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File Folder IRAN/ARMS TRANSACTION: LEGAL MEMORANDA:
SALE AND SHIPMENT OF MILITARY EQUIPMENT TO
IRAN

FOIA
S643

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SYSTEMATIC

160

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
165158	MEMO	PETER WALLISON TO DONALD REGAN, RE: LEGAL RESTRICTIONS ON SHIPMENTS OF U.S. MILITARY EQUIPMENT TO IRAN	6	11/11/1986	B1

The above documents were not referred for declassification review at time of processing

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- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
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165158 MEMO

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THE WHITE HOUSE

WASHINGTON

November 12, 1986

MEMORANDUM FOR DONALD T. REGAN
CHIEF OF STAFF TO THE PRESIDENT

FROM: PETER J. WALLISON *PJW*

SUBJECT: Sales of U.S. Military Equipment to Iran

Introduction

Various press reports have described alleged shipments of U.S. military equipment to Iran. The manner in which such shipments are said to have taken place varies widely throughout the differing accounts. Determination of the applicable law, and analysis of relevant legal provisions, is heavily dependent upon a precise rendering of the facts. The following general discussion, therefore, is designed solely to provide an overview of possibly relevant provisions of the Arms Export Control Act, the Export Administration Act, and related orders and regulations. This memorandum does not, however, offer any conclusions as to the legality of alleged shipments of U.S. military articles to Iran. In my opinion, it would be inappropriate to offer any such conclusions solely on the basis of hypothetical facts or media accounts.

Arms Export Control Act

Generally, export to foreign countries of items on the U.S. Munitions List */ is governed by the Arms Export Control Act. The Act generally applies, however, only to sales or leases by the United States government. Transactions involving non-Munitions List items, structured as other than sales or leases, or involving a principal other than the United States government, may not be covered by the Act.

*/ The United States Munitions List covers a wide range of items deemed to be inherently military in character including, but not limited to, firearms, munitions and rockets; military aircraft, vehicles and electronics; and equipment and spares for such items.

Non-Transfer and Use Assurances. Pursuant to section 3 of the Act, sales or leases of military articles to any country or international organization are permitted only if that country or organization agrees not to transfer such articles to a third country (e.g., Iran) unless the consent of the President has first been obtained. In addition, section 3 provides as a prerequisite to sale or lease of military articles to any country that the recipient country must agree to maintain the security of such articles and to provide substantially the same degree of security protection accorded to such articles by the United States government.

In considering a request by a recipient country for approval of the sale of any military articles to another country, section 3 of the Act requires that the President "shall not give his consent . . . unless the United States itself would transfer the defense article under consideration to that country." As noted below, there are legal restrictions on the United States itself transferring military articles to Iran that could be applicable. If these restrictions are applicable, it would be an issue whether the President could consent to a transfer to Iran of military articles from a legitimate recipient country.

If the President were to consent to the transfer by a recipient country (e.g., Israel) to Iran, section 3 of the Act requires that he "promptly submit a report to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate on the implementation of" the non-transfer and use assurance agreements required by the Act. "Promptly" is not defined in the Act.

Section 3 also provides that the President may not consent to a transfer by a recipient country (e.g., Israel) to a third country (e.g., Iran) of defense articles exceeding \$50 million in value (in terms of their original acquisition cost), or any "major defense equipment" exceeding \$14 million in value, unless he submits a detailed report concerning the transaction to Congress at least 30 calendar days before giving such consent.

Omnibus Diplomatic Security and Anti-Terrorism Act of 1986. This law amended the Arms Export Control Act by adding a new section 40, which became effective on August 27, 1986. On and after that date, Munitions List items "may not be exported to any country which the Secretary of State has determined . . . has repeatedly provided support for international terrorism." In Secretarial Determination 84-3 (attached), the Secretary of State determined that Iran is a country which has repeatedly provided support for international terrorism. That determination has not been revoked. Exports of U.S. military equipment to Iran after August 27, 1986, would therefore be an issue under this provision. The President may, however, waive this prohibition if he determines that "the export is important to the national interests of the United States and submits to the Congress a

report justifying that determination and describing the proposed export." The provision thus contemplates that the President's waiver will be submitted to Congress before the sale takes place. Any such waiver by the President is valid for 90 days after it is granted, unless extended by law.

Prohibition on Sales to Governments Granting Sanctuary to Terrorists. Section 3(f) of the Arms Export Control Act requires that the President "shall terminate all sales under this chapter [Arms Export Control] to any government which aids or abets, by granting sanctuary for prosecution to, any individual or group which has committed an act of international terrorism."

This provision of the Arms Export Control Act does not specify in what manner a determination is made that a government grants sanctuary to terrorists. However, the Secretary of State's determination that Iran is a country which has repeatedly provided support for acts of international terrorism might be applicable here.

Section 3(f) permits the President to avoid the prohibition of this section if he finds "that the national security requires otherwise." In that case, "he shall report such finding to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate." No time period for this report is specified.

We note that this section by its plain language appears to apply only to ongoing sales, credits and guaranties; it requires that the President terminate such sales, credits and guaranties, or that he may continue them if this is required by national security. This section may not, therefore, apply to a situation in which ongoing sales, credits or guaranties do not exist.

License Requirement. Section 38 of the Arms Export Control Act prohibits the export of Munitions List items without a license issued under regulations implementing that section. The implementation of this section, including the authority to adopt regulations and to grant licenses, has been delegated to the Secretary of State.

