

DEPOSITORY
SALE OF AWACS TO NATO

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BEFORE THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS

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SALE OF AWACS TO NATO

THURSDAY, MARCH 18, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, D.C.

The committee met at 10:45 a.m., in room 2172, Rayburn House Office Building, Hon. Thomas E. Morgan (chairman) presiding.

Chairman MORGAN. The committee will please come to order.

The committee has before it today for consideration House Concurrent Resolution 576 which pursuant to section 36(b) of the Foreign Military Sales Act would disallow the proposed sale of 32 airborne early warning aircraft to the North Atlantic Treaty Organization.

On February 27 the committee received notification from the Department of Defense of the proposed sale of the airborne early warning aircraft to NATO. Because this is a matter within the budget of the Department of Defense, the Armed Services Committee has been considering U.S. procurement of the airborne early warning aircraft.

On March 17 the Armed Services Committee reported out H.R. 12438, a provision of which prohibits the spending of any funds on procurement of these planes until a favorable decision by NATO to purchase these planes.

On March 8 Congresswoman Patricia Schroeder introduced House Concurrent Resolution 576 disapproving the sale to NATO.

On March 10 the resolution was referred to the Subcommittee on International Political and Military Affairs. The subcommittee held a hearing on the proposed sale on March 11 and the chairman of the subcommittee requested the chairman of the full committee to convene the full committee to receive the subcommittee's report.

REPORT BY CONGRESSMAN ROSENTHAL

I will now call on Congressman Rosenthal to report to the committee on this matter.

STATEMENT OF HON. BENJAMIN S. ROSENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. ROSENTHAL. Thank you, Mr. Chairman.

Due to the absence of Mr. Fасcell I chaired the hearing that considered this matter and with his permission I make the following report.

As you correctly stated, both Mrs. Schroeder and Mr. Downey filed resolutions of disapproval on the proposed sale of 32 airborne early warning aircraft to the North Atlantic Treaty Organization. In common parlance these aircraft are called AWACS, A-W-A-C-S.

CONGRESSIONAL OPPOSITION

I want to briefly summarize the testimony that was offered before the subcommittee. The burden of Mrs. Schroeder's argument was, should the United States subsidize the sale of very expensive aircraft to our NATO allies in order to make the sale? In other words, she said that the aircraft was extraordinarily expensive and that we would be subsidizing it by selling it to them at a significantly lower price than in fact it cost to produce if you take into account the research and development costs.

She also suggested that the Department of Defense is attempting by the proposed notice of sale to create a false impression that NATO is prepared to buy these airplanes when in fact the NATO defense ministers have not yet considered the matter and will consider this proposed sale sometime at the ministerial meeting in May.

Mr. Downey's testimony cited both DOD evidence and Armed Services and Appropriations Committee reports. He has gained some degree of expertise in the methodology and use of this airplane and he said that DOD had changed the AWACS mission a number of times. Mr. Downey said that in order to sell the plane to a rather dubious NATO, DOD wanted what we can only describe as a double subsidy; one, in research and development costs, most of which the United States pays, and then additionally because the United States would pay 25 percent of the participation in NATO funding. We would be picking up the tab twice using what he described as a double dip. He suggested that NATO should pay about \$950 million of the total research and development if they want this airplane and that DOD wants them to pay only \$150 million of this R. & D.

Downey also said that the Defense Department planned to buy at one time 42 AWACS at a then estimated cost of about \$63 million apiece but so far he said DOD has spent more than \$180 million per plane to put 13 working aircraft into the U.S. inventory. The GAO stated in a February 27 report on the financial status of major acquisitions that the United States would have to buy another 19 AWACS at a cost of over \$1 billion to bring the unit price below \$110 million per plane.

TESTIMONY OF GENERAL FISH

General Fish testified that NATO has studied the AWACS question for several years and that they concluded the Boeing modified 707 is the best plane for the very urgent defensive need of detecting and tracking enemy aircraft. The AWACS plane is a Boeing 707 with a huge radar bubble on top and presumably it is very useful in front line interdiction of enemy planes and enemy signals and that sort of thing.

General Fish said that the NATO military people had asked for the proposed letter of offer. During the course of the inquiry it developed

that the NATO military group generally was in favor of purchasing the AWACS and presumably would recommend to the ministerial meeting in May the purchase of the AWACS.

General Fish said that pursuant to the NATO military finding that they wanted this airplane that the Defense Department was submitting this notification. General Fish said that the intention of the Defense Department was to conform with congressional desire to inform in advance on major arms sales because there is some question as to the number of planes—and I will get to that later—that NATO will in fact purchase.

Because there is some question as to the precise price General Fish said, in essence, even though we are in an imprecise position we are trying our best to give you the best information available. He said that we do not know what the final cost will be except that the cost of the airplanes will be \$2.2 billion or less. He also said that we do not know how many planes NATO will buy simply because the defense ministers have yet to meet. He also said that this is a very complex negotiation with many countries involved and that is why at this early stage one does not know what the precise order or sale will be. He also said that the NATO purchase will lower U.S. unit costs of its own AWACS plane by having NATO pay 4 percent of each plane's cost as its share of the research and development costs.

Senator Thomas Eagleton of Missouri also testified in support of the resolution of disapproval. He said essentially that the notification under section 36(b) is an extra legal attempt to get tacit congressional approval of a proposed sale without adequate information or details being available to Congress to judge the case on its merit. He also said that it is highly questionable that NATO will ever buy these planes and he also said that no NATO country and no NATO defense ministers meeting has agreed to buy the planes as of now.

REPORT OF THE HOUSE APPROPRIATIONS COMMITTEE

Mr. Chairman, additionally complicating the issue, and it was kind of intriguing, is that the House Appropriations Committee considered this matter and the committee summarized previous budgeting for AWACS which it describes, and I quote from the House Appropriations Committee report, "not only the most expensive aircraft bought by the Air Force but one of the most controversial."

