KASSEBAUM: Of trying to sell arms to Iran?

MR. MCFARLANE: No, of the -- the basic concept was that our purpose in trying to contact people in Iran at all -- in the first place, was to not only to have some hope of influencing the future politically in Iran but to stop the war. And our policy of trying to do that for six years before this ever started was one of the central points that I was to make, for example, in the visit to Iran. How do we stop the war? Can we help you do it?

SENATOR KASSEBAUM: But weren't we, evidently, dealing with people who, perhaps, wanted to continue the war? It was to their advantage --

MR. MCFARLANE: I think definitely not.

SENATOR KASSEBAUM: -- to continue the war.

MR. MCFARLANE: I feel very strongly that that simply is not the case, that these people were very conscious that the continuation of that war was very harmful to Iran. I think they still feel that way.

SENATOR KASSEBAUM: What would be the consequences in the Middle East if Iran should win the war?

MR. MCFARLANE: It is difficult to know with certainty. However, the possibilities of Iran dominating the northern end of the gulf, giving them a much better position to pursue a military campaign down the west side of the gulf is clear and very, very threatening to our interest. Were they to try to move into Kuwait, Bahrain, Qatar, U.A.E., so forth, a separate and equally ominous possibility would be the rallying effect that that victory would have among Shiites throughout the area and the stimulus it might give to the terrorist campaign. Whether in Lebanon, Saudi Arabia, elsewhere, both of these consequences are very much against our interest.

SENATOR KASSEBAUM: Well, I certainly should -- would think so. I wonder when you say "it's at a stalemate" do we, today, have the credibility to be a player -- a major player in trying to bring parties together and move it beyond a stalemate?

MR. MCFARLANE: Well, it seems to me that I couldn't pretend that we do, today, have so effective a relationship with Iran or Iraq that we could do that. Nor have either -- nor has Iran, thusfar, at the Khomeini level, said they were willing to negotiate. But, surely, we'd never have that possibility if we didn't try. And I think that the prospect of our having a useful role to play is better today that it has been.

SENATOR KASSEBAUM: You believe we are strengthened today because of the recent actions that we've undertaken?

MR. MCFARLANE: I think, in the viewpoint of those who are going to be in the succession government, in the post-Khomeini period, their confidence in being able to deal with the United States in a way that assures them we're not going to act against their interest, is better now that it has been before. Yes I do. I don't pretend that the Khomeini regime is likely, in the short-term, to change course, nor did we expect it to.

SENATOR KASSEBAUM: You mentioned in your comments -- opening comments -- and so I'd like to follow through a bit, the importance of dealing with people at good faith and that since you stress the importance of the good faith -- people that you are dealing with -- I'd like to ask why when you recommended, I believe at least twice, that arms shipments to Iran be halted, once in late

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1985 and again after your visit to Tehran in 1986, both times decisions to halt these shipments were overturned, why was that?

MR. MCFARLANE: I cannot account for that, Senator. I don't know. I wasn't there.

SENATOR KASSEBAUM: You did recommend that they be halted because of questioning the good faith of the people that you were dealing with? Is that correct?

MR. MCFARLANE: I made that recommendation not entirely because of good faith. In fact, I thought there was a well intentioned group of people there, but that, thusfar, they simply couldn't deliver. In other words, good faith, yes -- ability to influence, no. And so it was premature and it should be discontinued. I made that recommendation. It was endorsed by others and I cannot account for how it was altered later.

SENATOR KASSEBAUM: You didn't question why it was altered or changed after you made that recommendation, and you have the expertise and were a major player at that point? Didn't it trouble you that it was overturned at some point?

MR. MCFARLANE: Well, bear in mind I made the recommendation after I had resigned, and was no longer in the government, and was not party to the deliberations in January of 1986, through which it was resumed. In May, in the four-day episode in Tehran, which renewed my confidence that this was still a premature opening, I came back, and, again, recommended that it be terminated. But I was out of the government and I was not involved in subsequent policy deliberations in the administration.

SENATOR KASSEBAUM: Just one final question -- if the war continues to drag on for a couple more years, what effect do you think that will have? Is this going to enhance anyway a change within Iran, or will it only strengthen the hand of the stronger group there -- the fundamentalists?

MR. MCFARLANE: It seems to me, Senator, that two factors are at issue here and one of them is the continuity of the Ayatollah Khomeini himself. And for as long as that is case, I expect that the war will continue and there's little prospect of change. The other factor is one of the extent to which -- call it pragmatic considerations of welfare in the Iranian society and its decline -- are more important than the very important factor of culture and of religious influence. In short, by whomever succeeds Khomeini, the balance between the Mullahs and the non-cleric -- call it more pragmatic individuals -- will determine the answer to your question, I think. And that, in turn, depends upon the extent to which leaders of government in Iran can rely upon an essentially religiously-founded basis for sacrifice as being more important to Iranians than their basic welfare. It seems to me that there is better than a 50-50 chance that those decisions by individual Iranian peasants will come down in favor of change and toward a less extreme policy. And that is why to make ties with those people who might lead such a faction today is in our interest.

SENATOR KASSEBAUM: Thank you.

after the questioning at open session we can have an opportunity to go in the back room for any further information along the lines that you mentioned that you would care to give us in closed session. So, when we've wound up the open session we retreat to the back room. Senator Sarbanes.

SENATOR SARBANES: Thank you, Mr. Chairman. Mr. McFarlane, did I understand your response earlier to the Chairman to be that the safety of certain elements -- so-called moderate elements in Iran would be endangered if their identity were revealed. Is that correct in a response you gave to the Chairman in your view?

MR. MCFARLANE: If I did, my larger concern, Senator Sarbanes, is that while I think there is a consideration of immediate safety, the portrayal of those individuals as having worked and working now with us affects more their ability to carry on in government or in their current status where they are and it's more a concern for whether they will remain viable over time.

SENATOR SARBANES: Well, that leads me right in on my next question and that was -- I'm interested in the calculation in your thinking of that assume that you could try to make an opening to so-called moderate elements without jeopardizing them or endangering their position within Khomeini Iran.

MR. MCFARLANE: I think I responded to this before your arrival, sir. My judgment was that the first objective had to be to determine whether, at all, there were such people and to consider that if there were, and if the idea of trying to deal with them had merit, it certainly was going to be opposed by others in Iran and it would be exposed. And consequently that you had to recognize going in that you had, perhaps at most, a three month or so opportunity to determine whether this policy had any merit to it. If there were people of interest in change or not. If there were, the second judgment -- and this goes to your point -- is could they change things now and if not, even though they were well-meaning you'd better back off. If they couldn't, of course back off. That's why it seemed to me that you had to expect the policy would have become public within three months time and plan on it and indeed expect it to happen and with full Congressional involvement and so forth.

SENATOR SARBANES: Well, what would the consequences have been even assuming all of this had worked out within a three month period if it became public? What would have happened, then, to these elements within Khomeini's Iran?

MR. MCFARLANE: Well, if they --

SENATOR SARBANES: Let's assume that you found elements that were so intended that you establish contact with them. What was going to happen to these elements once it became known, which I assume you assumed would happen surely within a fairly short order, once it became known that they had an identification with the United States.

MR. MCFARLANE: I expected that at the end of about three or four months time you would reach a conclusion that those with whom you dealt were dealing in good faith and they were competent and strong enough to preserve themselves against the opposition they would surely face, or a lesser degree of control and influence. And that at that point, if you determine that they were -- had good faith and were well meaning, but not yet able to act, still you would terminate things and say, well, let's stay in touch but let's not undermine your own Iranian position. Simply know that we are interested in supporting you over time.

SENATOR SARBANES: Well, now, how would the furnishing of arms to those elements have sustained their power position vis-a-vis Khomeini and the radicals.

MR. MCFARLANE: I think that's probably the most difficult question for Americans to understand, Senator Sarbanes, and in my judgment the answer is this.

SENATOR SARBANES: Well, I don't think we should limit it to Americans. I think it's a difficult question for lots of people to understand. I don't really accept the proposition that somehow there's something faulty in the thinking of American's that makes them sort of --

MR. MCFARLANE: I don't imply that.

