

# THE ATLANTIC COUNCIL

OF THE UNITED STATES

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## Third Party Arms Transfers: Requirements for the 21<sup>st</sup> Century

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POLICY PAPER

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September 1998

**Policy Paper Series**

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THE ATLANTIC COUNCIL OF THE UNITED STATES

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# Foreword

The Atlantic Council undertook this study with the encouragement and support of the Department of Defense (DoD). The objective is to examine procedures governing controls on third-party arms transfers and assess the impact of these controls on international cooperation. The project identifies ways that procedures could be streamlined in the interests of encouraging beneficial cooperation with important U.S. allies and partners. Despite long-standing efforts by the Office of the Secretary of Defense to encourage cooperation between the United States and its allies in developing and producing military weapon systems, only limited success has been experienced so far. Yet in the post-Cold War period of greatly reduced military spending, the potential economic and political benefits of increased cooperation remain significant for the United States.

The project's identification of obstacles to cooperation touches a complex of competing political, bureaucratic, and commercial interests. Underlying it all is a fundamental dilemma between the advantages to the United States of encouraging international cooperation in defense production, and certain legitimate considerations for national security. The issue is how and where to find a balance, both in specific instances and in overall policy.

A Working Group of distinguished experts in many fields convened several times over one year under the Co-chairmanship of the Honorable John D. Macomber and Senator Charles McC. Mathias to carry out this project. The group heard presentations by officials of the departments of State and Commerce and the Arms Control and Disarmament Agency, as well as representatives from several offices of the Department of Defense. American and European defense industry executives spoke to the Working Group along with defense procurement advisors from the British and French embassies.

Special mention is owed to the group's rapporteur, Michael E.C. Ely, and to the staff of the Atlantic Council's Program on Atlantic Cooperation. They spent many hours in research, checking facts, and assembling the findings of the group. Thanks are also due to the members of the Working Group who contributed their time, offered their insights, and provided their judgments with integrity and diligence. The work of the Group was particularly facilitated by the contribution of COL Lewis Thompson, USA, a Senior Military Fellow at the Council. COL Thompson conducted extensive in-depth interviews with participants in the inter-agency and intra-DoD conventional arms transfer process and provided invaluable insight to this work.

As always, the Atlantic Council takes no institutional position on the issue under study. Rather, the report reflects the general consensus of the Working Group, though not every member necessarily concurs with every opinion stated herein. Moreover, the members' views are personal and do not necessarily represent those of their institutions.

August 1998

David C. Acheson  
President  
The Atlantic Council of the United States

# MEMBERS OF THE WORKING GROUP

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Charles McC. Mathias *President and Chairman of the Board, First American Bankshares*

## Project Director

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# EXECUTIVE SUMMARY

## Background

Can the United States collaborate with foreign nations in armaments development and production without jeopardizing U.S. national security? This question – in light of America’s global security obligations – demands a satisfactory answer. The economic and political advantages of greater international cooperation are significant. Benefits from cooperation include improved interoperability of weapons and equipment used by U.S. allies and partners in operations with the United States, reduction in production costs, and preservation of a defense industrial base among U.S. allies. Yet, considerations of national security are equally cogent.

The system of controls governing the sale of weapons technology – especially relevant during the Cold War – persists today, reflecting a concern about limiting the loss of sensitive technology. Designed to reconcile different policy objectives, the controls – specifically those regulating transfers from second party recipients to third parties - reflect the tensions inherent in tradeoffs between national security, commercial needs, alliance relationships and economic rationalization. However, the very possibility of a third-party transfer – prompting exhaustive review and complex tradeoff calculations – inhibits needed, seemingly straightforward, second-party sales. These unavoidable conflicts often strain the close international relationships vital to cooperative weapons production and development.

The Atlantic Council assembled a Working Group to study the effect of these controls. It sought to discover whether ways could be found to streamline the decision process to improve possibilities for beneficial cooperation while at the same time maintaining necessary vigilance against weapons proliferation.

## Statement of the Issue

A March 1997 memorandum by Defense Secretary William Cohen reflects interest at the highest level in the need for cooperation to improve deployment of standardized equipment with coalition partners and to leverage U.S. resources through cost-sharing and economies of scale. Considering Secretary Cohen’s policy statement, do the controls as presently constituted and administered still serve U.S. interests, or have the interpretation and application of the laws and regulations of the Cold War period hardened into attitudes and procedures which now constrain current policy objectives? If the latter, can the system be improved within the existing legislative framework? Can important security concerns be safeguarded in a modified control regime?