After reviewing the changes in Air Force justification for AWACS in the past, the committee stated as follows in its report, and I read from the House Appropriations Committee report.

It would appear from the foregoing that the Air Force is determined to buy 34 AWACS aircraft regardless of the fact that the mission's priority has been changed and that NATO may buy aircraft to support the NATO requirement. This attitude seems to express a wanton disregard for economy. It is apparent that if the primary mission of AWACS is to support tactical forces, then the requirement can be reduced. It is also apparent that if most of the 34 aircraft are justified to support the NATO mission and NATO is willing to buy aircraft to support that requirement, then the number of aircraft purchased by the U.S. can be reduced accordingly. It is far more economical for the Government to pay 25 to 30 percent of the cost of AWACS aircraft in NATO than buy 34 aircraft for the armed services.

REPORT OF THE ARMED FORCES COMMITTEE

The Armed Forces Committee, Mr. Chairman, also considered this matter, and I read to you from their report dated May 10, 1975:

Committee action on this program was further complicated by the revelation of a proposal which is being considered within the Department of Defense to sell to our NATO allies the AWACS aircraft for approximately 50 percent of the cost to the United States Air Force. After a thorough airing of this proposal the committee directs that the Department of Defense take no action toward the consummation of any agreement with any foreign government relative to the sale of AWACS until the expiration of 30 days after a full report of the terms and conditions proposed for such sale have been reported to the Committee on Armed Services of the Senate and House of Representatives.

The notice of sale, Mr. Chairman, which I think the members have before them, says, "The total estimated value of the sale is \$2.2 billion," and under item C it says, "Description of services or services offered, 33 airborne early warning aircraft (spare parts and support equipment)."

LANGUAGE OF SECTION 36(b)

Now section 36(b) notices are referred to this committee and in the law it says as follows:

For each letter of offer to sell under paragraphs 1 and 2 the report shall specify (a) the foreign country or international organization to which the defense article or service is offered; (b) the dollar amount of offer to sell under paragraph 1 or of the completed sale under paragraph 2, a brief description of the defense article or services offered, the United States armed force which is making the offer to sale, the date of such offer and the date of any acceptance under paragraph 2.

Even though the notice of sale says 32 aircraft at \$2.2 billion, at a press conference the public relations spokesman for the Department of Defense publicly amended the notice of sale by saying that it would be "up to" 32 airplanes and "up to" \$2.2 billion.

My own view of how we should handle this matter, Mr. Chairman, is that we should refrain from getting into the subject matter of the merits of the airplane. There are an awful lot of experts that have varying opinions as to the efficacy, the validity, the usefulness, the cost of this particular airplane.

I also think that we should defer to the Armed Services Committee as to the merits of the airplane and we should not intervene in their process as to whether or not the 30-day notice required of proposed sale is valid or invalid. I do think that the mission of this committee is to protect the integrity of our responsibility under section 36, and considering that responsibility it is my view that the notice of sale is defective because they have publicly stated that the total estimated value is not what the value will be and the number of aircraft is not what the number will be and there is not a clear and present purchaser available at the present time.

DOD NOTIFICATION OF INTENT

General Fish said that the Department of Defense in its zeal to be forthcoming with this committee sent a notification of intent to issue a letter of offer trying to put the Congress in on the ground floor. Both Mr. Downey and Senator Eagleton suggested that there were

ulterior motives in this notification and that they were proposing to use the letter of offer and the tacit approval of Congress as a tool in the proposed salesmanship to be used at the ministerial meeting.

I have no opinion and would not suggest we get into that dispute. What I do think the committee ought to do today is recognize that the notification of the proposed letter of offer is, at the least, premature and secondarily technically defective in that it is imprecise simply based on the testimony of General Fish. Also, the time has all practically run out on Mrs. Schroeder's letter of disapproval and we would not want to get into the merits of the case.

I am going to yield to Mr. Winn shortly. I would suggest that we lay on the table Mrs. Schroeder's and Mr. Downey's resolution of disapproval and that we adopt a committee resolution which would say that the committee would request the President when they have in fact a large customer, a real sale, to send up a new notice of offer with a precise amount of dollar sales volume and a precise number of sales.

Mr. Chairman, in order to make any kind of evaluation, one must know the precise number so that you can then project out what the cost is and to what extent the United States is subsidizing the thing. You really cannot do that at this time; it is far too premature. I would suggest two things we do is—Mr. Winn would offer that motion—lay on the table the concurrent disapproval resolution. Then I would offer the committee resolution merely requesting the President to send up a new letter of offer.

I prefer to yield to Mr. Winn at this moment.

Chairman MORGAN. Yes, sir.

STATEMENT OF HON. LARRY WINN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. WINN. I thank you very much.

As Mr. Rosenthal said, he was chairing the subcommittee meeting for Mr. Fascell. The hearings went on for a little over 4 hours. I believe the record will show I am the only member of the subcommittee that was there for the entire 4-hour period of time.

NATO AND AWACS

It is kind of hard to understand how this resolution could come forward since Mrs. Schroeder is on the Armed Services Committee but it was also pretty obvious that we had quite a number of experts on airplanes and the desires and the needs of the Air Force, and particularly we had great expertise on what NATO should decide that they would want.

Now I would like to point out that General Fish brought out in the testimony that NATO had been talking and discussing and considering the AWACS airplane and other possibilities, one of which is being built in Great Britain, and he brought it to our attention, too, that the Department of Defense does have a request from NATO to proceed with a memorandum of understanding.

One thing that I would like to point out, I don't think that it is up to this committee and I will agree with my colleague from New

York, Mr. Rosenthal, that the subject matter on the usefulness of the airplane does not come within the jurisdiction of this committee or our subcommittee. We spent most of our time listening to variations of opinions on various airplanes. I am convinced, Mr. Chairman, that NATO has asked the Department of Defense for a memorandum of understanding so that they could proceed with the purchase of the AWACS airplanes.