SENATOR SARBANES: -- genetically unable to analyze this situation (laughter) as opposed to others around the world. My perception is that lots of people who are not Americans are asking similar sorts of questions.

MR. MCFARLANE: That wasn't my point, of course. The point is to ask oneself in a very realistic fashion, how change occurs in the Middle East. And using concrete cases in point, how have good governments emerged in the Middle East? And we find that it is not through a process of conventions, and primaries and runoffs and elections at all. But, instead, that it has been where people, occasionally of great competence, and occasionally not have had a common approach, however and it has very often been by first being able to survive. And to build a coalition or a faction -- a faction that must have strength and, specifically, arms. And that over time these malicias, factions struggle one against the other and one emerges with a leader of consequence who can lead. But, this process is one in which in country after country it has necessarily involved arms because arms are the currency that lead to strength with military support.

SENATOR SARBANES: Now, these arms were not going to be used by a moderate faction within Iran against another faction within Iran in a power struggle. They were to be used by Iran in the war against Iraq. Is that correct?

MR. MCFARLANE: Senator, the arms were the currency, and I think that's a proper term for engaging Iranian Army and Air Force officials who by debt of their stature and command and control of forces contributed to this power base that over time could assure the survival of the figures with whom we dealt. Now, I don't pretend that this was open warfare at this point that would have been served by tow missiles -- you're quite right about that. But, it would have been the currency through which the political process of getting the support of those Army elements was achieved.

SENATOR SARBANES: Well, do you -- is it -- was it your view that Khomeini and those -- and the more elements had been unaware that this currency was circulating?

MR. MCFARLANE: Senator, I have no concrete evidence that Ayatollah Khomeini was or was not aware of it.

SENATOR SARBANES: When you went in yourself how much in your calculations did you have a concern, one, that it would be found out? Did you believe you could go in without Khomeini and those knowing that you were there? And, secondly, assuming that that was a problem, what was your calculation on the dangers inherent to you in being taken -- not only the personal dangers but the dangers to the United States that a former National Security Advisor with the kind of access that you have to the most important of information would in effect found himself captured and held by elements very hostile to American interests?

MR. MCFARLANE: I'd beg two points, Senator Sarbanes. First of all that your earlier point about the extent to which Khomeini was conscious of what was going on, I answered in saying that I wasn't -- had no certain basis in the beginning of whether he

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did or not.

SENATOR SARBANES: Well, I'm very careful to say not only Khomeini, but radical elements associated with Khomeini.

MR. MCFARLANE: That is a very important factor and so I made a lot of effort to find out just what that situation was, and is today, I think. And I think that's the kind of thing that is better gone into in closed session. But, to deal with the point of your question -- I was very much aware that in dealing with people who wanted change in a climate controlled by somebody like Khomeini, indeed Khomeini, and surrounded by subordinates who are much more radical turn of mind that this was at risk -- both for those we dealt with and for us. And so, before going in there I had -- I made a very serious effort to determine just what awareness there was and what risks there were. And while I concluded that it certainly was not without risk, I finally concluded that it was an acceptable.

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SENATOR SARBANES: Would you agree with me that it would be a disaster for American interests if a National Security Adviser were, in fact, taken hostage by elements inimical to United States interests?

MR. MCFARLANE: Well, I could imagine circumstances in which it could be. (Laughter.)

CHAIRMAN PELL: Thank you. Senator McConnell.

SENATOR MCCONNELL: Mr. McFarlane, I happen to have spent an hour with Prime Minister Shamir Monday, and an hour with Foreign Minister Peres on Tuesday in Jerusalem, and I, therefore, have a good deal of interest in your observation about reliance on the Israelis for identification of these so-called moderate elements. Did you mean to say -- did you say that we relied exclusively on the Israelis to identify the moderate elements in Iran with which we were going to deal?

MR. MCFARLANE: My intent was to say that the original presentation to us that we found credible came from Israel, but that we did make our own independent efforts to determine whether their own conclusions were reasonable.

SENATOR MCCONNELL: Were those independent efforts to identify or to verify the Israeli advice about who the moderate elements were -- were those through government sources or private sources, or a combination of both?

MR. MCFARLANE: Basically government sources.

SENATOR MCCONNELL: Were there any private -- private advice offered by others in trying to identify who those elements were?

MR. MCFARLANE: None that I know of, with -- I may misunderstand, such as academics or of scholars or things like that -- no.

SENATOR MCCONNELL: Did you, Mr. McFarlane, as a result of your discussions with the Israelis, or from any other source, conclude that Khomeini's successor Montezari was the moderate?

MR. MCFARLANE: No, sir.

SENATOR MCCONNELL: Did you conclude that the military leaders who were not part of the revolutionary guard might fall in the so-called moderate category?

MR. MCFARLANE: Some of them. Yes, sir. Not all.

SENATOR MCCONNELL: Was there any discussion about the merchant or Bazarri class in Iran which controls about 75 percent of the business there? Is it generally thought that they have a number of so-called moderates in them?

MR. MCFARLANE: Yes, sir, it was. In some, the composition of the community group of people that were portrayed to us as being interested in change included people from each of these communities -- from military, even from the revolutionary guards, in a very few cases, from the Bazarri and from the Mullahs, and from the clerics, that there are shadings of attitude in each of these, and that those within the government at the head of this faction were reliant upon each of them.

SENATOR MCCONNELL: Did you ever have any direct contact with any of the people in any of those groups that we just talked about?

MR. MCFARLANE: These are not people that could come to

the United States. And I did not go there until until May and so the answer is no.

SENATOR MCCONNELL: So, we relied exclusively on the advice of others as to what individual in those various groups might comprise this moderate element?

MR. MCFARLANE: That's correct. We really had no alternative. But you make a very good point and that was why in December of 1985, in frustration of not being able to validate the bona fides of these people by direct contact, I recommended to the President, and he agreed, that we establish direct American-Iranian contact so as to make a better estimate of just what were the credentials of the people with whom we were dealing.

SENATOR MCCONNELL: Had you been earlier impressed, though, with the credentials of any of these individuals? You had not -- you had not met with any of them at the earlier point?

MR. MCFARLANE: I had not, and I accept your point that I relied quite heavily upon the characterization that we'd had from others.

SENATOR MCCONNELL: The Israelis?

MR. MCFARLANE: That's correct.

SENATOR MCCONNELL: Do you think it's a rather dangerous position for us to take to rely almost exclusively on any other country's intelligence assessments as a basis for initiating a policy which, by your own admission, was fraught with danger for the President, for the administration and for our position all over the world?

MR. MCFARLANE: Well, there certainly is a risk and that's why the determination of how far one goes is terribly important. But it seemed to me that the stakes, the national interest, in trying to determine the answer to the question is there hope in Iran, was terribly important to our country. Now, that said, given the enormous risks to be overcome, one should not make too great an investment or make too great an exposure of risk in the process, until you have a personal basis for determining that this is making sense and getting results. But it seemed to me that if there was to ever be anything except copping out and doing nothing, which is safe but irresponsible, that you should start something with the best information you can get and we did. Let it run until you see whether they are delivering results and these people are people of influence, and we did. And when you're shown that they cannot, even if they are well-meaning, deliver, stop it, you should do that. And I tried.

SENATOR MCCONNELL: You said earlier you figured that the efforts to establish this process would get out within a three-month time frame, but it was six months, was it not, at least, from July until December before we made any direct contact, ourselves, and did anything other than simply rely on the Israelis? Is that your -- is that what happened?

MR. MCFARLANE: Well, sir, the President's approval came in August of 1985. The authority was that if Israel were to sell arms to Iran and ultimately come to the United States to replace them, that they could do that, so long as the quantity shipped and the character of the weapons wouldn't alter the complex of the situation in the war or contribute to terrorism.

Now, I understand --

SENATOR MCCONNELL: Excuse me -- and so I -- if I may interrupt you. And so that whole process was based exclusively on intelligence assessments from Israel. Is that right? We had no --

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at that point, no independent verification whatsoever of what a moderate was or who they were in Iran.