## **The Operation of Controls on Transfers**

The system of restrictions must reconcile a wide range of tradeoffs while measuring legal and regulatory requirements against a commonly understood scale. A number of factors are at work in the process.

### **A. National Security**

There exist two potentially opposing considerations. One stresses the risks of possible access by a hostile end user to critical material or technology. The second tends toward a “broad” evaluation giving more weight to the benefits to overall national security of expanded international cooperation. The present system of controls appears, however, to focus principally on the former consideration.

### **B. Defense Industrial Cooperation**

For individual U.S. firms, each cooperative project is a negotiated-for-profit arrangement. Some may benefit more than others from a liberalized control system. For the U.S. government, the stakes in improved cooperation may be positive but are much more difficult to measure, because of the multiple tradeoffs.

### **C. Relations with Allies**

On the one hand, relations with allies are to some measure improved by successful cooperative ventures. However, delays and controversy over specific cases can cause friction in relations. Moreover, the allies may seek to use the alliance relationship to extract favorable terms on transfers that could damage other U.S. interests.

### **D. Economic Benefits and Drawbacks**

The theoretical benefits to all participants of a well-functioning system are obvious. The problem is determining how the package of benefits is to be divided.

### **E. Organizational and Procedural Issues**

The organizational structure of the control and approval process is often viewed as cumbersome and as a source of excess review and delay. Whether adjustments in the existing regulatory process alone can significantly affect international cooperation is questionable. Nevertheless implementation of the controls that results in delay or perceived unjustified disapprovals can serve as an indicator, however inadvertent, of a negative U.S. policy. Control procedures are heavily weighted toward full review and carry some presumption of denial in case of disagreements over national security impact.

## F. Military Department Culture and Attitudes

Underlying the procedural and organizational questions lies a different observation: that the culture of the Defense Department, characterized by apathy, indifference, even hostility, to cooperation with foreign suppliers, may be a basic factor complicating policy. While the hypothesis of an unfriendly Defense Department environment is not completely credible, the evidence does suggest the presence of an underlying systemic or attitudinal factor.

## G. Political Factors

Domestic politics and special foreign policy considerations can arise quickly to affect overall policy and individual decisions on third-party transfers. Driven by a wide and often contradictory set of interests, U.S. domestic politics can greatly affect decisions on third-party transfers – often protracting and stigmatizing the process. The current legislation itself derives largely from the 1970's when the Congress was especially intent on curtailing executive scope in various spheres. Although many cases evidently sail through the approval process, the way is always open for political intrusion which can cause friction in the system and with U.S. partners.

## **Findings and Recommendations**

The working of the present system of controls tends to act as a hindrance to achieving other important goals through international cooperation, such as standardization/interoperability and economies in R&D and production. The primary reason for this is the preponderance given by the procedures to the prevention of identifiable risk and the underweighting or disregard of long-term benefits, in alliance relations, in improved interoperability, and in better use of resources that closer international cooperation could yield.

The Working Group recommends that:

- the Office of the Secretary of Defense, in an effort to reduce complexity and undue delay, pursue a more ambitious program of organizational reform that would define authority, with standardized procedures and a review process. The result would be a “super” defense agency with international program monitoring responsibility.
- the Department of Defense explore the establishment of a cooperation ombudsman to follow all contentious cases and look out for unnecessary bureaucratic delay.
- the Office of the Secretary of Defense undertake a long-term campaign to systematically:

(1) interject international cooperation planning into Program Planning and Budgeting, to include review procedures undertaken by its JROC\* process; (2) inform Congress of this campaign to gain legislative support for future programs in the annual budget process; and (3) develop a curriculum for senior military and civilian service colleges to educate their professionals specifically about the balance of security and international objectives inherent in international defense programs.

- the following questions, which exceeded the Group's terms of reference, should be examined further:

1. Attitudes toward International Cooperation

Referring to the discussion of Defense Department "culture", is there something identifiably systemic in the operation of the process of designing, developing and procuring U.S. military systems that results in undue bias against foreign cooperation?

2. Effects of Mergers and Acquisitions on International Cooperation:

What are the security and technology transfer issues raised by U.S.-European industrial integration through transatlantic mergers and acquisitions and how can they affect possibilities of international cooperation. This is a complex subject involving private industry business strategies, questions of national industrial base and sensitive technologies, and intra-European policy on defense mergers and acquisitions.