Now Mr. Rosenthal questions the legality of the notification dealing with section 36(b) and I can't argue with that. I feel that if what the Department of Defense did at this time is illegal, then I feel that we have on record last year and this year probably another 71 notifications to this committee and to the Armed Services Committees which might be illegal. That will have to be up to the members of the committee and the other committees to decide.

A MOTION TO TABLE RESOLUTION

I will at the right time present a motion to table. The time for Mrs. Schroeder's resolution is about up and I feel in good faith that General Fish and the Department of Defense will present to this committee, as they have done in the past at our request, the information necessary on the start of a sale by the NATO countries.

I would like to just add one thing and this is from a letter from General Fish to Frank Slatinshek, chief counsel of the Armed Services Committee, February 27, 1975. He says:

The proposed sale of the E-3A airborne early warning aircraft in NATO would not only enhance U.S. readiness posture but will also have the most favorable effect on the U.S. Air Force AWACS program through a portion of the recovery of the R&D costs and by lowering unit production costs.

Now we discussed this for quite some time in the subcommittee and it is hard to really pinpoint how you are going to recover those R. & D. costs until you make a first sale. I am again quoting from the program here. It says:

Total system acquisition and management of the AWACS program and the use of the Government furnished equipment in the E-3A aircraft dictate that this proposed transaction be handled as a Foreign Military Sales case.

Again from the letter.

The addition of this aircraft to the NATO forces would markedly increase their early warning capability.

Now this is from the Department of Defense. I think they are sold on it. I think the NATO countries are sold on it and I want to give them a chance to find out. The last paragraph says:

The customer NATO, which includes the U.S. as a member will be charged all costs incurred in providing the articles and the services for this case plus an FMS administrative service charge. While the specific industrial participation by individual member countries has yet to be determined, it is anticipated that the proposed sale would have a positive net effect on the U.S. balance of payments.

Mr. Chairman, at the right time I will offer a motion to table but I know there are some other members that would like to be heard.

Thank you for yielding, Mr. Rosenthal.

ARMS SALES TO NATO?

Chairman MORGAN. Mr. Bingham.

Mr. BINGHAM. I thank the gentleman for yielding and I certainly agree with him and compliment him on the work he has done on this. It seems to me this is what was intended under the procedures laid down in 36(b) and I would like to ask this particular question. I may be wrong about this but my impression is that we don't sell military equipment to NATO as such: We sell it to individual countries that are members of NATO. Therefore, to put the prospective purchaser down as NATO is a meaningless generality which does not comply with the requirements of the section. Could the gentleman comment on that?

Mr. ROSENTHAL. In all candor section 36(b) does permit a sale to an international organization such as NATO.

Mr. BINGHAM. I realize it permits that but my impression is that NATO does not have funds for this type of purchase, that the funds come from the individual countries and that the sales are made to the individual countries within the NATO structure.

Mr. ROSENTHAL. I think the gentleman is correct.

THE AIR FORCE AND AWACS

Chairman MORGAN. Mr. Harrington.

Mr. HARRINGTON. Your colleague is asking that we table it and then pass a resolution requesting that the Air Force, when it has a specific customer, return to this committee. Will that have the effect of negating the sale?

Mr. ROSENTHAL. I am trying to take a very clearcut middle ground in this. There is no customer at the present time. There are negotiations going on. I asked General Fish:

Do you propose to sell 1, 2, 3 or how many?

He said:

We are asking permission to sell 32. However the negotiation, as often happens in these cases, comes out to be some lesser number. If we exceed the number, we have to come back to Congress.

There is no sale, there is not in fact a customer. There is a recommendation, I believe, by the NATO military group to the Council of Defense Ministers that a sale be made. After that group meets, as Mr. Bingham has suggested, there will be negotiations with individual countries perhaps as to number and to price.

Mr. HARRINGTON. My question still is what is the practical effect of what you suggest we do? Will it prevent the Air Force from going forward at this point?

Mr. ROSENTHAL. I don't know. Laying the resolution on the table, which Mr. Winn will do and which I agree to, permits this notification and this letter of offer to stand. What I am suggesting so that we maintain the integrity of the 36(b) process is that this committee also adopt a resolution that I will offer that calls on the President to send up an appropriate notice at an appropriate time when there is a

live customer with the specified amount. Even that in all candor does not have the effect of law, it is merely a request. I am hopeful that the administration in respect to the integrity of the process and the concern of this committee will comply with the request.

Mr. WOLFF. Will the gentleman yield?

Mr. ROSENTHAL. Yes.

SUPPORTS TABLING OF RESOLUTION

Mr. WOLFF. I want to concur with the statements of the gentleman from New York and the gentleman from Kansas on the question of laying this resolution on the table at the moment. However, I think it must be understood that this is done without prejudice to the rights and responsibilities of this committee in future actions. As I understand the law as it exists today, we are not responsible for the actual merits of the particular systems that are involved but the foreign policy implications that ensue from a military sale. On that basis, I believe as a result of the confusion that has existed as to the merits or demerits of this aircraft that we should postpone our decision on this until this has been established.

Mrs. MEYNER. Will the gentleman yield?

Mr. ROSENTHAL. Sure.

CONGRESSIONAL POSITIONS ON AWACS

Mrs. MEYNER. Mr. Rosenthal, you were at that meeting. Was it your impression that Mrs. Schroeder is not opposed to the manufacture or the sale of AWACS, she is just opposed to the United States so heavily subsidizing it?

Mr. ROSENTHAL. I think that is a fair statement. Mrs. Schroeder's position was that she objects to the United States selling it to NATO at a cutrate bargain basement price and to double that by paging one quarter of the unit cost in addition, what was referred to as a double dip. In other words, we are reducing the cost per unit and we are also subsidizing it by picking up 25 percent of the NATO thing.

