

Issue Brief

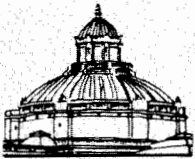
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ARMS SHIPMENTS TO IRAN

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by

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ISSUE DEFINITION

Congress is in the process of examining the legal and foreign policy implications of the Reagan Administration's secret arms sales to Iran in 1985 and 1986, and the diversion of proceeds from those sales to the Nicaraguan guerrillas. Many in Congress are determined to push for comprehensive congressional investigations and to propose legislation that would restrict such covert operations in the future.

Congressional interest has focused on the following major issues:

1. How will Congress and the American public get a full accounting of the relevant facts surrounding the sales to Iran and diversion of funds to the Nicaraguan guerrillas?

2. Did the Administration's actions violate the law?

3. What has been the effect of the Administration's actions on U.S. policy against international terrorism and military sales to belligerents in the Iran-Iraq war?

4. What has been the effect of the Administration's action on U.S. relations with key U.S. allies, moderate Arab countries, the Soviet Union, and supporters of international terrorism?

5. What kinds of legislative action are appropriate to restrict such covert operations involving the use of National Security Council staff in the conduct of sensitive U.S. foreign policy?

BACKGROUND AND ANALYSIS

Surfacing of the secret U.S. overtures to Iran

The first published account of secret negotiations between representatives of the Reagan Administration, including former National Security Adviser Robert McFarlane, and representatives of the Iranian government appeared on November 3, 1986, in the pro-Syrian Lebanese magazine Al-Shira'a. Elaboration on the negotiations from a very different perspective came on November 4 in a speech by Iranian Majlis (Parliament) Speaker Ali Akbar Hashemi-Rafsanjani. (See Library of Congress, Congressional Research Service, Foreign Affairs and National Defense Division. Iran-U.S. negotiations: an analysis of the Middle Eastern sources that "broke the story" on the McFarlane trip. By Clyde R. Mark, Nov. 20, 1986.)

The two accounts implied that the negotiations involved the transfer of U.S. military equipment to Iran but differed as to U.S. and Iranian purposes. An initial period of official Administration silence on the actions, together with exhaustive coverage in American and foreign news media, generated substantial public speculation and debate over a number of policy and legal issues related to the Iran initiative. Many observers interpreted the initiative as designed to exchange U.S. arms and spare

parts for Iranian intercession in Lebanon for the release of American hostages. Others see broader policy purposes as underlying the U.S. initiative.

Administration reaction

The day following the Al-Shira'a story, White House spokesman Larry Speakes asserted that as long as Iran advocated the use of terrorism, the U.S. arms embargo would continue. President Reagan, when questioned by reporters on November 6, noted that "the speculation, the commentary on a story that came out of the Middle East and that, to us, has no foundation -- all of that is making it more difficult to get the other hostages out." And, on November 7, when appearing with released hostage David Jacobsen in the Rose Garden, he refused to respond to questions concerning the negotiations on the basis of "endangering the people we're trying to rescue." White House spokesman Speakes, at a press briefing on November 10, reported that the President had met with his national security advisers on the status of American hostages in Lebanon, and that he had reviewed broad policy concerns in the Persian Gulf region. Speakes stated that the President had emphasized that "no U.S. laws have been or will be violated," and that the U.S. policy of not making concessions to terrorism remained intact.

As public speculation mounted, President Reagan, in a televised address on November 13, acknowledged an 18-month effort to establish contacts with Iran. He justified the initiative through his declared objectives of: (1) restoring relations with a strategically significant Gulf state; (2) seeking an honorable end to the Iran-Iraq conflict; (3) eliminating state-sponsored terrorism in the region; and (4) securing the release of American hostages held in Lebanon. The President confirmed that "modest deliveries" of "defensive weapons and spare parts" had been made to Iran as a signal of U.S. preparedness to effect a new relationship. He defended the actions, asserting that ample precedent existed for such secret and highly sensitive diplomacy, that no Federal laws had been violated, and that no concessions had been made to terrorism. He also declared that official silence on the initiative had been in hope of obtaining the release of Americans still held in Lebanon.

President Reagan again defended his actions at a nationally televised news conference on November 19, rejecting contentions that the secret arms transfers to Iran had been a mistake. He said that they were intended to signal American good faith to moderates in Iran who might succeed the radical regime of Ayatollah Khomeini. The President described the shipments as "minuscule" ones that would not alter the military balance in the ongoing Iran-Iraq war. He again denied they were ransom payments for American hostages. With respect to the Iran operations, the President declared that the responsibility for the decision was "mine and mine alone."