3. The U.S. Role in a European Arms Industry:

In a related question, what should U.S. policy be toward the development of a separate (even if cooperative and inter-linked) European military industrial base and should the United States encourage the emergence of such an independent European capacity? If, so, in what way should the United States urge its European allies to consolidate their industrial base, offer incentives by accepting less favorable tradeoffs, and encourage transatlantic mergers and acquisition.

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\* Joint Requirements Oversight Committee, chaired by the Vice Chairman of the Joint Chiefs of Staff with a membership which generally includes the Vice Chiefs of the Services

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# **Third-Party Arms Transfers: Requirements for the 21<sup>st</sup> Century**

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## **I. BACKGROUND**

It is generally accepted that the end of the Cold War has transformed the security parameters that have for decades shaped U.S. policy on arms transfers. The disappearance of the threat from the former Soviet Union has caused the United States and its long-time allies to shift their focus to a new security environment. One important aspect of this change of focus is its effect on the alliance relationships that set the parameters for cooperation between the United States and friendly countries. This is particularly true in the development of compatible military doctrines, the design of military force structures and the development and deployment of interoperable or standardized armament systems.

The new environment is characterized by much lower levels of military spending by the United States and NATO members (and to a lesser extent Japan), leading to massive downsizing, with the deepest cuts coming in procurement and to a lesser degree, particularly for the United States, research and development. Even though U.S. expenditures for weapons research and development were reduced in FY98 to \$35 billion, for example, they still vastly exceed the combined outlays of the allies. From a multiple of about threefold in the 1980s, the United States now spends five to six times as much as its allies. (It should be noted that the U.S. figure reflects the funding of competing alternative systems, a practice which the NATO allies have not followed.)

The U.S. defense industrial base has been massively consolidated into a much smaller number of participants by a series of mergers and acquisitions, a restructuring which has not yet been matched by the more fragmented European armaments industry. One result is a growing worry in the United States and Europe that U.S. technical and industrial preponderance has increased to the extent that its European allies – particularly Germany, France, the United Kingdom and Italy – are effectively unable to compete in an environment where major weapon systems are increasingly complex, technically sophisticated and expensive to develop and produce.

Growing U.S. sophistication in military technology development tends to make cooperation on the basis of equality of contribution difficult to attain. The U.S. preponderance in the development of technology tends to increase, at the expense of the United States, the disparity in the sharing of the economic benefits of technology

transfer unless offset by allies' purchases of the weapon systems. This inequity confers on the United States a competitive strength, however. Tempered by domestic political constraints on foreign sales, the United States gains increased ability to use foreign sales as well as foreign customers to support a larger domestic defense industrial base and to reduce unit costs for the Department of Defense (DoD).

Competition for foreign sales is increasing worldwide. There are several factors to weigh in this competitive environment:

- Foreign competitors increasingly need sales into third-country markets to support their economic viability and to preserve their national (or potentially Europe-wide) industrial base.
- Foreign competitors need greater access to U.S. materiel, components and technology to compete with the United States in third country markets. The technology gap that is opening raises the questions of whether the United States should help its allies to compete with U.S. industry – which some U.S. firms view as a disadvantage to them.
- In this climate of heightened and more adversarial competition for sales to third parties, the current system of controls is criticized by allies and domestic observers alike as cumbersome, outdated, and susceptible to meddling and interference in pursuit of other objectives at variance with policy.

Despite the advantages of U.S. technology, U.S. controls on third-party arms sales prompt foreign firms to seek alternatives to buying from the United States. This is especially true when equivalent or near-equivalent non-U.S. technologies are available. The perceived disadvantages of delays and uncertainties of U.S. third-party transfer restrictions and the heightened environment of competition for sales can outweigh the advantage of U.S.-sourcing or cooperative development, leading to duplication of effort and waste of limited resources.

The principal competitors of the United States are also NATO alliance partners and the benefits for the United States from cooperation with them remain significant. Current U.S. policies and restrictions on third-party sales can adversely affect political and security relations between the United States and Europe, its most important democratic ally. At the military level, joint development and production of weapon systems encourage convergence of military doctrine, reduce individual country outlays for research and development, reduce unit costs, and promote standardization, interoperability and joint use. Industrial cooperation strengthens and deepens ties between the participants and reinforces alliance solidarity. Cooperation also helps to reduce concerns that emerging U.S. military capabilities, propelled by Washington's vastly higher expenditure on new weapon systems, are creating a gap with its allies. However, concerns remain that the United States is

moving toward a new generation of radically advanced war-fighting techniques based on materials and technological innovations which its partners are not able to share, making them less able to carry their burden in future allied or coalition operations. To the extent that cooperation can reduce the gap, it should facilitate burden-sharing.