Now of course the more you sell of the planes and regardless of to whom you sell, you reduce the per unit cost. Mr. Downey had a somewhat different point of view. He had serious questions about the tactical use of these planes over the United States but conceded that they might be useful in Europe. It was also brought out that in and around Mr. Downey's district Grumman Aircraft makes a less expensive model of the AWACS which costs about 25 percent but Mr. Downey's addressing himself to that issue should in no way complicate our view. We have, in my judgment, a very narrow responsibility pursuant to 36(b) and we should stay away as much as we can from the merits or the uses or the technical weaponry or the expertise factors as Mr. Winn talked about.

Mrs. MEYNER. Thank you.

HOW MANY AWACS IN SALE?

Just one final question. Why the arbitrary figure of 32, or isn't it arbitrary?

Mr. ROSENTHAL. That is the problem. They would like to sell 32 and they don't have any customer for 32—as a matter of fact, they don't have a customer. General Fish said that 32 was a number that they would like to sell; they may sell less than that. They may cost less than that. That is precisely the point I made, that the letter of offer is technically prima facie defective if it does not with a high degree of precision name the customer, name the amount. As a matter of fact, under the law the notice of offer is required to state the date of any acceptance under paragraph 2.

Now as Mr. Winn alluded to, I think they have been less than technically responsive on some other letters of offer but other letters of offer have not been challenged. This is the first time we have had to meet this challenge and I am trying to find a way to meet it within a meritorious sense of our responsibilities.

Mr. WOLFF. Would the gentleman yield?

Mr. ROSENTHAL. I yield to Mr. Wolff.

Mr. WOLFF. Let me rise in defense of my colleague from Long Island who, I think, is not simply holding to the provincial view of looking out for aircraft just from his district, but is, I am sure, looking out for the best interests of our country. I think that should be on the record plus the fact that I think it is important as well to understand that these figures that are being bandied about include R. & D. costs, and the R. & D. costs are not the actual cost of the aircraft involved. If you are going to start to talk about a \$2.2 billion cost to include the R. & D. cost, you are not talking about the cost of the aircraft itself.

Mr. ROSENTHAL. Let me correct one thing. Staff has advised me, Mr. Bingham, that there are some instances where NATO is the owner and purchaser of some military equipment. That is what I am told by the staff.

LOCATION OF AWACS MANUFACTURE

Chairman MORGAN. Mr. Rosenthal, where is this plane going to be manufactured? Are we talking about competition from New York?

Mr. ROSENTHAL. I didn't want to necessarily bring that up. [Laughter.] I think Mr. Downey's position was that he was opposed to the double dipping regardless of who was involved. I think that is a fair representation of his position.

Where is this manufactured? I don't know.

Where is this plane manufactured? Boeing, Seattle?

Mr. HICKS. They make the AWACS.

Mr. ROSENTHAL. Equipment for both of the planes are made in Mr. Downey's district. The AWACS plane is made in Washington and that is why we are honored to have Mr. Floyd Hicks with us this morning on this committee.

Mrs. MEYNER. We should ask Mr. Wolff and Mr. Downey if they would let AWACS make an emergency landing at Kennedy. [Laughter.]

Mr. ROSENTHAL. Would the gentleman yield?

Mr. WOLFF. I would be delighted to have the aircraft not only land but to be used in a control mode for Kennedy which suffers very badly from problems with air traffic control at the present time.

Mr. ROSENTHAL. Even though I was told that this is a Boeing airplane, it would be made generally where Boeing makes their airplanes. I understand both in Wichita, Kans., and out in Seattle, Wash., there would be European components used and that is one of the areas under negotiation which would affect the cost of the unit is how much would be made here and how much would be made there.

ARMS PURCHASES BY NATO

Chairman MORGAN. Mr. Bingham.

Mr. BINGHAM. Since I raised my question earlier I have also had some information from the staff. I believe it is true that some purchases have been made by NATO but not of this type of equipment. As far as I know, no purchases of aircraft, for example, have been made by NATO. While conceivably this purchase could be made by NATO, I think the gentleman's point is that no purchaser is identified in this letter of offer. This might be a NATO purchase or it might be one by several countries and therefore his point that it is too vague in the notice to satisfy the requirements of 36(b) is perfectly valid.

Mr. WHALEN. Mr. Chairman.

Chairman MORGAN. Mr. Whalen.

Mr. WHALEN. I thank the gentleman for yielding.

I don't want to seem indelicate but I think that we should perhaps go a little more deeply into this competitive question. The Congress was treated several months ago to the spectacle of an industrial firm trying to block approval of a naval aircraft because that particular firm did not receive a contract, and I would hope that that is not the case in this situation. I was rather impressed by the witness list and I wondered if you could elaborate on the St. Louis connection. Is McDonnell-Douglas, for example, interested in this?

Mr. ROSENTHAL. I don't know. I would urge all of us to try to stay away from these other complicating factors. I think we have a narrow area of interest and that is maintaining the integrity of the 36(b) process. I think, as Mr. Bingham has so appropriately suggested, the letter of offer is defective in terms of the name of the customer and in the amount, but mostly it is premature. There is really not a customer and letters of offer should not be used. If, albeit, that is the case, it is a promotional weapon saying that Congress approves the sale. Letters of offer should be used as a responsible vehicle for notifying Congress of the sale when in fact there is a clearcut sale and a clearcut purchase and that includes numbers, amount.

Chairman MORGAN. Mr. Rosenthal, will you yield to Mr. Bonker. I hope we can recognize Mr. Winn for his motion after Mr. Bonker is through.

THREE ISSUES INVOLVED IN THE RESOLUTION

Mr. BONKER. Yes; Mr. Chairman.