On November 25, Attorney General Edwin Meese announced that National Security Council aide, Lt.-Col. Oliver L. North, had organized the diversion of \$10 to \$30 million in profits from U.S. arms sales via Israel to Iran, to anti-communist guerrillas in Nicaragua, and that National

Security Advisor, Vice Adm. John M. Poindexter, had knowledge of the plan. President Reagan, claiming that he had been unaware of the transactions, stated that Adm. Poindexter had resigned and Lt.-Col. North had been relieved of his duties. The President reiterated his belief that policy goals toward Iran were well-founded, but that one aspect in the implementation of that policy was "flawed." He declared that implementation of all future foreign and national security policy initiatives would proceed only in accordance with his authorization. On November 26, the Justice Department announced a "full-scale" investigation of the Iranian arms deal, with the Federal Bureau of Investigation called into the inquiry.

On December 1, President Reagan, in appointing a special review board to investigate the activities of the National Security Council, denied that he had had advance knowledge of funds from Iranian arms sales being diverted to Nicaraguan contras. He stated that he would welcome the appointment of a special independent prosecutor to investigate the clandestine operation if such was deemed necessary by the Justice Department, commenting that there must be "a full and complete airing of the facts" to maintain confidence in "our government's foreign policy apparatus." On Dec. 2, he announced the appointment of Frank C. Carlucci as National Security Adviser.

Vice President George Bush, in his first speech addressing the controversy on December 4, defended the President's rationale for the secret initiative, but stated that "mistakes were made" and that U.S. credibility had been damaged.

President Reagan, in a radio address on December 6, declared that the U.S. effort to establish a relationship with "moderates in Iran" had been terminated, stating that it had not been his intent to trade arms for hostages. The President, in his State of the Union Address on Jan. 27, 1987, acknowledged that the initiative had not worked, declaring "and for that I take full responsibility." Referring to the initiatives objectives, the President commented that "we did not achieve what we wished, and serious mistakes were made trying to do so."

On February 26, the special panel appointed by President Reagan to investigate the role of the NSC in the Iran-contra controversy submitted a report concluding that, from its inception in August 1985, the Iran initiative became "in fact a series of arms-for-hostages deals" that contravened official U.S. policies toward terrorism and arms transfers to Iran. It found that virtually all senior officials in the Administration, including the President, had demonstrated a "failure of responsibility," that the legality of certain aspects of the initiative was "at best highly questionable," and that there had been concerted efforts to obscure the operation by some officials following the initiative's disclosure in November 1986. The report indicated that the President had never "insisted upon accountability and performance review," that he had been poorly served by his top advisors, and had not seemed aware of the manner in which his policy was being implemented. As one panel member summarized, "the problem at the heart was one of people, not of process. It was not that the structure was faulty; it is that the structure was not used."

President Reagan, in a nationally televised speech on March 4, stated that he accepted the findings of the Tower Commission report and acknowledged that "what began as a strategic opening to Iran deteriorated in its implementation into trading arms for hostages," and that there were "reasons why it happened, but no excuses. It was a mistake." The President assumed "full responsibility" for what had occurred. In his weekly radio address on March 14, the President said that Secretary of State George P. Shultz and Secretary of Defense Caspar Weinberger had advised him strongly not to pursue the Iran initiative, stating that he weighed their advice but had decided the initiative was worth the risk, adding: "as we now know it turned out they were right and I was wrong."

Responding to questions during a nationally televised news conference on Mar. 19, President Reagan stated that there had been no "thought of hostages" when the Iranian arms sales initiative had begun. He denied any knowledge of the diversion of sales proceeds to the contras. The President insisted he had made a "misstatement" during his Nov. 19, 1986, news conference when he denied Israeli involvement in the arms sales. And he said he could not recall whether he had given approval for Israel to sell U.S.-supplied arms to Iran before or after Israel had shipped the weapons.

On Mar. 31, President Reagan, in a directive implementing recommendations of the Tower Commission, called for an NSC review of all covert action programs to be completed by Apr. 30, and for proposed changes in procedures for approving and coordinating covert action to insure that "The NSC staff itself will not undertake the conduct of covert activities."