MR. MCFARLANE: Well, no, not entirely. The U.S. intelligence community had been collecting information as best it could on the situation in Iran for a long, long time, and that had involved inputs from Israel, of course, but also from a number of other countries. And so, when we got the Israeli estimates, our own intelligence community had considered not only that input, but input from wherever we could find it and could make a recommendation to the President as to whether this was a prudent thing to do or not -- and recommended that we go ahead with it, clearly recognizing that we couldn't do it with absolute certainty and conviction, but the judgment of the director was that, yes, this was worth a try for a period of time. And so, with that authority, Israel undertook under it to be in touch with the Iranians again. And the first action, as I recall it, was at or about the first of September in 1985. So, responding to your question, time-wise, September, October, November, the authority was exercised and the initiative tried. At the end of that time, it seemed to me, that its original purpose putting us, Americans, in touch with Iranians wasn't proving out. And, separately, that it was taking on a focus, a priority, of securing the release of hostages. Consequently, I recommended that we try to get it back on its original course. And the President approved that, and then a meeting between myself and an Iranian took place in London and led me to the conclusion that this isn't yet a mature opportunity, and that we should stop it. And I recommended that we stop it after that three-month trial.

SENATOR MCCONNELL: One final question, Mr. Chairman. Did you or anyone else in the August discussions with the President suggest to him that if this got out, and you indicated earlier you thought it would be out within three months -- if it got out it was going to look strictly like an arms-for-hostages deal?

MR. MCFARLANE: That was made very emphatically by more than one person to the President.

SENATOR MCCONNELL: Thank you, Mr. Chairman.

CHAIRMAN PELL: Senator Simon.

SENATOR SIMON: As a follow up to the question by Senator Kassebaum, when your recommendation to terminate arms deliveries to Iran was made, who overturned that recommendation?

MR. MCFARLANE: Senator Simon, I made that at the end of December and left the government and I was not party to the follow-on decision process in January through which the process was resumed, and I don't know.

SENATOR SIMON: Let me just ask, then, ordinarily how would the process work?

MR. MCFARLANE: Ordinarily the President would assemble his National Security Council members, the Secretary of State and Defense, National Security Advisor, the Director of Central Intelligence, possibly the Chairman of the Joint Chiefs, the Vice President, and others in the Reagan administration who are members -- that includes Secretary of the Treasury, the Attorney General, the Chief of Staff of the White House.

SENATOR SIMON: And your recommendation went to your successor or to the President or to whom?

MR. MCFARLANE: When I returned on December 9th from London in 1985, I was asked -- or I went in to see the President on the 11th, and present were the President, the Secretary of Defense, the Deputy Director of CIA -- the Director was out of the country -- the Vice President, Mr. Regan, Secretary Weinberger. Secretary Shultz was in NATO meetings. I debriefed that I had carried out my instructions in London and said that we were open to a political discourse, but that we would not ship U.S. arms nor encourage others to do so, and as a separate matter, believed that the specific individual who was the Iranian go-between was a person we should no longer deal with. That was December 11th. The Secretary of Defense endorsed that position as well, and while the President not reach a judgment on the spot, my assumption, because it was the common view around the briefing room, was that the matter would be curtailed.

SENATOR SIMON: The let me shift to the broader issue. You have probably done more reflection on what all of this means than anyone else in this room. Reversing roles a minute. If you were a United States Senator today -- I do not want to wish this upon you -- but if you were a member of the Senate, how would you be handling this Iran situation? What should we be probing, what should we be doing, how should we be handling this in the best interests of this country?

MR. MCFARLANE: Senator Simon, it seems to me that the approach taken thus far by committees of jurisdiction -- this committee, its counterpart in the other body -- is proper. Your question is broader than that. It seems to me that the orientation of each committee in its jurisdiction should be to determine, number one, the analytical foundation -- that is, the quality of policy analysis that led to this, separately, the process through which decisions were reached, and finally, evaluating both of those -- policy analysis and process -- to determine whether there was weakness of system or of person -- of personality. And if that is systemic, to determine what changes in the system, the process, are in order.

There is a separate matter that is dealt with by independent counsels and so forth, but each of these are appropriate areas of interest for the Congress, and not only by the Select Committees that have been established, but by jurisdictional committees as well.

SENATOR SIMON: As you reflect on that systemic situation, one of the questions is, who should be executing policy. Do you think the National Security Council, on reflection, has moved into the area of going beyond advising to executing policy more than

it should?

MR. MCFARLANE: Senator Simon, it's out of place for me to speculate on matters with which I was not personally involved, but I will answer your question based upon my own activities while in government. And it seems to me that there is a legitimate role for the National Security Council, for the President's personal staff, to engage in contact with other governments on a very, very rare basis, not as a conscious initiative of our government usually, but in response to the interests of people in other governments. And that, I would guess, would be less than one tenth of one percent of the diplomacy of this country.

However, it is made legitimate by the situation in which these foreign entities -- be they government officials or people who aspire to be government officials -- are in. And it is a position of vulnerability -- or even those who are not vulnerable but for whom our history of dissociation and estrangement and perceptions popularly within those countries are so rigid as to make possible turmoil within those countries if a public discourse is open without preparation.

Preparation means first to determine whether each country is sincerely interested. That requires very discreet contacts that have two qualities -- on the one hand, great discretion and privacy, and on the other hand, the highest level authority. Now I would say that the number of times that that happens or should happen in a given administration you can count on one hand, if that many, and even then, when it is the President's personal role and his personal staff involved, it has to involve the Secretary of State and other appropriate Cabinet officers. And it did when I served in this government.

SENATOR SIMON: Let's follow on what happened after you were in the office. And let us assume that the transfer of funds from the Iran sales to the Contras was both good public policy and it was legal -- and I don't assume either, but let's assume that just for the question. Just in terms of structure, is it wise to have someone in the National Security Council carrying this out?

MR. MCFARLANE: It is never wise to break the law, if the law was broken.

SENATOR SIMON: But assuming that it was not contrary -- my belief is clearly that it was contrary to the law, but assuming it was not contrary to the law, structurally this a wise way to move?

MR. MCFARLANE: It is never wise to evade oversight. By oversight I mean checks and balances, if that is the intent of your question.

SENATOR SIMON: I guess my question really goes beyond that, and that is whether policies like this -- the execution of policy shouldn't be with the State Department and with the Defense Department rather than with the National Security Council?

MR. MCFARLANE: As I've said, I think in about 99.9 percent of the time, yes. I would say at the same time that that doesn't foreclose human error. It does give you a more likely prospect of this kind of effective check and balance that I discussed and which is entirely proper.

SENATOR SIMON: I thank you. Thank you, Mr. Chairman.

CHAIRMAN PELL: Senator Adams.

SENATOR ADAMS: Thank you, Mr. Chairman. Mr. McFarlane, it's nice to see you again.

Mr. McFarlane, I ask former Secretary of State Vance, and

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I have appeared before and in the Security Council. I'm concerned about the process that you just testified to a moment ago of who participated and who presided, because I think the process in this National Security Council leads to policy. In other words, the policy out of it, both its implementation and in this case whether policy was established, comes either in written form or through verbal communication there. Did you indicate that on the Security Council forming policy in the time you were in the administration that it also involved the Chief of Staff, I believe you mentioned the Attorney General, and so on, because it's my remembrance that either the President or the Vice President, the Secretary of Defense, the Secretary of State, National Security Advisor, are the Security Council. Isn't that correct?

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MR. MCFARLANE: There are four statutory members, and they are the President, the Vice President, the Secretary of State and Defense, and no others.

SENATOR ADAMS: Correct. Now, who presides?

MR. MCFARLANE: The President.

SENATOR ADAMS: When you were there. The President presided. Did he physically preside, or did the Vice President preside in his state? I'm just trying to find out who made the policy in this, and I'm going to ask you specifically in a moment the communication to you, because I'm trying to determine whether the system was flawed, which the Congress should deal with in terms of the act itself, or if there was a breakdown. And this has been confusing to me, of how everybody either did or did not understand what they were supposed to do, particularly the operating officers -- State, CIA, the other normal operating divisions that carry out the missions that you have described. Who presided, in your -- on your watch?

MR. MCFARLANE: Senator Adams, the President always chaired the National Security Council.

SENATOR ADAMS: In other words, he physically was present?