I would just like to say there are three issues involved in this resolution. One concerns the merits of AWACS as a viable defense system, and I have already reached a conclusion on that question and voted earlier against AWACS; the second is the circumstances surrounding

the proposed sale to either NATO or to other countries who are considered our allies. Third, of course, is section 36(b) and the committee's role in this procedure.

Now Mrs. Schroeder has stated, or at least she is on record in the subcommittee as taking the position against the subsidized sale of this system to NATO and question whether or not the sale itself is firm. As I understand, the Armed Services Committee has taken action to withhold the sale until after 30 days in which all the pertinent information relevant to the sale has been submitted.

Now I think it would be unfortunate for this committee to invoke the provisions of 36(b) for the first time on sales to our allies. It was my impression that the provision was in the Nelson amendment which was enacted earlier to place an overall lid on arms sales, mostly to the Persian Gulf, so that we could get a handle on the large volume of sales to these countries. Even though this committee has taken action before on the sales to Jordan of Hawk missiles, we have never really approved a concurrent resolution of a denial of sales to any country, and I would not like to see this committee really assert itself on a particular sale to our allies. Therefore, I will support the Rosenthal substitute and call upon the President to revise the statement with respect to the proposed sale.

Chairman MORGAN. Mr. Winn.

NATO PURCHASING "UMBRELLAS"

Mr. WINN. Thank you, Mr. Chairman.

Before I make the motion to table, and I will do so very shortly, I would like to clarify a point that Mr. Bingham brought up about NATO not being a customer. He is right, NATO as such is not a customer, but there are umbrellas under which NATO has been purchasing for many, many years. One organization is called NAMSA, another one is called JACMO. They get all kinds of clever names. I don't know what this stands for but this is not an unusual thing. NATO itself cannot enter into a contract, they have to go back to the NATO council just like Mr. Rosenthal said. I did want to clarify it that we have sold arms before—maybe not airplanes but other types of arms.

Mr. FRASER. Would the gentleman yield?

Mr. WINN. I will yield to Mr. Fraser and then I want to make my tabling motion.

DEFECTS IN 36(b) NOTIFICATION

Mr. FRASER. I intend to support the gentleman's motion to table. I just wanted to make the statement that when we considered the sale of Hawk missiles to Jordan we urged an agreement to get earlier rather than later notice of proposed sales in the case of weapons and by the time we got notice the matter had progressed so far that it involved political problems for us to act affirmatively on a resolution of disapproval.

I make that point because I would not want our action today to be construed as overlooking our interest in early notification. I would hope that the action today, including the adoption of Mr. Rosenthal's

committee resolution would be limited to the facts here. First that apparently NATO is not the purchaser.

Second, there is no date of an offer. This notice is technically deficient, it has the date of the notice to Congress but not the date of the offer. In that sense there is not strict compliance with the statutory requirements but I don't think we would want to give the impression that we want to wait until the deal is all wrapped up.

Mr. BINGHAM. Would the gentleman yield?

Mr. WINN. I will be glad to yield.

NEED FOR CONSULTATION

Mr. BINGHAM. I think the point that was made in connection with the Jordan matter was that we wanted some preliminary consultation before a notice of offer was filed and that is certainly consistent with what we are doing here. What we are quarreling about here is that a formal transmittal notice of intent to issue a letter of offer was filed which starts the clock running and that is not at all what we had in mind. We had in mind the DOD promise that they would in similar cases in the future have consultation before a notice of offer has been submitted and that in fact has been what has been done with respect to the proposed sales to Egypt. So I don't think that quarreling about this procedure in any way negates the motion. We would like to be kept informed as far in advance as possible of the proposed deal.

Mr. WINN. I thank the gentleman for his information. It is pretty obvious that when you come on this committee and we request these offers to purchase and memorandums from the Department of Defense that it is hell if you do and hell if you don't as far as timing is concerned with them trying to meet the requests of this committee.

MOTION TO TABLE RESOLUTION

Mr. Chairman, I offer the motion to table House Concurrent Resolution 576.

Chairman MORGAN. All in favor of the motion of the gentleman from Kansas indicate by saying the word aye; all opposed no.

The motion is carried.

Mr. ROSENTHAL. Mr. Chairman.

Chairman MORGAN. Mr. Rosenthal.

COMMITTEE RESOLUTION PROPOSED

Mr. ROSENTHAL. Mr. Chairman, pursuant to the dialog we just had I offered a resolution and asked that it be distributed. I think it may have been distributed and I don't think I need the 5 minutes. I think I have adequately discussed it and I would hope the committee will accept it.

Chairman MORGAN. Mr. Rosenthal, we will have the clerk read the resolution.

Mr. CZARNECKI [reading]:

RESOLUTION OFFERED BY REPRESENTATIVE ROSENTHAL

Whereas the Committee on International Relations of the House of Representatives finds that it does not have sufficient information with which to fulfill its responsibilities under section 36(b) of the Foreign Military Sales Act with respect to proposed sale to the North Atlantic Treaty Organization of E-3A Airborne Early Warning Aircraft, described in the statement submitted by the President on February 27, 1976 (transmittal number 76-41) : Now, therefore, be it

Resolved, That the Committee on International Relations of the House of Representatives requests the President to submit a revised statement with respect to the proposed sale described in the preamble of this resolution when more specific information concerning this proposed sale is available.

Sec. 2. The Committee has made no judgment with respect to this proposed sale and will consider a new submission with respect to this proposed sale without prejudice.

Sec. 3. The Committee recognizes that our relations with our allies of the North Atlantic Treaty Organization are of the highest importance to the United States and, accordingly, will follow, with interest, the progress on negotiations concerning the proposed sale of E-3A Airborne Early Warning Aircraft to such Organization.

Chairman MORGAN. Mr. Rosenthal.

EXPLANATION OF PROPOSED COMMITTEE RESOLUTION

Mr. ROSENTHAL. Mr. Chairman, I think we have said all that needs to be said. I think the responsible way for maintaining both the integrity of this committee and the integrity of the process is this committee resolution which is a request, and I think the President would be wise to follow that.