Congressional Reaction

Congressional and public criticism of the Administration's handling of the controversy rose rapidly. Early congressional reaction followed a series of hearings and briefings in mid-November where Administration officials undertook to explain the policy to congressional Members with oversight responsibility for covert operations and foreign affairs. Some Members claimed they were misled in the briefings; others suggested Administration witnesses were withholding the full details of the dealings with Iran.

Persistent indications of disagreement within the Administration over the policy toward Iran added to congressional concerns. Even supporters of the President's actions, like Senate Republican leader Robert Dole, said that it was more difficult for them to win congressional support when key Administration figures like Secretary of State George Shultz were seen to be reluctant to defend the policy.

With the revelation of the diversion of funds from the Iran arms sales to the Nicaraguan guerrillas, Members of both parties pushed for strong Administration and congressional efforts to investigate past action and strengthen U.S. decisionmaking and accountability in foreign affairs.

Key Questions for Congress

The 100th Congress appears likely to focus its attention on the following key questions concerning the arms sales to Iran:

1. How will Congress and the American public get a full accounting of the relevant facts surrounding the sales to Iran and diversion of funds to the Nicaraguan guerrillas?

Despite widespread agreement that a thorough investigation of events is required to ascertain the facts and resolve contradictions, considerable controversy has existed on the best way to get the facts. Some concern exists over possible damage to U.S. foreign relations and intelligence activities from full public disclosure. A number of different approaches have been undertaken.

Justice Department. On November 21, President Reagan directed Attorney General Edwin Meese III to undertake a review of the matter. On November 26, after the Attorney General announced that some funds from the arms sales to Iran had been transferred to the Nicaraguan contras, President Reagan announced that the Justice Department had broadened its investigation and the Justice Department announced that its inquiry had become a major criminal investigation by the Federal Bureau of Investigation. The Justice Department has been investigating Swiss bank accounts allegedly used in diverting funds to Nicaraguan contras.

Special Prosecutor. Some Members of Congress and others, however, felt that Attorney General Meese should not be involved in the criminal case because of his role in providing legal advice during the period of the arms sales. On December 2, President Reagan announced a decision to have an independent counsel to investigate the matter. The Counsel would be appointed by a special panel of three Federal appellate judges, under the Independent Counsel Act. Most Members of Congress considered the decision an important step forward, but a few expressed concern that it might provide a screen for the Administration. Members generally agreed that the creation of an independent counsel would not reduce the need for a congressional investigation to look into broader questions of policy as well as violations of law.

On Dec. 19, Lawrence E. Walsh was named by the special panel as independent counsel and was instructed, in addition to investigating the Iranian arms sales and diversion of funds to the contras, to examine the "provision or coordination of support" for the contras since 1984. Since January 1987, Walsh has appointed 20 associate counsels. The FBI has assigned a team of special agents to work exclusively with the independent counsel during the investigation. On Jan. 28, Walsh empaneled a grand jury to hear evidence of any illegalities that might have been committed by Administration officials or private individuals. The independent counsel granted immunity to Fawn Hall, secretary to former NSC aide Lt. Col. Oliver L. North. (Hall refused interviews by the Tower commission because it lacked power to grant immunity; and her attorney said on Feb. 23 she will not testify before the select committees until all immunity questions were resolved.) In response to a lawsuit filed by North's

attorney on Feb. 24 challenging the constitutionality of the independent counsel, Walsh submitted a memorandum to the U.S. District Court seeking dismissal, stating the litigation could "irreparably injure" the investigation. On Mar. 5, Attorney General Meese, in an effort to circumvent the issue, appointed the independent counsel as head of a newly created office within the Justice Department, a move challenged by North's attorney on March 6.

U.S. District Court Judge Barrington D. Parker rejected North's suit on March 12 on procedural grounds, noting that North could not show irreparable harm at the time from the independent counsel's investigation and that it was not appropriate to interfere with an ongoing criminal investigation. Judge Parker indicated there was good reason to believe that the independent counsel provision in the 1978 Ethics in Government Act (P.L. 95-521) was constitutional.

Independent counsel Walsh on March 10-11 met with House and Senate select committee leaders, requesting that the panels postpone the grant of immunity to Rear Adm. Poindexter and Lt. Col. North for 90 days to facilitate development of possible criminal cases.