Closer defense industrial cooperation bears more on the political relations of the United States with its allies than on technological benefits to U.S. defense. However, the overriding prerequisite falls upon European allies: Until their governments and defense industries undertake the downsizing and increased integration and rationalization that are long overdue, closer cooperation with the United States will be very difficult. European governments continue to give unwarranted protection to an industry that resists the harsh discipline of belt-tightening and reduction.

The elimination of national champions, their fusion into a rationalized European industrial and technological base and the establishment of a common European institution to manage the development and production of weapons are tasks which so far have proven intractable, although determined efforts continue.

Jacques Gansler, Under Secretary of Defense for Acquisition and Technology, has stated that it would be unwise for Europe to create a single large supplier of weapons or to delay cooperation until a strong European defense industry can be formed; he recommends greater transatlantic cooperation, especially in developing arms and systems for coalition operations. He suggests the formation of teams of transatlantic companies for developing such systems.\* However, U.S. third-party transfer restrictions remain an inhibitor.

The transfer of U.S.-origin material, technology, and training to a third party involves a U.S. approval policy and process that warrants reexamination. This paper addresses specific questions germane to this complex issue. The questions, listed below, are answered in summary form and developed further in the discussion that follows. (See Annex for brief explanations of key laws and regulations surrounding such transfers.)

- What is the impact of current procedures regulating third-party arms transfers on U.S. security, relations with allies, and international defense cooperation?

Current procedures are intended to protect U.S. security interests. However, this is not without costs. It has aggravated relations with allies on occasion and sometimes impedes international defense cooperation.

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\* Financial Times, March 27, 1998

- Can procedures governing arms exports and the related technology transfer to allies be improved to facilitate defense cooperation while preserving U.S. economic and security interests? If so, how?

Improvement can be made by streamlining procedures and introducing foreign participation in the concept/planning stage of equipment development in selected cases.

- Is the issue of third-party transfers a factor in the United States Government's decision to encourage or discourage defense industrial cooperation?

Yes, in some cases, but their actual effects are difficult to quantify reliably.

Underlying these questions is another: What case can be made for closer defense industrial cooperation between American and foreign firms? In the course of this paper this question will recur, although the primary focus will remain the analysis of the questions noted above.



## II. STATEMENT OF THE ISSUE

*I have determined that International Arms Cooperation is a key component of the Department of Defense Bridge to the 21<sup>st</sup> Century. In the evolving environment of coalition warfare, limited resources, and a global industrial and technology base, it is DoD policy that we utilize International Armaments Cooperation to the maximum extent feasible, consistent with sound business practice and the overall political, economic, technological, and national security goals of the United States.*

William A. Cohen

DoD Memorandum, March 23, 1997

Secretary Cohen's memorandum reflects concern at the highest level about the need for cooperation as an instrument to preserve and improve deployment of standardized or interoperable equipment with coalition partners and to leverage U.S. resources, and those of its allies, through cost-sharing and economies of scale. Within this broad framework, controls on third-party transfers are one identifiable, if difficult to quantify, element affecting the implementation of the policy.

This inquiry examines the impact of U.S. third-party transfer controls on the stated desire for increased international defense cooperation. An example of such a third-party transfer would be a weapons system developed jointly by the United States and the United Kingdom that might be sold to a friendly third country.

The current controls on transfers of material and technology to third parties were developed during the Cold War, partly as a response to a security environment that has since changed. They remain a function of U.S. national security policy, reflecting both foreign policy interests and military considerations. The legislative basis, which goes back decades, remains unchanged, reflecting continuing concern over the need to limit the loss of sensitive technology. This remains a central policy objective, particularly with regard to proliferation of weapons of mass destruction. Considering Secretary Cohen's policy statement:

- Do the controls as presently constituted and administered serve U.S. interests, particularly the objective of international armaments cooperation?
- Have the interpretation and application of the laws and regulations governing third-party transfers hardened into anachronistic attitudes and procedures which now constrain current policy objectives; and if so, can the system be improved within the existing legislative and regulatory framework?

The Working Group, in exploring these questions, found itself facing a number of relevant issues which were not explicitly addressed by the assumptions under which the study had been assembled.