Mr. WOLFF. Would the gentleman yield?

Mr. BINGHAM. Would you yield?

Mr. ROSENTHAL. I would be happy to yield to Mr. Wolff.

Mr. WOLFF. I thank the gentleman for yielding.

I take this time only to ask Mr. Bingham a question.

Did you say that there was notification of the Egyptian sale of aircraft?

Mr. BINGHAM. No; I said quite the contrary, that the administration has been in the process of informally consulting with Congress on proposed sales to Egypt before the submission of any proposed notice of offer which is what we have wanted them to do. So I think this procedure which involves a premature filing of a proposed letter of offer does not give us the kind of advance notice that we want. We have had commitments from DOD that they would try to have advance consultation on proposed sales that they consider may be controversial before they actually submit the notice and that is what they have been doing.

Mr. WOLFF. Specifically on the question of the Egyptian aircraft, has the gentleman received any informal information on this other than what he has seen in the newspapers?

Mr. BINGHAM. Certainly. The representatives of the State Department have discussed it with me but there has been no notice of offer filed.

Mr. WOLFF. I thank the gentleman.

Mr. ZABLOCKI. Would the gentleman yield?

Mr. ROSENTHAL. Yes.

PROPOSED AMENDMENT TO COMMITTEE RESOLUTION

Mr. ZABLOCKI. I am about to ask the gentleman from New York, since the law requires that each letter of offer be referred to us, whether he would amend his somewhat tight resolution to refer not just to a "proposed sale" but to amend it to say "offer of sale"? That would be on line 5 in the whereas clause and in line 3 of the first resolved, on lines 2 and 3 of section 2 and the second to the last line in section 3. Wherever you refer to a "proposed sale," in order to comply with the law to refer to an "offer of sale."

Mr. ROSENTHAL. Am I correct—

Mr. BINGHAM. Would the gentleman yield?

Mr. ROSENTHAL. Yes.

Mr. BINGHAM. This raises a point that I wanted to discuss before because I think really there has been some confusion about section 36 and the relation between section 36(a) and 36(b). I think the wording of the resolution as it stands is correct. If the committee would refer to 36(b), what is anticipated there is that the President submits a proposed letter of offer.

The letter of offer has not been sent, he is submitting a proposed letter of offer and it does not go until after the 20 days have elapsed without a veto. Therefore, the comments that were made before by the gentleman from New York, if I may have his attention—Mr. Rosenthal, I would like your attention a moment because you referred a couple of times—

Mr. ROSENTHAL. I am told the legislative counsel does not see any substantive differences in either approach.

MEANING OF SECTION 36(b)

Mr. BINGHAM. Let me just make the point I was about to make before Mr. Zablocki raised his.

Section 36(b) does not contemplate a letter of offer having been issued, it talks of a proposed letter of offer. So the question, for example, of listing the date of acceptance would be improper in such a notice. The reference in subparagraph 2 of the section 36(a) you will note is to the reports that are expected quarterly concerning all offers to sale that have been issued and, two, requires a cumulative listing of all such letters of offer to sale that have been accepted during the fiscal year.

Those are after the fact but it would be improper for the administration to come up with a letter and an acceptance at the same time. They are not supposed to have issued the letter of offer until they have submitted it to us for review and at that point it is a proposal, not a sale.

Mr. DERWINSKI. Would the gentleman yield?

Mr. ROSENTHAL. I am happy to yield.

Mr. DERWINSKI. I guess we have to wait until this motion or amendment is disposed of, is that correct?

DISCUSSION OF ZABLOCKI AMENDMENT

Mr. ZABLOCKI. My understanding is that the gentleman from New York was about to offer the amendment.

Mr. ROSENTHAL. Legislative counsel say it——

Mr. BINGHAM. I don't understand this amendment and I really would like to speak in opposition to it. I think it is improper.

Mr. ZABLOCKI. The gentleman from Wisconsin has suggested an amendment to the committee resolution of the gentleman from New York on the basis of his argument earlier that there was not a purchase, that there was not a sale. I think with a letter of offer to sell the President does not have to have a consummated sale.

Mr. BINGHAM. Would the gentleman from Wisconsin restate his proposed amendment?

Mr. ZABLOCKI. On line——

Mr. DERWINSKI. Mr. Chairman, do we have a formal amendment pending?

Chairman MORGAN. Yes, we do.

Mrs. MEYNER. Mr. Chairman, what is the request of the gentleman from New York?

Mr. BINGHAM. Will the gentleman from Wisconsin state his proposed amendment to the Rosenthal resolution which, by the way, I fully support in its present form.

Mr. ZABLOCKI. The gentleman from Wisconsin only intends to have the committee resolution as proposed by the gentleman from New York, Mr. Rosenthal, to comply with what is in the law. In section 36 (b) and in the paragraph above it for each letter of offer to sell under the paragraphs 1 and 2 the report shall specify—and we have A, B, C, D, and F—the requirements in the letter. The resolution as proposed by the gentleman from New York on the basis of what his earlier presentation was, he argued that there was not a buyer as yet. Therefore, I suggested that wherever he refers to a “proposed sale” that his committee resolution comply with the language of the law and therefore substitute for “proposed sale” an “offer of sale” at line 5 in the whereas clause, on line 3 of the first resolved clause, on lines 2 and 3 of the section 2 and on line 5 of section 3.

Mr. FRASER. Would you yield?

Mr. ZABLOCKI. Yes.

Mr. FRASER. Let me say my impression is that the amendment of the gentleman from Wisconsin be broader, that the section that we are dealing with does refer specifically to offers of sale.

Mr. BINGHAM. Would the gentleman yield?

Mr. ZABLOCKI. What the gentleman from New York was referring to, if I might add, as far as actual consummated sales are in the quarterly reports in section 36 (a).