MR. MCFARLANE: That's correct.

SENATOR ADAMS: All right. Then did you use a policy-forming decision to give instructions to others of coming forth with a decision memoranda, or was it simply verbally communicated to everyone?

MR. MCFARLANE: Senator, the process which basically replicated process in policy decisions, in other areas -- arms control and so forth -- were ones in which first the President called together his advisers, the issue was presented to him, and each Cabinet officer and adviser expressed his view. He posed questions, and through an iterative process, solicited and received the advice of all of his --

SENATOR ADAMS: Right. This was verbally done at the meeting.

MR. MCFARLANE: That's correct. And they are in session.

SENATOR ADAMS: And was it recorded?

MR. MCFARLANE: Again, being out of government, I have not seen that --

SENATOR ADAMS: No, I mean on your watch.

MR. MCFARLANE: On my watch.

SENATOR ADAMS: I'll ask you in a moment how you got the word as someone outside of government, because I've always been concerned in every administration of somebody saying they speak for the President and this can become a very tricky business unless there is either a written memoranda or a clear line of authority so that you know that the person is speaking for the President. Otherwise, your policy, whatever, is developed, or lack of policy becomes implemented someplace else, and I just need to know what you can contribute to the committee in terms of your watch and then what happened to you as you were receiving instructions.

MR. MCFARLANE: Yes, I understand. As I say, it began in July with the President convening each of the people on the council, hearing their advice, not deciding, but thinking about it. Those

same individuals meeting singly or in groups with him -- again, the Secretary of State and Defense -- and over time in the course of about a ten-day period, late July, early August, the President coming to a conclusion to authorize a specific authority for another country to do something. And I stress that because --

SENATOR ADAMS: I understand. Now, was that communicated

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MR. MCFARLANE: I'm getting to that, yes.

SENATOR ADAMS: -- by decision memoranda to the operating agencies?

MR. MCFARLANE: I'm about to get to that, yes.

SENATOR ADAMS: What is it?

MR. MCFARLANE: I'm getting to that, yes.

SENATOR ADAMS: Oh, yes.

MR. MCFARLANE: The President viewed the decision as a decision to grant his approval for the actions of another government, although indeed ultimately that government would come to us again, Israel, to buy replacement arms. Now, he communicated that to me, and when he did by telephone, I said to him, Mr. President, as you know, your Secretaries of State and Defense are opposed to this. He says, yes, I understand that, and provided his own explanation of the basis for his decision.

Then I notified the other National Security Council members, the Secretary of State and Defense and the others, and on those occasions heard once more the opposition of it from the Secretaries of State and Defense. And I encouraged them to be back in touch with the President, because you're quite right -- the communications through channels that are not always open can lead to ambiguities and misunderstanding. And I know in at least one case, I believe the Secretary of State -- perhaps more than once -- after the decision, promptly, though -- reaffirmed his concerns about it, even though out of this country.

SENATOR ADAMS: But the policy, then, still on your watch, did it ever come down? Because I'm concerned about the testimony of Secretary Shultz before the House committee, that he says, I learned not as a result of being involved in the development of the plan and we're talking about this authorization, but so to speak as a plan -- was about to be implemented. I learned in various ways of the two proposed transfers during 1985, but I was never informed and had the impression they were not consummated. What I'm trying to determine is whether the National Security Council processes the Congress should be involved in determining that there be a more direct line of communication. Are you saying to me now that he knew that it was the President's decision that he verbally communicated, but at the end of this, some type of instruction was clear within the National Security Council statutory people that this was going to be done?

MR. MCFARLANE: Absolutely yes, Senator Adams. Now, the knowledge of the specifics, the detail, the scope, the intent of the President's decision was understood by the Secretary of State and Defense, and they expressed again their opposition to it. Now, as to whether or not after the decision, the continuing awareness by them of what was going on did occur. I would say that first in that same transcript, the Secretary of State acknowledged that in 1985 --

SENATOR ADAMS: Yes, he knew that this was being discussed, but he indicates he thought that the policy, and that's what we're trying to talk about here, that the policy either had not been implemented, or he didn't know anything further about it being

processed during your watch.

MR. MCFARLANE: No, during my watch --

SENATOR ADAMS: And my question -- what happened to you afterwards?

MR. MCFARLANE: I believe if the transcript is complete, it also says that while there -- for him, the Secretary of State was lesser awareness in 1986 than in 1985. He testified there was considerable discussion, and to and fro, about it. And specifically, I took occasion to just go back and try to recall the numbers of times and settings and occasions in which I, with him and others on the NSC, the statutory Cabinet-level people, was in touch or met with them. And in only three months' time, from July, August, September, it came to more than 200 contacts with those five or six people.

SENATOR ADAMS: Was there a written presidential option, memo, distributed to them?

MR. MCFARLANE: No, but there was no ambiguity or uncertainty by them of the nature of the decision.

SENATOR ADAMS: All right. Now, I want to, because my time is running out, ask you, now you're out of office, you're on the receiving end of instructions, and people are saying that this is the presidential policy in 1986 on which you operated. Did you receive that with a written presidential option memo, a verbal contact? How did you know what the policy was? I don't know whether the system is broken down or whether there's a new system in place. And that's what I'm really asking.

MR. MCFARLANE: Yes, sir. In May of 1986, when I was asked by the President to go ostensibly to open a political exchange, I was given written instructions, "Terms of Reference," they were called, four pages of them, and it was on that basis that I proceeded.

SENATOR ADAMS: And who did you receive those from?

MR. MCFARLANE: From the National Security Adviser.

SENATOR ADAMS: Mr. Poindexter?

MR. MCFARLANE: That's correct.

SENATOR ADAMS: In other words, your successor?

MR. MCFARLANE: That's correct.

SENATOR ADAMS: So you had written instructions of what you were to carry out. Is that correct?

MR. MCFARLANE: That's correct.

SENATOR ADAMS: Did you notify at that point the Secretary of State, the CIA, any of the other operating agencies of your instructions and mission?

MR. MCFARLANE: I asked whether or not they were involved, and who had approved these instructions, and was told that the Secretary of State was involved indeed, and that the President had approved the instructions.

SENATOR ADAMS: You were told that, but you didn't see a presidential option memo or anything because you were out of government at that point? Is that correct?

MR. MCFARLANE: That is correct, and I was called in for this meeting the day before I was -- had already -- or, they had

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already arranged for me to leave.

SENATOR ADAMS: Was the President or the Vice President or any of the other officials other than Mr. Poindexter there present and issuing to you instructions, verbal or written?

MR. MCFARLANE: They were not. On my return, the President acknowledged that the instructions were indeed his instructions.

SENATOR ADAMS: I see. Thank you, Mr. Chairman.

CHAIRMAN PELL: Senator Moynihan?

CHAIRMAN PELL: Thank you. Senator Moynihan.

SENATOR MOYNIHAN: Thank you, Mr. Chairman.

Mr. McFarlane, Senator Sarbanes, and Simons, and Adams have spoken to the question of process, and I'd like to pursue this matter, and, in particular, in the context of your statement to Senator Simons that it is -- it is never wise to evade oversight. And I suppose what I'm going to try to find out is when you began to think this. It goes back in the record, as best I can establish -- goes back to the second week in April, 1984 when Senator Barry Goldwater as Chairman of the Select Committee on Intelligence, sent to Mr. Casey, the DCI, a letter saying that the Intelligence Committee had not been informed of the mining of Nicaraguan harbors, that this -- act was in violation of international law, and that the Chairman was "expletive deleted," as The New York Times put it, over the event.

Two days later you appeared at a foreign affairs conference at the Naval Academy and stated that what Mr. -- Senator Goldwater had said was not true. Now, whether you knew this to be the case or not, you can have an opportunity to answer, but you said -- wasn't true. I'll read the account in The Washington Times. From Annapolis: "Every important detail" of United States secret warfare in El Salvador and Nicaragua, including the mining of Nicaraguan harbors, was "shared in full by the proper committees -- proper Congressional oversight committees" insists President Reagan's Assistant for National Affairs, Robert C. McFarlane. Robert C. -- Mr. McFarlane said, "He cannot account for Senator Barry Goldwater's contention that he was kept ignorant about the CIA-sponsored harbor minings."