First, the Group observed that the problems and obstacles facing defense cooperation are pervasive and systemic, and will require a more sustained and determined high-level effort to overcome - on both sides of the Atlantic - than shown heretofore. Nonetheless, DoD is correctly looking for ways to improve the process by eliminating unnecessary cooperative controls even if they do not constitute the root of the problem. Controls on third-party transfers, however, constitute a component of the root problem.

Second, the Working Group found that the questions associated with controls on third-party transfers are part of the management of a larger set of issues: how to maximize the outcome of international arms cooperation. Clear policy guidance and implementation in this area should give better direction to arms transfer procedures. Uncertainty as to the weights given to the various objectives of U.S. policy tends to send an unintended and confusing signal both to allies and to those officials in the U.S. government, who must administer arms control policy.

Third, there arose questions about the true magnitude of the problem: i.e., how many truly important cases involving restraint of cooperation actually arise, and what might be their importance? Is the situation worsening or improving? Quantitative data are not readily discernable. The likelihood is that, though problem cases may be few, the frictions they generate can be significant.

Fourth, the Group noted that cooperation takes many forms, from sale of hardware or technology, to co-production or licensed production, to joint development with the partners playing direct roles in conceptual design, systems integration and determination of the production process. These differing modes of cooperation raise different concerns and pose different problems at various phases of the armaments cooperation process that may require or be susceptible to a range of solutions. This variability complicated the problem of determining the attitudes of U.S. industry: does industry generally welcome more cooperation, oppose it, or hold mixed views? Probably the last.

Against this background, the Atlantic Council Group took a hard look at the current process for implementing the legislative and regulatory requirements and has a number of specific recommendations to offer. It also has suggestions for further work to address the broader problems and issues.

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### **III. THE OPERATION OF CONTROLS ON TRANSFERS**

Two recurring themes emerging in the discussions of the Working Group were the tradeoff of security considerations versus the benefits of cooperation that must be reconciled in the approval process. The security concerns relate to the risks that equipment or technology might get into the “wrong hand” through third-party transfers. Another difficulty is that of measuring legal and regulatory requirements against a commonly understood scale. The security objectives are as strong as the objectives of increasing defense cooperation. The question is whether and how a satisfactory balance can be established between these competing objectives. A number of factors are at work in the process.

#### **A. National Security**

Here the Working Group found itself faced with two potentially opposing concepts. One approach stresses the risks of possible access by a hostile end user to critical material or technology. This reflects the valid concerns that underlie the Arms Export Control Act\* and still condition U.S. policies on proliferation of conventional weapons and weapons of mass destruction. The second tends toward a “broad” evaluation of the effect of the controls, emphasizing benefits to national security of expanded international cooperation. The present system appears to focus principally on the narrow security-weighted concept, probably because of the difficulty of measuring the negative effect of the control procedures on other global objectives and, in some instances, concern over nonproliferation issues. The choices are circumscribed by the requirements under law for reporting to Congress all agreements involving the transfer of classified weaponry or technology.

#### **B. Defense Industrial Cooperation**

For individual U.S. firms, each cooperative project is a negotiated-for-profit arrangement. Some projects may benefit more than others from a liberalized control system. For the U.S. Government, there are gains from liberalized cooperation, although they are more difficult to measure because of the tradeoffs pointed out above. For example, it may be in the interest of the United States to agree to joint production of a weapon system, i.e. with production lines in the United States and in the cooperating ally’s country, which results in higher unit costs, but ensures greater interoperability through common use of the weapon system.

#### **C. Relations with Allies**

Relations with allies are to some measure improved by successful cooperative ventures, and cooperation can contribute measurably to the effectiveness of combined operations. However, allies can seek to use the alliance relationship to

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\* See Annex

extract favorable terms on transfers that damage other U.S. interests. In addition to U.S. national security and protection of the national industrial base, individual U.S. suppliers can be adversely affected in terms of employment and profitability.

## **D. Economic Benefits and Drawbacks**

The economics of cooperation are related to the specifics of implementation. Theoretically, there are benefits to all participants of a well-functioning international cooperative system. However, the problem has always been to determine how the package of benefits is to be divided. There is perceived inequity in tradeoffs, for example, between U.S. jobs and profits on one hand and the desire of an ally for transfer of a key U.S. technology.

## **E. Organizational and Procedural Issues**

The Working Group examined the organizational structure of the control and approval process, including the interagency\* review procedures and the internal process of DoD and the armed services. The Department of State was cited by some of those interviewed as a source of excessively long reviews and delay. With regard to the armed services, the Group noted differences of procedure among them. An examination of each would require a detailed organizational study that could not be undertaken by this project; however, it was concluded that the services themselves do not appear to be at the core of the control problem in terms of organization and procedure. Each service has reformed and improved its organizational arrangements.