The requirement in this section that a license be obtained for the export of military articles is expressly made inapplicable to "exports or imports made by or for an agency of the United States government (A) for official use by a department or agency of the United States government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by any other means." The scope of this exception is described in the International Traffic and Arms Regulations ("ITAR"), issued by the Secretary of State. In particular, § 126.4 of the regulations states that the above-cited exception applies "only when all aspects of a transaction (export, carriage and delivery abroad) are effected

by a United States government agency, or when the export is covered by a United States government bill of lading." The regulation expressly states that the exception "does not authorize any department or agency of the U. S. government to make any export which is otherwise prohibited by virtue of other administrative provisions or by any statute." Nothing in the ITAR, however, expressly prohibits the export of Munitions List items to Iran.

Export Administration Act

The export of items not on the Munitions List, but which have potential military application, is generally governed by the Export Administration Act.

Section 6 of the Export Administration Act requires that certain congressional committees be notified at least 30 days prior to the approval of any license for the export, to any country which the Secretary of State has determined has repeatedly provided support for acts of international terrorism, of any goods or technology worth more than \$1 million which would make a significant contribution to its military potential. As indicated above, Iran has been so designated by the Secretary of State.

The authority of the Export Administration Act has also been used to impose a requirement for validated licenses (and a presumption of denial) for certain categories of exports to Iran thought to have particular military application, including all aircraft and helicopters and related parts and components, and all goods and technical data subject to national security controls and destined for a military end-user or end-use.

Iranian Assets Control Regulations

At the time of the Iranian hostage crisis, certain Iranian properties in the United States were blocked by Executive Order 12270, issued November 14, 1979. These assets may have included, in part, military equipment purchased under contract pursuant to a legally authorized U. S. sales program. Certain press reports have speculated that military equipment previously so blocked has been shipped to Iran.

Under the Iranian Assets Control Regulations issued by the Department of the Treasury on May 21, 1984, a Treasury license is required for the movement or transfer of any tangible property in which Iran has any interest whatsoever and which has potential military application. This license requirement applies to Munitions List items acquired by Iran through commercial channels prior to the hostage crisis but never exported. It does not, however, apply to items exported directly by the U. S. government.

Furthermore, the authority for the Iranian Assets Control Regulations was conferred by the President by virtue of Executive Order 12270 and the International Emergency Economic Powers Act. Any restriction in the regulations on the actions of the President, therefore, would generally be susceptible of revocation by the President himself.

DATE AND TIME: February 13, 1984, 8:30 a.m. to 5 p.m.; and February 14, 1984, 8:30 a.m. to 12 noon.

ADDRESS: National Aeronautics and Space Administration, FB 10-B, February 13, Room 625-T, and February 14, Room 226-A, 600 Independence Ave. SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Henry V. Bielstein, M.D., Code EB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1546).

SUPPLEMENTARY INFORMATION: The Life Sciences Advisory Committee consults with and advises the Council and NASA on the accomplishments and plans of NASA's Life Sciences Programs.

This meeting will be closed to the public from 4 p.m. to 5 p.m. on February 13 for a discussion of candidates being considered for Committee membership. During this session, the qualifications of proposed new members will be candidly discussed and appraised. Since this session will be concerned throughout with matters listed in 5 U.S.C. 552(c)(6), it has been determined that this session should be closed to the public. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 35 persons including committee members and other participants).

Type of Meeting

Open—except for a closed session as noted in the agenda below.

February 13, 1984

- 8:30 a.m.—Committee Functions (Open session).
- 9 a.m.—SL-1 Preliminary Results (Open session).
- 10:30 a.m.—Review Life Sciences' Program Plan (Open session).
- 1 p.m.—Review of Space Station Plan (Open session).
- 4:00 p.m.—LSAC Membership (Closed session).

February 14, 1984

- 8:30 a.m.—Status of space Biomedical Institute (Open session).
- 9:30 a.m.—Advocacy Paper (Open session).
- 12 noon—Adjourn.

Dated: January 17, 1984.

Richard L. Daniels,

Director, Management Support Office, Office of Management.

[FR Doc. 84-1748 Filed 1-20-84; 8:45 am]

BILLING CODE 7510-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Options Task Force; Regular Meeting Notice

AGENCY: Hydropower Options Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Review of Hydropower Options Task Force Charter
- Discussion of Bonneville proposal
- Discussion of Work Schedule
- Business
- Public Comment.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Options Task Force.

DATE: Tuesday, January 31, 1984, 9 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room at 700 SW Taylor; Suite 200, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Tom Foley, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-1787 Filed 1-20-84; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF STATE

Office of the Secretary

[Secretarial Determination 84-3]

Determination Pursuant to Section 6(i) of the Export Administration Act of 1979—Iran

In accordance with Section 6(i) of the Export Administration Act of 1979, 50 U.S.C. App. 2405(i), I hereby determine that Iran is a country which has repeatedly provided support for acts of international terrorism.

George P. Shultz,

Secretary of State.

[FR Doc. 84-1825 Filed 1-20-84; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: National Airspace Review Plan Revision.

SUMMARY: On April 22, 1982, the National Airspace Review plan was published in the *Federal Register*. The plan encompassed a review of airspace use and the procedural aspects of the air traffic control system. Subsequent revisions to the schedule of various task groups have been made. This notice advises that Task Group 2-4.4, Helicopter Operations, Approach Procedures, which was scheduled to begin February 20, 1984, has been postponed until after April 30, 1984, in order to ensure availability of pertinent flight test data results to the task group. A specific date for this task group session will be provided in a subsequent notice in conjunction with other plan revisions.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, 202-426-3560.

Issued in Washington, D.C., on January 11, 1984.

Karl D. Trautmann,

Manager, Special Projects Staff, Air Traffic Service.

[FR Doc. 84-1750 Filed 1-20-84; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission For Aeronautics (RTCA), Special Committee 151—Airborne Microwave Landing System Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Airborne Microwave Landing System (MLS) Area Navigation Equipment to be held on February 8-10, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's introductory Remarks; (2) Approval of Minutes of the

Secy of State's determination