Now, 13 days later, Mr. Casey sent a hand-written letter to Senator Goldwater and apologized. He said, "Our contention that you were fully informed was not so, and I apologize, we've mistaken." And we tried to -- instead of just getting mad at each other and say, aha, you see -- we said, all right, can we learn something from this -- get something good out of it, as the Chairman is going to try to here. And we looked at the statute and the statute said that the committees were required -- the committees of oversight we're required to be informed of any significant anticipated activity. And, well, the statute didn't define significant and so it wasn't clear, perhaps, what was. And we said, "Can we define a working definition?" And we did. And we said, "As a working definition any activity -- covert activity the President himself approves, we'll take to be significant." That's the way the Executive Branch works.

And, then, on the 6th of June, we signed an agreement -- Mr. Casey signed as DCI, Senator Goldwater as Chairman of the Senate Committee, and I as Vice-Chairman, signed an agreement to this effect. If the President agrees -- if the President has approved something or directed something that significant will be told, then you don't have to make a decision everytime an event comes along.

Now, these have come to be known as the Casey Accords. And in the first -- almost the -- and the first large breach of the accords was the events that took place just about exactly a year after -- began about a year after these agreements -- June and July.

One, it was our clear understanding that the Casey Accords were signed with the approval of the President. Could I ask you, sir, did you not personally approve them in the National Council -- that statement signed by him and the two of us?

MR. MCFARLANE: I recall, certainly, being involved in it. I don't know -- I don't think it was within my authority to approve it, but I would have endorsed it the President, and I'm likely to do it.

SENATOR MOYNIHAN: Yes -- to get -- because our

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understanding was the President did say fine, that's a good --

MR. MCFARLANE: Yes.

SENATOR MOYNIHAN: -- working definition, good procedure.

MR. MCFARLANE: Yes, sir.

SENATOR MOYNIHAN: Did you -- by that time -- were you that -- by that time aware that what you had said at the Naval Academy was not so?

MR. MCFARLANE: Yes, Senator Moynihan. And I think that you and I have already talked about this quite a lot. And I agree with your portrayal and every aspect of it. At the time I said what I did at the Academy, I said it on the basis of what I had been told by the CIA. And I think, subsequently, as you point out, that that was not an accurate representation by the CIA, and in turn, by me.

SENATOR MOYNIHAN: And I do not, for a moment suggest, you said something you knew not to be true, but the problem was, it wasn't true.

MR. MCFARLANE: Right.

SENATOR MOYNIHAN: Was there no learning process there about you can't always depend on what you're told in the government?

MR. MCFARLANE: It made an impression.

SENATOR MOYNIHAN: Yes -- made an impression. But, also, after that great travail and the statement about international law -- which I'd like to return to another time if we have a second round, Mr. Chairman -- when it first arose with -- in the context of this proposition, we'll send arms, we'll get involved, and so forth, and the -- and it was clear we -- the Congress is not going to be informed. Didn't -- didn't that say to you, oh, my God, we're going to have trouble? At that point, did you not think it is never wise to evade oversight? Did you tell the President? Did you tell the others that, you know, you've got to share this? I mean -- the Iranians are going to know -- if the Iranians are going to know, why not let the Senate Intelligence Committee know?

MR. MCFARLANE: Well, Senator, the point you're making is one with which I agree. Let me deal beyond the principal, however, with the concrete.

SENATOR MOYNIHAN: Okay.

MR. MCFARLANE: The short answer is, I didn't do it because the President's decision was that it was not to be shared. I did feel strongly that the point in time would come where it would become clearly public, and even if we succeeded, that you would want the Congress to know, and if it didn't, you'd want the Congress to share the burden of failure. So it seemed to me that the outer limit of avoiding Congressional oversight was at about a three-month watershed and that is entirely arbitrary. At the end of that time, judgments were reached, but whatever they had been at the time, it seemed to me, that it would also have been appropriate, even if the program had gone on, to have engaged appropriate Congressional members.

SENATOR MOYNIHAN: Could I ask you this, sir, we're trying to find out whether there's a systemic process, as Senator Simons, Senator Adams is concerned with -- a systemic problem, or just individuals? We are asked to believe, and it obviously is true, that there are men of high office in the United States government were prepared to trust the government of the Ayatollah Khomeini to keep information confidential and not prepared to trust the Congress of the United States. Well, is that a systemic problem, or is that a personal problem? Is that a problem of people? I mean, you say in

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three months it was going to come out and, indeed, it came out when the Iranians chose to put to out on November 2. And then we found out and we have been at it since. And we have seen a presidency shaken, which we didn't need. Was it a systemic, in your judgment, that the people thought it was unwise to abide by the law in -- of oversight in Committees, did you just not think about it? Or did they particularly not trust us? It was a Republican Senate.

MR. MCFARLANE: Senator Moynihan, you probably have more knowledge on this than virtually every other colleague of yours in the Senate, and I find myself in congruence with what you believe. But I do not want to engage this morning in sophistry with you, and I'm afraid that I am very near the point of doing it.

SENATOR MOYNIHAN: Yes.

MR. MCFARLANE: Let me say this -- I think that to acknowledge my agreement with you should not mask as well my concern, and, I think, you're own, about the the fact that the process is neither perfect in the Executive Branch nor in the Senate and the House.

SENATOR MOYNIHAN: No, no, no.

MR. MCFARLANE: I recall, very graphically, and painfully, the experience during the Achille-Lauro when traveling with the President two day into the crisis, we had indentified the terrorists, their location, their apparent intent to be flown from Egypt to another country through very sensitive means, that a member of the Senate asked to be fully briefed on this, as was his authority, that being briefed he proceeded to put quite alot out about the source of that information which was compromised. Now, I don't mean to pretend for a moment that that --

SENATOR MOYNIHAN: Could we not, then, agree that there is a difference between very tender, very tense -- hour-by-hour events and long processes that are, you know, going to -- of a different order -- no Americans were directly -- but the shipping of arms is a complex process and opening -- making approaches, you know, time extended process, as against immediate crisis.

MR. MCFARLANE: Well, I don't make the point to say that your point isn't valid because it certainly is valid. And even if I wanted to raise an issue of concern about committees, the law provide that you don't have to go to the full committees. Indeed, the five members of the leadership, to me, represent clear integrity of process and I agree with that.

SENATOR MOYNIHAN: And I agree. Mr. Chairman, when I -- if we go around a second time, I'd just like to ask about the whole question of the law belligerency, and the Hague conventions, and our providing contraband to one party -- one belligerent, and the rights of reprisal of the other belligerent.

CHAIRMAN PELL: Maybe we could get to that in the next round.

SENATOR MOYNIHAN: When we go round -- if we do, sir. Thank you. Thank you, Mr. McFarlane.

CHAIRMAN PELL: Thank you, Senator Moynihan.

SENATOR HELMS: Mr. Chairman, thank you very much.

Mr. McFarlane, I, unfortunately, had some meetings downtown, but going to those meetings and coming back I have been listening to you on the radio and your testimony is very good. Now, let me mention that at least three times during the short period that I heard on the broadcast, you mentioned the American people have some difficulty in understanding this or that, and I agree with you. The nuances of foreign policy, trying to deal with a hostile situation -- these are not things that can be appreciated by the average citizen. Inasmuch as that is the case, I think it would be relevant and interesting for you to describe, not only for those of us here, but to those listening on the radio as I was, what will be the consequences if we do nothing and the Soviet Union takes over that area of the world?

MR. MCFARLANE: Senator Helms, I've treated briefly the reason why we should care about the relationship between ourselves and Iran. It is focused upon its geography, vis-a-vis the Soviet Union, its role through centuries as an avenue for -- coveted by the Soviets, for both commerce and the projection of power through the Persian Gulf. Iran is coveted for its own petroleum resources, as well as its ability to control the flows of the entire Arabian Peninsula's flows in and out of the Gulf. It is of concern to us because of its sponsorship of terrorism. In short, these reasons, plus its vulnerability as being flanked by Afghanistan and Pakistan, make it -- make its control, potentially, by the Soviet Union, a truly strategic enhancement of Soviet ability to project power globally, and to control the lifeline of the international economy. The loss or the success by the Soviet Union in dominating Iran would, in fact, enable them to bring the international economy to its knees, and over time to project power much more easily throughout that part of the world.