### **Defense Department**

Examination of the approval process within DoD was undertaken because several members of the Working Group and invited commentators identified this structure and its procedures as central to the problem. One veteran observer writes, "... the process is time consuming and the Pentagon does not speak with one voice. These two factors, and the fact that the regulations often are not correctly interpreted, are the root problems... DoD never has been properly organized to participate in international arms cooperation programs."

Other commentators stressed the need to safeguard the integrity of the security aspects of the review process by continuing to provide a full hearing for all viewpoints, particularly by experts regarding the security implications of transfers of advanced technologies and systems. These observers believe the present system essentially works, if not perfectly, and that caution is needed to avoid streamlining that would speed and liberalize the process at the expense of the safeguards for national security that remain an important basis for the formal procedures.

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\* Chiefly, the Department of State, Defense, and Commerce and the Arms Control and Disarmament Agency.

A related view holds that the laws and regulations are in themselves reasonable and probably necessary; they are sufficiently broad to permit interpretation and case-by-case review; and there is policy to guide the decision-making process. This view holds that the root of the problem lies elsewhere, for example, in the way DoD is organized to deal with the question.

The cumbersome nature of the review process was a recurrent theme. The group heard anecdotal evidence that foreign perceptions of slowness and uncertainty in the U.S. process can lead foreign governments to duplicate U.S. technology in order to export their products free of U.S. controls. These perceptions can also lead them to procure from second-best non-U.S. sources. On the other hand, interagency representatives who gave their views stressed the stepped-up ability of the process to move quickly and automatically, and the small number of cases actually requiring close review. Other commentators cited the need for better staffing, training and continuity in DoD and the services to ensure the expeditious functioning of the review mechanism. Still others noted that most of the anecdotal criticism derives from cases that reflect historic circumstances that have since changed; other criticisms, in this view, reflect unsuccessful attempts to merely reverse or circumvent legitimate restrictions.

### **Lobbying**

Lobbying in Congress and the executive branch by foreign governments and suppliers and their American partners, in the view of some inside the system, also tends to complicate and slow the decision-making process. This is because such lobbying draws greater attention to the cases within the bureaucracy. This heightens the interest of the sometimes competing constituencies which focus closely on cases that might otherwise pass through the review process with relatively little difficulty. A balanced view must recognize the political context within which the system operates, where conflicting political agendas contribute to delay within the system. In this view, the resulting complaints from the industry about the approval system itself may be misplaced.

### **Nature of Controls**

Another factor cited as a possible impediment to cooperation is excessive reach of existing controls. Several experts suggested that the U.S. practice of insisting on universal, post-hoc, case-by-case review frustrates negotiations with partners ahead of time for acceptable third-party transfer destinations. Such a prior-negotiation procedure would eliminate uncertainties and delays. Further, the policy of retaining control over transfers during the entire useful life of the product may have the effect of clogging up the control system with inconsequential cases involving long-outdated equipment and technology. It was suggested that a cut-off date, a "statute of

limitations” by category or product, would reduce the volume of trivial approval requirements. Others believe that the age of the articles or technology has little to do with the decision-making, rather that preserving the sanctity of the process is the goal.

The problems of delay and uncertainty associated with the transfer process serve as a desirable impediment for interest groups that see more disadvantages than advantages in expanded international programs. A national security safeguard litmus test is an area where full agreement on tradeoffs is particularly elusive and selective. A more understandable measure of what constitutes equivalent foreign technology could open the way to quicker and less restrictive licensing.

There were mixed views on whether adjustments in the existing regulatory controls on transfers can in themselves significantly affect international cooperation; the controls are an indicator, if unintended, of U.S. policy. They are heavily weighted toward full review and carry a presumption of denial in cases of disagreements over the implications for national security. Opponents of the existing system identify it as the key obstacle to expanded international cooperation. Supporters maintain that the *status quo*, properly administered, is necessary and justifiable. Efforts can of course be made to streamline and hasten the process through tighter deadlines, better staffing, and closer controls by senior management. However, those remedies have always been available and it is not evident that they would alter substantially the present process.

## **F. Military Department Culture and Attitude**

Underlying the procedural and organizational questions lies a different issue, the observation that the culture of DoD, putatively characterized by apathy, indifference, even hostility, to cooperation with foreign suppliers, may be a basic factor impeding policy. This allegation builds on two elements, one internal to DoD, the other involving the Congressional budgetary process.