Special panel (Tower commission). On November 26 President Reagan also appointed a three-member panel to investigate the role of the National Security Council and to focus on the Iran-contra controversy. The panel comprised of Edmund S. Muskie, a former Democratic Senator and Secretary of State under President Carter; Brent Scowcroft, a former National Security Adviser under President Ford; and Chairman John G. Tower, a former Republican Senator and more recently an arms control negotiator. President Reagan was interviewed twice by the Special panel. The Special panel submitted its report to the President on Feb. 26.

Special Counselor. On Dec. 26, 1986, President Reagan appointed David M. Abshire, retiring NATO Ambassador, as a special counselor with Cabinet rank to coordinate White House activities on all aspects of the Iran matter.

Other Federal Action. Several agencies are conducting investigations on Nicaraguan contras and their American supporters that focus on a number of issues, including: allegations that the contras and their supporters within and outside the Administration laundered money, smuggled weapons, and violated the Neutrality Act and the congressional ban against direct and indirect military aid to the contras.

Congressional Action. Congressional action had been complicated by the fact that the 99th Congress had adjourned and the Senate during the 100th Congress would change from a Republican majority to a Democratic majority. Senator Robert Dole, the outgoing majority leader, suggested that the President should call a special session of Congress that could establish a special committee to investigate. Senator Robert Byrd, the incoming majority leader, said he favored a special committee but not a special session. Meanwhile, several committees, including the Senate Permanent Committee on Intelligence, began investigations.

On Jan. 5, 1987, in response to an Administration request, the Senate Intelligence Committee voted 7-6 against releasing a sanitized version of its report. It agreed, however, to leave subsequent release of information contained in its report to the Committee's discretion. On Jan. 29, 1987, the Committee made public a report summarizing its December hearings and transmitting it to the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition.

Some Members of Congress believed a special select committee such as had operated in the Watergate investigation would best meet current requirements. In their view, a special committee prevents the same witnesses from being called before several House and Senate committees and helps coordinate the differing interests of committees with jurisdiction over various aspects of the case. Other Members favored proceeding within the established system. Under the existing system, each committee could explore more thoroughly the aspects of the case within its jurisdiction in the context of the surrounding issues; for example, the intelligence committees might concentrate on covert activities; the foreign policy committees would look more at foreign policy objectives and the judiciary committees would look into possible criminal violations. On December 4, congressional leaders agreed to form a special committee in both the Senate and the House to investigate the controversy.

Senate Select Committee. On Jan. 6, 1987, with the convening of the 100th Congress, the Senate agreed to S.Res. 23 creating an 11-member select committee which would aim at a final report on Aug. 1, 1987. It reserved the right, however, to extend the deadline to Oct. 30 should a majority of the Senate deem that more time would be required. On Jan. 22, New York attorney Arthur L. Liman was named chief counsel. Liman in February said the committee was beginning the process of granting some witnesses limited immunity, and was negotiating with the White House for greater access to President Reagan's personal notes. He also stated the committee was free to broaden its inquiry beyond the Iran-contra matter to examine other Administration policies.

On Mar. 19, the Senate, at the committee's request, adopted S.Res.170 authorizing civil legal proceedings compelling Major General (retired) Richard V. Secord to allow access to records of foreign bank accounts under his control in order to answer "critical questions" concerning Iran-contra financial transactions.

House Select Committee. On Jan. 7, 1987, the House agreed to H.Res. 12 creating a 15-member select committee with a termination date of Oct. 30, 1987. A 24-member staff has been hired under the direction of Washington attorney John W. Nields Jr. On February 26, the committee met in executive session and authorized application for immunity for certain persons. It also discussed Justice Department-committee relations and the Tower commission report.

The House and Senate select committees voted on March 18 to conduct joint hearings beginning May 5 and to focus the hearings initially on the funding of the Nicaraguan contras, including the possible diversion of proceeds from the sale of arms to Iran. Subsequently, the hearings would examine the Iranian arms sales to determine responsibility for what went

wrong in U.S. policy formulation and management. The committees also voted to seek limited immunity for six witnesses linked to organizations supporting the contras. In addition under an agreement with the office of the independent counsel and approved by both committees, Congress would apply for limited immunity for former national security adviser Rear Adm. John M. Poindexter in mid-April which would facilitate his giving closed testimony in early May and public testimony in mid-June. The committees also elected to delay application for limited immunity to Col. Oliver L. North, with private testimony after June 15 and public testimony after June 23.