Mr. BINGHAM. Is the gentleman from Wisconsin proposing——

Mr. ZABLOCKI. In lieu of “proposed sale” substitute “offer of sale.”

Mr. BINGHAM. I think the correct way if he wants to use the words “offer of sale” would be to add it after the word “proposed.” There is no offer of sale until after the 20 days have expired; therefore, it is a proposed offer of sale.

Mr. ZABLOCKI. This is not what the law says. May I read the law in section 36 (b).

In the case of any letter of offer to sell any defense articles or services under this act for \$25 million or more, before issuing such letter of offer the President shall submit.

Chairman MORGAN. The time of the gentleman has expired.
Mr. Biester.

MEANING OF SECTION 36(b)

Mr. BIESTER. Mr. Chairman, as I look at section 36(b), and I gather that is the operative section we are dealing with here, it seems to me that the point at which this potential sale has reached in terms of negotiations may very well be the point at which the submission should take place. If you look at 36(b), it says:

In the case of any letter of offer to sell any defense articles or services under this act for \$25 million or more, before issuing such letter of offer the President shall submit.

Now we all concede there is no formal letter of offer and there should not be at this point as we are taking up this issue. What we intended by the legislation was to find that point before which concrete arrangements were made at which the Congress could state its opinion. Now we are, as I understand it, at the point at which NATO has requested a memorandum of understanding from the Department of Defense for this proposed sale and it strikes me that it is precisely the point at which this resolution would have been appropriate and this submission would have been appropriate and it is not premature, it is not tardy, but in terms of the time frames during which the Congress is supposed to express itself the Department has done the right thing.

I think the gentleman's amendment, which I reluctantly oppose, clarifies and demonstrates that we are at the correct point and his amendment I think would carry us beyond that.

Mr. BINGHAM. Would the gentleman yield?

Mr. BIESTER. Yes, I do.

MEANING OF "LETTER OF OFFER"

Mr. BINGHAM. May I refer the committee to the last sentence of the paragraph in section 36(b). I beg the committee to remember that I was the author of this section and I think I know what it was intended to mean. The last sentence says:

The letter of offer shall not be issued if the Congress within 20 calendar days after receiving any such statement adopts a concurrent resolution stating in effect that it objects to such proposed sale.

So it is a proposal for a letter of offer that is being submitted and I don't see what possible objection there could be. I am perfectly agreeable to seeing the words "offer of sale" included in the Rosenthal resolution but I think they should still be following the word "proposed" because that is what we expect under section 36(b) is a proposal for a letter of offer.

Mr. BIESTER. I thank the gentleman for that point. It seems to me not only is he correct about the Zablocki amendment, the force of his argument is that this is the time during which this submission should have been presented to the committee.

Mr. GILMAN. Mr. Chairman.

Chairman MORGAN. Mr. Gilman.

Mr. GILMAN. Mr. Chairman, I would like to support the contention of the gentleman from Pennsylvania. I think that his interpretation

of the section is valid and that leaves us with one other question, and that is, whether there is a valid buyer. Allegations have been made that we have made prior sales to NATO. If there is a Defense official attending the hearing this morning, maybe he could clarify for the committee whether we have made such sales and whether such sales are proper.

I note that the statute states that the proposal can be made either to a foreign country or to an international organization. I am referring to subsection (a) of section 36, subdivision IV, which states that the sale can be made either to a foreign country or to an international organization. If there is such a Defense Department representative present, Mr. Chairman, I would like some clarification to determine whether we can—

Mr. ROSENTHAL. Would the gentleman yield?

Mr. GILMAN. Yes; I am pleased to yield.

FURTHER DISCUSSION OF ZABLOCKI AMENDMENT

Mr. ROSENTHAL. I think there is a consensus developing in the committee to accept the words "with respect to the proposed offer of sale." I don't think Mr. Bingham objects to that and it is not inconsistent with the point Mr. Biester made, and I think perhaps Mr. Zablocki would accept that. The statute does have the words, as Mr. Bingham said, "proposed sale" and as Mr. Zablocki said, "a letter of offer." If we put in there "with respect to proposed offer of sale" in those five places, I think we could all agree we satisfy our problem.

Mr. ZABLOCKI. Would you yield?

Mr. ROSENTHAL. Yes.

Mr. ZABLOCKI. Let me clarify. My only intention was to make clear that there was not a buyer. It is my understanding that under 36(b) a letter of sale is a letter of intent to sell. If the Congress does not object, then it becomes a proposal to sell. I have no objection if you are going to say amend it since this is a committee resolution. I have no objection if we agreed to amend it to read "with respect to a proposal of offer of sale."

Chairman MORGAN. Any objection?

Mr. GILMAN. Mr. Chairman.

Chairman MORGAN. Mr. Gilman.

Mr. GILMAN. I still think we should clarify whether an improper resolution has been presented to us, and I would like some clarification from the Defense Department as to whether it is proper to sell to NATO, or must we sell to the individual country?

TESTIMONY OF DOD REPRESENTATIVE

Mr. Chairman, with your permission could we hear from the Defense Department?

Chairman MORGAN. I don't know if there are any Defense Department representatives present.

Mr. WOLFF. Mr. Chairman, a point of order. We have disposed of the matter on the sale.

Chairman MORGAN. The other matter was tabled, this is the committee resolution we are working on now.

STATEMENT OF LT. COL. KARL LAUENSTEIN, U.S. AIR FORCE, ACTING SPECIAL ASSISTANT TO THE DIRECTOR, DEFENSE SECURITY ASSISTANCE AGENCY

Colonel LAUENSTEIN. Mr. Chairman, I am Lt. Col. Karl Lauenstein, U.S. Air Force, Acting Special Assistant to the Director, Defense Security Assistance Agency.