The first element is said to be a preference by the military services to work with American suppliers who understand service needs and are effective in meeting them. A “not-invented-here” attitude (also found in foreign military establishments) tends to denigrate technology of foreign origin and fuels a tendency to view foreign participation in a project as a complication that adds to risk of failure. The services have never funded core programs that include foreign participation and have resisted with a good measure of success the attempts by the Office of the Secretary of Defense (OSD) to encourage cooperative projects. They have selected for cooperation mainly small, low priority projects that otherwise could not be funded, and have found ways in the budget process to terminate potentially successful cooperative programs that were seen as competitors for funding. Also cited was “the tendency of the military to make foreign policy” and the unwillingness of senior

officials to overrule middle-level participants who attempt to impede the execution of cooperative program decisions decided at the OSD level.

The second element is embedded in the service budgetary process and Congress. Members of Congress support constituent defense firms and naturally want defense expenditures to take place in their state. This built-in bias, in turn, makes it easier for DoD to favor, or acquiesce in, funding for U.S.-only defense projects. The services need only point out “loss of jobs” to all but guarantee that defense budget programs will be “U.S.-only”.

Without fully accepting the hypothesis of an unfriendly environment, the Working Group observed that repeated attempts by service secretaries or OSD over more than 25 years to energize international cooperation have brought relatively meager results. This fact supports the view that there remains an underlying systemic problem.

One presentation to the Group argued that an overhaul of DoD’s strategic planning process is essential if international cooperation is to be part of the DoD planning, programming and budgeting system where “... political power, rice bowls, and defense and service procedures and regulations all come together to ensure that programs live or die within the established process.” The presentation noted that, “The lack of strategic planning ensures that the international programs come along with too little, too late [or] little-to-no funding, no political support, and no real military service support.” Without such support “... there is no incentive to take a program international, and if there were, the programmatic and mechanics of doing so are almost prohibitive.”

A proposal to remedy that problem exists. The National Defense Panel (NDP) report strongly supports closer cooperation with our allies. The NDP recommendation presents an opportunity to integrate international cooperation into the planning process by including the participation of foreign firms in programs as part of an overhaul of the DoD acquisition process. The NDP recommendation for a Joint Forces Command could be extended to include the establishment of an international systems development center to work with battle development centers and laboratories as a means of providing early foreign entry into the requirements and programming process.

## **G. The Political Environment**

Underlying these issues related to arms transfers and international cooperation is the political context behind the governing legislation. Much of the current legislation was enacted in the 1970s when Congress was intent on curtailing the scope of executive branch discretion and reasserting congressional oversight of foreign policy. Congress has both positive and negative views of international cooperation, but has generally supported the basic principle of cooperation. There have been a number

of favorable legislative initiatives, e.g. the Culver-Nunn amendment of 1976, the Nunn-Warner and Quayle amendments of 1986 and the McCain amendment of 1997. However, the enormous power of Congress in the budget process opens the way to questioning approval of individual transfer cases on behalf of constituents and, as noted previously, that is resolved more often in favor of domestic rather than international programs.



## IV. FINDINGS AND RECOMMENDATIONS

The findings and recommendations go beyond the specific issue of arms transfers to third parties. But they go to the heart of the larger policy issue of increased, effective international arms cooperation. Some experienced observers believe the single real key to the problem of international cooperation is to be found in solving the underlying organizational and procedural issues within DoD.

The Working Group believes there are certainly elements of truth in each of the observations discussed. Yet, with the notable exception of the related organizational and procedural issues described above, they do not seem to show the central path to the policy stated by Secretary Cohen: the need for more and better cooperation at an acceptable cost. The Group by and large agrees with the observations of a military culture that fundamentally resists foreign cooperative programs, but recognizes that the subject is both controversial and, at this point, not substantiated conclusively.

If future budgetary restrictions were to further shrink U.S. defense budget levels, one might foresee greater incentives for the services and OSD to seek international partners since reduced resources could make stretching with partners more advantageous. However, the current weakness and fragmentation of the European arms industry makes an efficient solution along this line less likely. Consolidation and invigoration of the European industry would improve prospects for transatlantic cooperation.

In any case, the Working Group does believe that the early integration of foreign participants into the strategic planning and programming process may be one key to the broad goal of fostering a positive culture supportive of increased cooperation in armaments. Early involvement will not solve the problem if the control and approval process remains unwieldy and is subject to cultural bias. The complex but limited and specific questions of controls on conventional arms transfers constitute a subset of the issues related to international cooperation.