Other Congressional Action. The Senate Select Committee on Intelligence, Senate Foreign Relations Committee, Senate Energy and Natural Resources Committee, House Foreign Affairs Committee, House Judiciary Committee have examined various aspects of the Iran-contra matter during hearings conducted since Congress convened in January 1987.

2. Did the Administration's action violate the law?

Concern in Congress and the Administration over possible violations of law in selling arms to Iran grew with the knowledge that some of the proceeds were used to assist the Nicaraguan guerrillas. The President stated on November 10 and 13 that no laws had been violated, but when the decision to appoint an independent counsel was announced on December 2, Attorney General Meese said, "We think that we have a statutory basis to believe that a Federal Law may have been violated."

Members of Congress have cited many relevant laws that may have been violated, but judgments are difficult because of many waiver provisions and lack of specific information. In addition to fundamental laws regarding the use of appropriated funds only for the objects for which the appropriations were made, conspiracy, and the obstruction of justice, relevant laws that have been mentioned include the following:

National Security Act of 1947 (P.L. 80-253), as amended (50 USC 401-413). Secs. 501 and 502 require the Director of the Central Intelligence Agency or heads of other entities involved in intelligence activities to keep the Senate and House Intelligence Committees fully and currently informed of all intelligence activities or "significant anticipated" intelligence activities. Notifications affecting "vital interests" may be limited to the leadership.

Intelligence Authorization Act for FY86 (P.L. 99-169). Sec. 105 is one of a group of provisions known as the Boland Amendment which prohibit or place strict restrictions on the use of funds to assist Nicaraguan resistance fighters in military or paramilitary operations.

Arms Export Control Act (P.L. 90-629), as amended. Under Sec.3(d) the President is required to give 30 days prior notice of third country transfer of major defense equipment worth more than \$14 million. Under Sec. 40 (in effect since Aug. 27, 1986) items on the U.S. Munitions List may not be exported to any country that has been determined to have repeatedly provided support for acts of international terrorism, unless the President waives the provision and reports the waiver to Congress.

Numerous other sections are also relevant, especially Sec. 3 (f), 36(b), and 38.

Foreign Assistance Act of 1961, (P.L. 87-195), as amended. Sec. 506 provides special authority to draw from Department of Defense stocks and requires prior notification to Congress of transfers to foreign countries from such stocks.

Export Administration Act (P.L. 96-72), as amended. Sec. 6(j) requires 30 days prior notice to Congress before granting export licenses for goods worth more than \$1 million bound for countries supporting terrorism.

(See Laws Implicated by Shipments of Military Materials to Iran, by Raymond J. Celada, CRS Report 86-1005A; and Compilation of Selected Laws Relating to the National Security Council, Arms Transfers, Intelligence Activities, Aid to the Contras, and Appropriations Laws and Principles, by American Law Division. Unnumbered CRS Report.)

3. What has been the effect of the Administration's actions on U.S. policy against international terrorism and military sales to belligerents in the Iran-Iraq war?

The Reagan Administration formally classified Iran as a supporter of international terrorism on January 23, 1984, on the basis, as stated by a State Department spokesman at the time, that the United States had "convincing evidence of a broad Iranian policy furthering terrorism beyond its borders including statements by Iranian officials supporting these acts." An immediate consequence was the application of antiterrorism export controls to Iran. A ban on shipments of military equipment to Iran has been in effect since the outbreak of the Iran-Iraq conflict in 1980 as a result of the official U.S. position of neutrality with respect to the war.

International Terrorism. Critics of the Iran initiative note that, since Iran had been placed on the list of countries sponsoring international terrorism in January 1984, the action contradicts the frequently asserted U.S. policy of not negotiating with such countries. They dispute the President's contention of November 19 that since U.S. government contact began with Tehran, "there has been no evidence of Iranian government complicity in acts of terrorism against the United States." They argue that Iran, in recent years, has been involved in sponsoring, if not terrorism in general, then certainly the movements which take foreigners hostage in Lebanon. They note that the President failed to mention the three Americans abducted in Lebanon since he approved the Iran operation in January. Others question whether, despite the official U.S. policy of no concessions to terrorism, the President would have authorized arms to Iran had there been no hostages. Still others point to the timing of arms shipments in relation to the release of American hostages held by pro-Iranian factions in Lebanon. In any case, the prospect of securing military supplies could be an incentive for further hostage-taking.