Now, in saying that theoretical possibility, I don't pretend that that was an imminent prospect, however one had to be concerned especially with the fragile state of affairs within Iran, and the apparent decline both of the economy and of the uncertain succession process that an unstable condition, and a contended succession process, could occur -- and that the Soviet Union would certainly be doing what it could to influence that change, and because they would, we should as well.

SENATOR HELMS: Now, you're a student of history and I try to be and I, in the past two or three years, have done, as probably you have, a great deal of reading about prosecutions of World War II. Now, just being fair about this, how does this compare with the dozens of forays and efforts made by the administration during World War II, and I'm referring to Franklin Roosevelt? Was it unusual to deal with unusual people during that war?

MR. MCFARLANE: The short answer is, no. One can distinguish between authorities in war and peace. But your point is correct, Senator Helms, that this would not be considered a great extravagance or unusual.

SENATOR HELMS: Well, I'll just put it this way, Mr. McFarlane. If Franklin Roosevelt had been required to prosecute World War II under the same restraints and criticisms and media attention, leaks, misrepresentations, and all the rest -- that Ronald Reagan faces every day of his life -- we would have lost that war. And the French today would be making their vichyssoise out of sauer kraut.

Now, that's a difference -- this is a war going on, all over the world, between communism and freedom. And I, for one, am not standing aghast at efforts to try to stabilize the situation in the Persian Gulf and the entire Middle East. And for my part, I hope we can get some more of the Ayatollah's money to help the freedom

fighters, not only in Nicaragua, but Angola and Afghanistan and some of the rest.

Thank you, Mr. Chairman.

CHAIRMAN PELL: Thank you, Senator Helms. In view of the fact that we are going to the back room shortly for those points that Mr. McFarlane does not want to discuss, understandably and properly here, I think we should probably limit ourselves to five minutes in this round and I will do so, myself.

I'd like to follow-up for a second on Senator Simons question as to the structure of the National Security Council. Because what this committee's interested in here are fundamentals, policy matters, structural foundations and patterns -- not who did what or why but, more, why he did what.

Now, in light of that I wrote, which I'll ask to be put in the record to the President, some time ago -- a couple of weeks ago -- had a reply from Mr. Carlucci a couple of days ago, which I'll also ask to have set in the record. It's apparent that the NSC, which made the error in this case of dealing not only in contacts, but in operations, will not do so in the future. I think the point that has been made that the NSC should on one-tenth of one percent, or one percent of the time, engage in actual contacts with foreign governments is absolutely understandable. We wouldn't have had our opening to China without that. But whether it engages in operations, which is what happened here, or it engaged in the context with the various intermediaries, then you're getting into an operational matter that should better be left to the intelligence agencies or to the joint chiefs. And my understanding of the reply from Mr. Carlucci is now the new patent, the new order of things of the Executive Branch, and I'm very glad, indeed, of that.

I would also like to comment on Senator Moynihan's point that he raised about mining the harbors, et cetera. I believe it was an inquiry from the ranking minority member of this committee that stirred them up to reply to the Intelligence Committee and to the cross-over to us.

One policy question that strikes me is -- I think it's a very good idea to try to open up contacts with governments of which we disapprove. I think the higher level our relationships are the better. I remember fearing the time of our withdrawal of ambassadors from Spain -- it was a mistake. The worst of relations, the better should be the contacts at the higher level -- should be those contacts. And I understand this effort to try to make contacts with elements in the Iranian government that might be more sympathetic to us if they could be found.

Why would not this same argument apply to Cuba, with which we have very poor relations, and seek elements there with whom we might be in contact, and seek to move ahead? I would be very interested from a policy viewpoint if Mr. McFarlane would give us a reply?

MR. MCFARLANE: Mr. Chairman, the analogue is quite good, I think and that is probably what has led -- I believe every administration, since President Kennedy, to engage in contacts, the government of Cuba -- the persistent hope to proceed, as you wish, is very healthy, I think, and it has led every administration, to include this one, to try to make those contacts, which have succeeded to the extent of reaching the high level. But unfortunately, thus far, in each occasion, have been thwarted by either lack of common interest or purpose or events at, the time unrelated, but which have an influence -- either involving us and the Soviet Union, or Cuba and the Soviet Union, or both -- it's not to say you shouldn't keep trying. And I think each administration has -- probably will.

CHAIRMAN PELL: I remember about a dozen years ago the

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then-ranking minority member of this committee, Senator Javitz, and I, went to Cuba and we did not see many signs there. We had a long conversation with Castro at the time -- many signs of efforts being made to communicate and try to improve relations. I'm glad we agree on that objective and would ask you one other brief question. Should we engage in negotiations to release hostages, or should we absolutely not touch it at all?

MR. MCFARLANE: Senator, I think the state of our policy on negotiation is very imperfect -- part of definitional, but part of it conceptual. It seems to me that the element that is clear and that on which there is consensus is that you don't make concessions to them. Now, short of making concessions does one negotiate? Does one talk -- have discussions? There's a lot of murk over what's within the ground rules. It always seemed to me, while serving in government that the President encourage discussion so as to find out what were the purposes, the vulnerabilities, the limits, the tolerance for pressure, and simply learn as much as you could about them, but not to make concessions to them.

SENATOR SARBANES: Thank you, my time has expired. I have one other request and that is, is there any reason why you couldn't submit to this committee the four pages of the terms of reference that -- to which you referred earlier.

MR. MCFARLANE: I returned them upon my conclusion of the mission and returned here when I debriefed in June of 1986. As far as I know I assume they're available in the White House at this time and I'd be glad to cover, in closed session if you wish, the content of them and I recall it.

SENATOR SARBANES: Or maybe on a classified basis you might be able to submit us the actual text of those terms of reference?

MR. MCFARLANE: I don't have them physically. I imagine they still exist. I could certainly give you as best an account as I could of them. It's pretty clear in my mind.

SENATOR SARBANES: Right, thank you very much.

Senator Kassebaum.

SENATOR KASSEBAUM: Mr. McFarlane, with the stalemate in the war between Iran and Iraq and our credibility in question in both of those countries at this point, what specific steps would you recommend for our policy in the Middle East and specifically regarding those two countries and also what specific recommendations would you make for our anti-terrorist policy?

MR. MCFARLANE: On the first point, it seems to me that our policy in the past of seeking to -- or being willing to help bring an end to the war is correct and if anything may have been enhanced by the outcome of this episode to the extent that people in Iran have a better understanding of our own bona fides and good faith and the sharpness of our disagreements with them. But may, also, find us valid interlocutors with Iraq to bring the war to a close. Now, again, I don't think that will happen for as long as Ayatollah Khomeini is in charge, but I think we may now have a better opportunity to be accepted as intermediaries in the post-Khomeini.

SENATOR KASSEBAUM: Is there anything, though, that we should be doing at this point?

MR. MCFARLANE: Well, it seems --

SENATOR KASSEBAUM: What is our relationship with Iraq?

MR. MCFARLANE: I think maintaining in our public and our private stance -- through our -- the country handling our interests

there, to continue to make clear our openness to discussing both disagreements and common interest to Iran. And that can be done through diplomatic channels. I think with Iraq we can do the same thing.

SENATOR KASSEBAUM: Had we tried that with Iran before we initiated the contact regarding the arms shipments?

MR. MCFARLANE: We have had periodic contacts. They had not encompassed any great substance, nor -- however we had made clear our policy position on ending the war and our openness to it through third countries -- yes, we had.

SENATOR KASSEBAUM: How about our anti-terrorist policy at this point? What would you do to restore some credibility to that?