The Working Group concludes that the operation of the present system of controls, with its procedures and cultures, tends to hinder the achievement of other important goals related to international industrial defense cooperation. The existing system gives greater weight to the prevention of identifiable risk and underweights or disregards long-term benefits for the United States in terms of alliance relations, interoperability-standardization, better use of limited resources for modernization programs, and reduced unit costs to DoD.

The Working Group recommends:

- that OSD pursue a more ambitious international cooperation program of organizational reform that would define authority, with standardized procedures and a review process within the Office of the Under Secretary of Defense for

Policy. An international policy “czar” for the program should be considered. The result would be a “super” defense agency with international program responsibility. Though some contend that such a move would unduly weaken the review process and underweight security considerations, the Working Group believes that the operation of the present system confers too much weight on these factors. The Group is reluctant to go into the specifics of a major DoD reorganization of the management of international affairs, but recognizes that its principal observations identify important disadvantages in the present system of arms transfers; reform is needed to reduce complexity and possibilities of unnecessary delay.

- that DoD explore further the establishment of a cooperation ombudsman to review all contentious cases in an effort to identify undue bureaucratic delay in the programming/budgeting process that works against possible foreign partnerships.
- that OSD undertake a long-term campaign to systematically (1) interject international cooperation planning into the Planning, Programming, and Budgeting System to include review procedures undertaken by its JROC\* process; (2) inform Congress of this campaign to gain legislative support for future programs as an item of special concern in the annual budget process; and (3) develop a curriculum at senior military and civilian service colleges to educate their professionals specifically about the balance of security and international objectives inherent in international defense programs.
- that the following questions, which exceeded the Group’s terms of reference, be examined in depth:

### **1. Attitudes toward International Cooperation:**

Referring to the discussion of DoD “culture”, is there something fundamental in the operation of the process of designing, developing and procuring U.S. military systems that results in undue bias against foreign cooperation? As a realistic matter, some programs may, in fact, be too sensitive or essential for any outside participation, barring a critically needed foreign contribution. If so, parameters need to be established to define “red”, “yellow” and “green” light categories. Any unwarranted biases against cooperation should be identified and eliminated. This would greatly increase transparency and prospects for effective cooperation. (The Foreign Comparative Test (FCT) Program\* is one practical illustration of how the questions of systemic bias can be addressed.)

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\* Joint Requirements Oversight Committee, chaired by the Vice Chairman of the Joint Chiefs of Staff with a membership which generally includes the Vice Chiefs of the services

\* The FCT is a DoD program (prescribed by 10 US USC 2350a(g)) which provides funding for U.S. test and evaluation of selected equipment items and technologies developed by allied countries and judged as having the potential to satisfy valid DoD requirements.

**2. Effects of Mergers and Acquisitions on International Cooperation:**

The question of security and technology transfer issues raised by U.S.-European industrial integration through transatlantic mergers and acquisitions requires examination. This is a complex subject involving private industry business strategies, questions of national industrial base and sensitive technologies, and intra-European policy on defense mergers and acquisitions.

**3. The U.S. Role in a European Arms Industry:**

In a related question, what should U.S. policy be toward the development of a separate (even if cooperative and inter-linked) European military industrial base and how much weight should be given to encouraging or minimizing the emergence of such an independent European capacity? Drawing on the statement by Under Secretary Gansler cited earlier, in what way should the United States urge its European allies to consolidate their industrial base, offer incentives by accepting less favorable tradeoffs, and encourage transatlantic mergers and acquisitions?

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## ANNEX:

### EXAMPLES OF U.S. LAWS AND REGULATIONS CONTROLLING THIRD-PARTY ARMS EXPORTS

- **Arms Export Control Act** (Public Law 22 U.S.C. 2753, Section 3): Prior U.S. consent is needed for a partner in a cooperative project with the Department of Defense to transfer any defense article or service, including technical information to another country. The President may not give his consent to the transfer “unless the United States itself would transfer the defense article under consideration to this country”.
- **International Traffic in Arms Regulations (ITAR)**, (22 C.F.R. parts 120-130): Before reselling, transferring, transshipping, or disposing of a defense article to any user other than as stated on the export license, the written approval of the Office of Defense Trade Controls must be obtained.
- **Under-Secretary of Defense for Acquisitions Memorandum “Policy for the Negotiation of International Agreements”** (November 1, 1988): Approval of the Department of Commerce and Department of State may be required for International Agreements that are likely to have third-party sales.

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