Supporters of the Iran initiative consider that the Administration was making a rational effort to affect Iranian policy in the Gulf and influence the leadership evolution in this important country. In the course of the undertaking, defenders assert, the Administration made a humanitarian attempt to deal with opportunities offered by events by demanding that Iran cease supporting terrorism and use its influence to release American hostages in Lebanon. They note that the intervention of Iranian officials reportedly had led to the release of several passengers held by pro-Iranian groups during the June 1985 hijacking to Beirut of TWA 847. In any case, the initiative apparently resulted in the release of three American hostages in Lebanon.

Iran. Proponents of the initiative argue that the arms shipments were intended to bolster moderate elements within the Iranian government to enable them to influence a change in the Khomeini regime's continued refusal to negotiate an end to the 6-year-old Gulf conflict. Links with moderate factions could also serve as a hedge against Soviet designs on a strategically important Gulf state, particularly when the time comes for a successor to Ayatollah Khomeini.

Some observers indicate concern that the Administration might be making mistakes in its assessments of Iran similar to those made during the period surrounding the overthrow of the Shah. Critics take issue with the basic premise of the initiative that the opening of contacts could affect the political situation in Tehran. They question whether the action would jeopardize rather than help those the Administration desired to emerge as leaders by trying to influence policy through military transactions. They contend that whoever ends up in control of Iran, virtually all of the contenders are anti-American, and that any power struggle is not between pro-U.S. and anti-U.S. factions.

U.S. Neutrality in the Iran-Iraq Conflict. Critics note that then-Secretary of State Alexander Haig, in the first Middle East policy statement of the Reagan Administration on May 26, 1982, asserted that the United States from the beginning of the Iran-Iraq war had stressed its neutrality. Haig said that the United States had refused and would continue to refuse "to allow military equipment under U.S. controls to be provided to either party." They state that this policy has been reiterated consistently to date, including a statement of May 6, 1986, declaring there was no change in U.S. neutrality policy in the war, and that no U.S. arms or munitions are licensed for shipment to either belligerent. They contend that shipments of U.S. arms and spare parts to Iran, whether directly from U.S. stocks or through third parties such as Israel, violate the official position of neutrality. Others argue that the arms shipments, which included TOW anti-tank missiles and spare parts for Improved Hawk surface-to-air systems, can hardly be classified as "defensive weapons," and could tip the balance in the Gulf war in Iran's favor -- a development not in the strategic interests of the United States. They dispute the notion that the U.S. sales had no substantial impact on Iran's ability to carry out the war. They cite Iraqi claims of improved Iranian air defenses, increased Iranian air force activity, and losses from improved Iranian antitank capabilities.

In a January 27 statement before the Senate Foreign Relations Committee, Secretary of State Shultz reiterated the U.S. position of neutrality and asserted there would be no further "exceptions" to transfers of U.S.-origin military equipment to Iran, either directly or through any third party. Shultz emphasized that Iran's rejection of "its bellicose and terrorist policies" would be a necessary first step to any progress in improved U.S.-Iranian relations.

4. What has been the effect of the Administration's action on U.S. relations with key U.S. allies, moderate Arab countries, the Soviet Union, and other adversary states?

Since 1983, the United States has actively increased efforts to counter international terrorism through a variety of unilateral, bilateral, and multilateral steps. These have included diplomatic initiatives aimed at achieving coordination among U.S. allies and friendly governments in countermeasures against countries supporting terrorism, such as Libya and Iran. The Reagan Administration in October 1983 concluded that U.S. interests would not be served by an Iranian victory over Iraq and, since March 1984, has continued to conduct diplomatic efforts with the objective of halting the flow of foreign or U.S.-supplied arms to Iran (Operation Staunch). At the same time, friendly regional Arab states have been given assurances that the United States would continue such efforts in limiting Iran's capability to wage war.

Allies. West European official reaction to the Iran initiative has been subdued, but there is ample reportage of strong concern about the implications of the U.S. move. With the exception of the United Kingdom, Western European governments had received considerable criticism about their response to terrorism from U.S. media following the U.S. strike against Libya earlier in 1986. Now they are witnessing, through direct American arms transfers, the appearance of exchanging arms for hostages and dealing with a terrorist-sponsoring country, apparent U.S. duplicity.