MR. MCFARLANE: Well, it seems to me, Senator Kassebaum, that the conclusions regarding our ability as a country to deal with diverse kinds of terrorism hasn't been tarnished -- certainly not to the extent that is portrayed popularly in the press. When you stop and think about it, I can't imagine that -- be it Khomeini, Hassad, Gadhafi, others -- anyone had had any illusions that the President's response to a Libyan attack would be any different today than it was in April of last year. But, I take your point that what we have done is different and there is an apparent contradiction. And this is, I think, a reflection of an error on my part to have expected that my own belief that one has to deal with different kinds of terrorism in different ways and that in the case of Iran, to alter the policy of the state you're going to have to alter the leadership of the state and that you should proceed in ways that may enable you to do that successfully, isn't in contradiction with the fact that with another kind of terrorism -- as one finds in Libya, you use other means.

Now, I think in our own country the understandable popular perception is that terrorism must be dealt with with great violence -- fight fire with fire -- and not to have yet absorbed that all centers of terrorism are not the same. And I think in this case I was also probably wrong in expecting that because, for example, in our country the average American, I believe, would conclude clearly Israel has an effective counter-terrorism policy. And Israel, however, uses very different means -- sometimes great violence and sometimes negotiations with terrorists. But, it is quite different for the United States to pursue that same approach. Our body politic -- our people -- the American people have a more unidimensional appreciation of the problem and I think over time we must seek to try to expand that.

SENATOR KASSEBAUM: Thank you.

CHAIRMAN PELL: Senator Sarbanes.

SENATOR SARBANES: Well, Mr. Chairman, first of all I want to elaborate on the history that Senator Helms made reference to. This isn't addressed, really, to Mr. McFarlane because I don't think a question was put or an answer received. But, the fact of the matter is that the United States went to World War II on the basis of the President coming before the Congress and asking for a Declaration of War, which was then done according to our constitutional processes. And, of course, once that was done you had both the executive and the legislative branch united in that decision in the necessity of waging the war effort.

Mr. McFarlane, you were on the National Security -- I want to go back to a subject that we touched upon before. You were on the National Security Council staff from 1973 to 1977 is that correct?

MR. MCFARLANE: That's correct.

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SENATOR SARBANES: And then returned to the National Security Council in 1982, first as the Deputy and then as the National Security Advisor, is that correct?

MR. MCFARLANE: That is correct.

SENATOR SARBANES: Well, I remain very deeply concerned about the thinking process that would place -- well, let me ask you this question -- as a member of the staff and then as National Security Advisor is it accurate to say that you really had access to the most secret of information and the most important of decisions made by our government?

MR. MCFARLANE: Well, on occasion, I surely was exposed to many of them, yes.

SENATOR SARBANES: I mean you would be one of a very small -- literally a small handful of people in the government in terms of the level at which you were operating in terms of accessed information and the significance of the decisions that were being made.

MR. MCFARLANE: That's fair, I think, yes.

SENATOR SARBANES: Well, then, I am greatly concerned about a thought process that would take a person of that sort and place them in extreme jeopardy in terms of being seized as a hostage. You were very exposed when you went into Tehran in the spring of 1986 and I assume you perceive that yourself, would that be correct?

MR. MCFARLANE: It crossed my mind. I don't mean to be facetious.

SENATOR SARBANES: Was it your idea that you should go to Tehran?

MR. MCFARLANE: No, sir.

SENATOR SARBANES: Whose idea was it?

MR. MCFARLANE: I was asked to go by the President. I don't know through what process.

SENATOR SARBANES: Asked by the President, himself, or asked -- told by someone else that it was the President's wish that you go?

MR. MCFARLANE: The latter.

SENATOR SARBANES: The latter?

MR. MCFARLANE: Yes, sir.

SENATOR SARBANES: Did you -- in addition to the I guess obvious concern about your own personal safety in the circumstance -- I take it you had some concern of that sort. I think any reasonable person would. Would that be correct?

MR. MCFARLANE: Oh, they were, but at the end, they were overcome by having thought through the self-interest within Iran of those with whom we would deal in not just the opportunity of the moment in my seizure, but the longer-term interests, their vulnerabilities and the extent to which we were important to them as a long-term matter. And I concluded at the end that it was a prudent risk and I believe today it was.

SENATOR SARBANES: Well, it may have been a -- I mean one could make that judgment in terms of one's individual safety. After all, that's something you can place at risk if you choose to do so and people do it frequently and we respect them for that. What about, however, the fact that what was also being placed at risk was a person who had been in the very inner circles of our government and, therefore, held -- knew some of the most important information and decision-making and, in effect, that person -- I mean you're not talking about an ordinary individual in terms of their experience -- but that person is being placed in jeopardy.

I mean from the point of view of being taken as a hostage, that would be an enormous bargaining position, would it not, by the people who held such a person?

MR. MCFARLANE: Senator Sarbanes, these certainly do involve some very serious calculations. I think, in the public discourse, I simply want to assure you that I had thought through those very carefully and I don't believe there was any remote possibility that advantage could have been developed from my seizure. And that involves some things that are just -- that one has to think through and prepare for, but I think we did.

SENATOR SARBANES: Well, I see my time is up. Thank you, Mr. Chairman.

SENATOR SIMON: Just a few very general questions. One is in response to the question of -- or comments of Senator McConnell, you mentioned heavy reliance on Israeli intelligence. Just as a general -- do you have any general observations about the ability of U.S. intelligence agencies? Are we doing the job we ought to do?

MR. MCFARLANE: Senator Simon, I think that our intelligence certainly isn't perfect in every place of the world, nor in each category -- human, scientific. I think the CIA is conscious of where its problems are, is doing what it can to solve them. I

wouldn't deny -- I don't think they would -- that the '79 revolution led to enormous loss in the means to collect intelligence in Iran and that still gives us an imperfect picture of what is going on in Iran. And faced with that, one has to begin the long-term process which takes a generation to replace it, but also, in the meantime, securing intelligence from others who seem to have some qualification -- more than one, to cross-check and do the best you can. And in Iran, it is still woefully poor. But it is getting better.

SENATOR SIMON: But if you were President of the United States you would not say we need a fundamental re-gearing in improvement of our intelligence capability?

MR. MCFARLANE: No. There are areas of intelligence I found truly superb and I think are a real credit to our country today.

SENATOR SIMON: Okay. Then, second, as you discuss the arms sales to Iran -- we have had Operation Staunch, trying to keep other countries from sending arms to Iran. Was this obvious conflict in policy, was that discussed in the National Security Council, what damage one would do to the other?

MR. MCFARLANE: Yes, sir, with considerable emotion and reason and logic by the Secretary of State and Defense, and others -- myself.

SENATOR SIMON: And then finally, just a very broad question. It appears to me as I look at recent history that foreign policy, by and large, has been a pretty bipartisan thing, not only bipartisan in terms of both parties, but in terms of the Executive Branch working with the Legislative Branch, up until the time we get involved in Vietnam. And then all of a sudden, there was some pulling apart. And a pulling apart that has never been fully repaired.

Is maybe one of the reasons for our present difficulty the fact that we have not had enough working together between the Executive and the Legislative Branch as fundamental policy decisions are formulated?

MR. MCFARLANE: I agree with that, Senator Simon. This can only sound self-serving. I think that is fundamental to any hope to get what you're after. The irony of my sitting here in this committee today is that I believe that as a matter of record, that I spent more time in this body and the other body as National Security Adviser than probably all of my predecessors put together. That doesn't excuse in any iota the lack of discourse with the Congress on this particular issue. But I believe profoundly in what you have to say here.

SENATOR SIMON: And what has happened is really -- while you've spent a great deal of time, the time is spent primarily after a decision is made --

MR. MCFARLANE: No, it was before.

SENATOR SIMON: Before?

MR. MCFARLANE: On arms control, in Latin American policy, in Middle East policy, the need to engage before the fact with the Congress was a matter of routine -- '83, '84, and '85.

SENATOR SIMON: All right. I thank you, Mr. McFarlane.

CHAIRMAN PELL: Senator Adams.

SENATOR ADAMS: Thank you, Mr. Chairman.

Mr. McFarlane, when I questioned you before about the

development of the policy, you indicated that Secretary of State, Secretary of Defense made their case; their case was rejected; the President went on with the policy over their opposition and began to implement it. My question, that was directed from Secretary Shultz' testimony on the House side, was did you ever inform the Secretary of State during this period in the fall of 1985 that the policy was working or had not worked, because policy is a continuing thing. And did the Secretary of State know that the arms sales or arms shipment attempt to reach a new rapprochement with Iran had not worked? Was he ever told about this?

MR. MCFARLANE: Yes, sir, I shared my knowledge with the Secretary of State, my misgivings, my hopes and fears, and, in short, we were colleagues and the specifics of what you say -- when Israel would come to an arrangement, be it September or November, this information, when I had it, was conveyed to the Secretary of State. I think his own notes are a matter of record that bear that out.

SENATOR ADAMS: Did you do this in some type of written form or just oral conversations that -- for example, I understand one arms shipment was rejected and sent back because of the age of the arms and markings on it and so on. Did you ever tell him that it hadn't worked at that point in the fall of '85?

MR. MCFARLANE: Yes, sir. It was my recommendation in the wake of the incident that you mentioned in November of '85, upon our return from the summit in Geneva, after I had briefed in the Vatican, Paris, and London, to the President that because this had gone off course, he should convene his Cabinet officers and try to get it back on course by a meeting between Americans and Iranians directly to see if we really could validate personally -- not through third parties -- the bone fides of the people we're dealing with.

He agreed. And we did. And that was a matter I discussed with the Secretary of State as well and he supported that.

SENATOR ADAMS: So he knew that going into the period of time just before you left the government that this policy involvement had had troubles -- you had recommended pulling back, he had recommended pulling back -- all of this was then a government policy of pull-back by the time you left? I'm talking about when you were National Security Adviser, not later when you go to Iran.

MR. MCFARLANE: Yes, sir, I believe that's correct.

SENATOR ADAMS: I'm just trying to determine whether anybody knew what the policy was. That's really my question, Mr. McFarlane, is -- was -- are we starting from the fact there wasn't a policy, or the policy was there and nobody -- the operating agencies weren't informed of it so they could participate?

MR. MCFARLANE: They did know what the policy was and I think, Senator Adams, that in the public and private and in testimony here, that it has not been, for the past two months, a matter of the Secretary of State or Defense not understanding what the policy was. There was consciousness of the decision. It was obvious a disagreement with it -- but it wasn't a matter of not knowing what it was.

SENATOR ADAMS: Well, that was why -- I read you the part. It says, "I -- where he said, "I was never informed and had the impression that they were never consummated." All I'm trying to determine is that the policy, which as Senator Moynihan has pointed out, certainly not communicated to the Congress, the policy was started over the objection of the operating agencies, but then they seem to indicate that they didn't know that the policy was changed at the end of '85. And then we started again in '86. I'm trying to determine who's running the show.

MR. MCFARLANE: In the time that I was in government, they knew what was going on. Once I left government, I --

SENATOR ADAMS: Obviously, once you leave government, until you get the four-page instructions, you -- I understand. I'm not asking about that blank period.

MR. MCFARLANE: Right.

SENATOR ADAMS: But what you're indicating to me is that there was a policy, the operating agencies were in disagreement, and so they went with a separate outside operation and created the National Security Council and the President's personal staff as a second operation.

MR. MCFARLANE: I can't confirm or deny. I have no knowledge on that point. But by inference, the -- let me comment on something that I -- maybe I wrongly take from your question. The idea that Cabinet officers, while I was in the government, weren't fully conscious of not only the decision but its effects, seems to me to be counter to -- to simple logic.

SENATOR ADAMS: No, I --

MR. MCFARLANE: Would it have been reasonable for me, for example, without any presidential approval in the obvious opposition of the Secretary of Defense, to tell Israel, yes, go ahead and deliver arms, and then you can come to the Pentagon and buy arms from the Secretary of Defense who is fundamentally opposed to it? Clearly not. It would have been inconceivable that unless there were presidential approval, any of this could have happened. And I don't think that I am so iconoclastic as to believe that I can manufacture TOW missiles in my backyard. I could not. I'm sorry, I don't mean to be facetious.

SENATOR ADAMS: Exactly. No, I'm not -- what I am concerned about and what the committee is concerned about is the policy as it was developed.

MR. MCFARLANE: Right.

SENATOR ADAMS: And as it continued. And then it led into a second policy decision on diverting arms or money for arms to the Contras, is that there was a second policy operating division within the government which consisted of the President and a certain number of known or unknown people who were outside of the operating agencies, and that followed on behind what you were doing, and I'm just trying to determine whether the Congress has to deal with two operating policy divisions or with the standard operating divisions with which the Congress and the American public are familiar -- the President, National Security Council, Secretary of State, Secretary of Defense -- or do we have another arm out here? That's what I think was happening to you that you've explained, and what led to an even further happening. And what we're concerned about here, is there going to be another happening beyond that? That's the issue.

CHAIRMAN PELL: Thank you, Mr. --

SENATOR ADAMS: I would ask that the witness answer, but

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CHAIRMAN PELL: Mr. McFarlane, if you'd care to reply, feel free before we go on to Senator Moynihan.

MR. MCFARLANE: Well, Senator Adams, I believe I've given you as full account as I can of the process and the positions of the principal participants while I served in government, which I believe was in accord with normal process, really, in virtually every important criteria. But I simply cannot account for whether or not that process changed once I left.

SENATOR MOYNIHAN: Mr. Chairman, again in the spirit that you have convened this hearing and it has been carried on, that -- let us see what we can learn from all this and half reconstitute in the aftermath, I mentioned the view of our committee on intelligence that the mining of the Nicaraguan harbors is a violation of international law. And this was certainly the view of the World Court when the case went there.

Law has long been a concern of this committee. Treaties come to this committee and treaties, under the Constitution, are the law of the land, and under the Constitution -- the Constitution provides that Congress may enact statutes that reflect the law of nations. It's in our Constitution. Obviously mining of harbors in a situation where there is no belligerency is a violation of that law.

I'd like to ask you about the Hague Conventions, and ask you about whether anybody -- whether this came up as the way you discussed decisions? The Hague Conventions of 1907 codify what was existing traditional law with respect to the responsibility of neutrals in their relations with belligerents. And if a neutral provides arms to one belligerent, the other belligerent has the right of reprisal under a treaty that is passed through this committee and is in effect statutory law. It seems to me that when we provided 2,000 TOW anti-tank missiles, some F-4 parts, possibly F-14, that goes well beyond symbolic gifts of exchange. That could well change the balance of power in a particular kind of encounter. I don't have to tell a Marine Lieutenant Colonel that.

Did anyone ask that -- whether, in the process of doing this, we were not giving the Iraqis the right to shoot down American airplanes on the expectation that there is contraband there, and under law they can sink American ships? I just want to ask you. I'm not -- I'm just saying, did this ever come up? You know, the Hague Conventions are law of this land.

MR. MCFARLANE: Senator Moynihan, the vulnerabilities, both legal and political, received a very thorough airing, and I should say that the Secretary of Defense gave a rather eloquent portrayal of the not only legal considerations that could be invoked by Iraq, but our own domestic law and its application. And --

SENATOR MOYNIHAN: The question of what Iraq might be -- might do in response and do under -- with established rights did come up in the conversation?

MR. MCFARLANE: The specific possibility of the shoot-down of an aircraft did not, although rather thorough discussion of the U.S. policy toward Iraq, which had been one that basically had involved a certain tilt at a point in time, would be affected by the appearance of a tilt toward Iran. The -- and, as I've said, a discussion of the law, both our own and international law, was part of this deliberation.

SENATOR MOYNIHAN: I kind of wish it had been more persuasive, but I'm glad to hear that and I think that we do recognize, and Mr. Chairman, I'd like to leave with the thought that there are statutes here and the question involves whether we put the United States or American individuals and property at considerable jeopardy by un-neutral acts in a situation of belligerency. It's an old question and I just wanted to raise it, and I thank you, and thank you, sir.

CHAIRMAN PELL: Thank you very much.

The committee will go into recess now, but before going into recess, I would like to say that we will ask formally of the administration for that four-page terms of reference. But we appreciate your resume of it. We'd rather get it eventually directly from the administration than read the lead copy in the press.

We thank you, Mr. McFarlane, for this open testimony, very much indeed for being with us. And the committee will now recess and move into the back room.

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