Critics contend the initiative has severely damaged U.S. credibility that will likely test the NATO alliance and provide considerable ammunition for anti-American forces. Press reports and commentary indicate that Western European officials will likely question the competence and cohesion of the Administration, its formulation and management of foreign policy, with a potential loss of confidence in the U.S. capacity for leadership. Reportedly, many of these officials already had been alarmed by the Administration's handling of the Reykjavik meeting between President Reagan and Soviet Chairman Gorbachev. Others argue that the Iran initiative undermines prospects for a coordinated and effective allied strategy to combat terrorism, as had been achieved at the Tokyo Summit in May 1986. The initiative also negates U.S. efforts in placing pressure on governments supplying arms to Iran.

Moderate Arab Countries. The Administration's confirmation of military sales to (non-Arab) Iran, and the Israeli role in the operation, has further strained U.S. credibility with moderate Arab countries. This situation follows U.S. policy reverses in Lebanon in 1983, the stagnated Arab-Israeli peace process, and failed Administration efforts to furnish U.S. weapons systems to Jordan, Saudi Arabia and Kuwait.

From their perspectives, Iran remains a strategic threat, and the Arab League, meeting in Tunis on November 14, described President Reagan's speech of the previous day "a new and dangerous" element in U.S.-Arab relations. In the first place, the arms deliveries to Iran violated U.S. neutrality in the Gulf war; in the second, the real initiative, stated by the President as aiming at improved relations with Iran, was neither American nor Iranian, but rather Israeli. They consider that, since 1980, Israel has pursued a strategy of supplying arms to Iran, and the United States, lacking its own strategy toward Iran, bought the Israeli approach. The initiative thus enhances Arab perceptions that U.S. policy in the Middle East is driven by Israeli interest and is fundamentally anti-Arab.

Soviet Union. Official statements by Soviet leaders concerning the initiative have been relatively constrained. The Soviet news agency TASS on November 14 commented that the point at issue was not a "swap" of American hostages for U.S. arms, but rather a thoroughly planned, strategic, subversive operation against Iran. Some observers consider the possibility of Soviet doubt over the capacity of the President to conduct foreign policy in the wake of the Iran issue. Others contend that the Soviets are likely to take advantage of opportunities when the United States appears weak and indecisive through such measures as convincing neutral and friendly governments that Washington is incapable of consistency and is untrustworthy. Still others look to an escalation of Soviet and Cuban activity in Third World trouble areas.

5. What kinds of legislative action are appropriate to restrict such covert operations?

Many critics of the Administration's actions argue that Congress must take specific legislative action in order to ensure that such misuse of executive branch power does not occur in the future. Their proposals for action include those that would:

- a. hold more accountable or limit the role of the national security adviser and NSC staff in the conduct of foreign affairs;
- b. make the appointment of the national security adviser subject to Senate approval; and
- c. strengthen existing statutory restrictions on U.S. arms transfers, notification of covert operations, dealings with countries that support terrorism, and dealings with the Nicaraguan guerrillas.

Others in Congress are more cautious. While they favor careful executive branch and congressional investigations to root out any wrongdoing, they see no need at present adopt measures that might weaken the President's powers in foreign affairs with additional legislative restrictions.

The Tower commission report recommended that no substantive change be made in provisions of the National Security Act dealing with the structure and operations of the NSC staff; urged the Congress not to require Senate confirmation of the national security adviser; recommended that each

Administration formulate precise procedures for restricted consideration of covert action; recommended the establishment of a joint House-Senate intelligence committee with a restricted staff to oversee the intelligence community; and recommended against implementation and policy oversight dominated by intermediaries.

ARMS SHIPMENTS TO IRAN

SUMMARY

Congress in the process of examining the legal and foreign policy implications of the Reagan Administration's secret arms sales to Iran in 1985 and 1986, and the diversion of proceeds from those sales to the Nicaraguan guerrillas.

Congressional interest is focused on the following major issues:

- The failure of the Administration to notify Congress of this secret operation;
- Use of the National Security Council staff to carry out secret contacts that by-pass normal congressional oversight of foreign affairs;
- Possible legal infractions in the Administration's transfers of arms to Iran without notification of the Congress and diversion of funds to the Nicaraguan guerrillas;
- The effect of the covert arms sales on U.S. policy against international terrorism and the impact of the sales on the Iran-Iraq war; and
- Concern over the ability of the Reagan Administration to carry out a credible, coherent foreign policy on sensitive issues like relations with Iran.