With regard to Mr. Gilman's question, we have made previous sales to NATO as an entity through FMS. The one that comes to mind as perhaps the largest sale previously was a sale by the United States in 1973 for communications satellites and launch services. If I recall, this sale was approximately \$74 million and was a sale directly to NATO. There are other examples; I don't have them with me.

Aside from the sale to NATO and NATO infrastructure, there have been sales to the alphabet soup, if you will, of NATO such as supply parts, things of this sort for items that went to individual countries.

Mr. GILMAN. Mr. Chairman, based on that response, if it is obvious that we have the proper timing and a proper purchaser, then I question the objection.

Mr. BINGHAM. Would the gentleman yield?

Chairman MORGAN. The time of the gentleman from New York has expired.

Mr. FRASER. Mr. Chairman.

Chairman MORGAN. Mr. Fraser.

NATURE OF THE AWACS SALE

Mr. FRASER. Thank you, Mr. Chairman.

Can you tell me whether the proposed sale of the AWACS aircraft is going to be to individual NATO countries or will it be to some NATO institution?

Colonel LAUENSTEIN. The proposed sale, as indicated on our notification to Congress, is to NATO. Now the question to be resolved is in the payment for the aircraft.

Mr. FRASER. Let me ask the question. To whom will title be delivered?

Colonel LAUENSTEIN. Let me digress for a second and say we are in the process now of trying to go forward with a letter of offer to NATO. The purpose of this is to elicit a response and begin to resolve the many, many issues dealing with the sale of—

Mr. FRASER. Answer my question. If the sale takes place, to whom will title go as you now anticipate?

Colonel LAUENSTEIN. As now anticipated it would go to NATO.

Mr. FRASER. They would take title to the aircraft?

Colonel LAUENSTEIN. Yes, sir, if the offer were accepted as issued.

Mr. FRASER. No individual country would claim title?

Colonel LAUENSTEIN. I cannot say that that would not occur. That is a possibility.

Mr. FRASER. That turns out to be a critical difference here. You cannot now tell us whether it will be France or Britain or West Germany or NATO which would take title to the aircraft? What would your expectation be?

Colonel LAUENSTEIN. All right. Our expectation and our intent right now is to deliver a letter of offer to NATO, as an entity. If NATO accepted the offer, title would be transferred to NATO.

Mr. FRASER. I want to know who is going to buy it and get the title.

Colonel LAUENSTEIN. Sir, I cannot answer that just as I cannot tell you whether the letter of offer will even be accepted. This is the time we issue a letter of offer to a foreign government or any international organization. It is an offer—a price and availability quote—which may or may not be accepted by the purchaser.

Mr. FRASER. So what you are saying is that this notice does not serve to inform us as to who will take title.

Colonel LAUENSTEIN. I am not saying that, sir.

Mr. FRASER. You don't know.

Colonel LAUENSTEIN. We have had a request from NATO for a letter of offer, and it is to permit a response to that request that we have provided the 36(b) notification.

Mr. FRASER. All right. Let me put it this way. If it turned out that West Germany was going to take title to three of the airplanes and France five or whatever, would you then think that this letter of notice was inadequate?

Colonel LAUENSTEIN. I would have to respond along the lines that under our understanding of 36(b) if the scope of the letter of offer changed significantly or the purchaser changed, we would indeed under the law be required and would voluntarily come forward with a revised letter of offer notification.

Mr. FRASER. So in other words you would agree that if a country in NATO was actually going to be the purchaser and take title that this would not be an adequate notice under 36(b).

Colonel LAUENSTEIN. Sir, I am not qualified to address that question. I think we are over into the legal area now and that is beyond my field.

Mr. FRASER. That is what we are dealing with, a legal question. That is why I think the—

BOEING AS AWACS CONTRACTOR

Chairman MORGAN. The time of the gentleman from Minnesota has expired.

Mr. WHALEN. Mr. Chairman.

Chairman MORGAN. Mr. Whalen.

Mr. WHALEN. Mr. Chairman, I just wanted to ask the gentleman a question.

The notice which you sent to Congress lists Boeing as the supplier. Has the Department of Defense been under any pressure from other airframe manufacturers for consideration in this contract?

Colonel LAUENSTEIN. Sir, again speaking from my position, I am not aware of that nor am I qualified to comment in that regard; however, I would like to correct one thing. I don't recall in our notification indicating that Boeing was indeed the contractor per se. Under the transmittal of 36(b) we list the Air Force as handling the contract.

Mr. WHALEN. I think you are correct on that score.

Chairman MORGAN. Would the gentleman yield?

Mr. WHALEN. Yes.

Chairman MORGAN. I wonder if we can dispose of this.

Mr. WHALEN. I yield to Mr. Winn, Mr. Chairman.

IMPACT OF COMMITTEE RESOLUTION

Mr. WINN. Thank you, Mr. Whalen. I appreciate the gentleman yielding.

I would just like to ask a question of Mr. Rosenthal.

Going back, there is nothing in your committee resolution now, is there, that would prohibit the Department of Defense from going ahead with the memorandum of understanding?

Mr. ROSENTHAL. There is nothing in that resolution at all for them to continue negotiations. I assume they will raise it after the ministerial meeting if the ministers act in an affirmative fashion. If and when they have a concrete purchaser with a name and a number, they ought to send a new letter and I suppose it will be treated appropriately.

Mr. WINN. I thank the gentleman.

Mr. BINGHAM. Mr. Whalen, would you yield to me?

Mr. WHALEN. Yes.

Mr. BINGHAM. I would just like to respond briefly to my friend from New York, Mr. Gilman. It was not only the fact of the identity of NATO as a prospective purchaser that I think is objectionable. What is objectionable is the fact that so much of this proposed letter of offer is vague and uncertain. We don't know the price, we don't know the quantity, we don't know the identity of the purchaser.

PASSAGE OF ZABLOCKI AMENDMENT

Mr. ZABLOCKI. I move the previous question, and in order to clarify the matter I again would restate my amendment as amended by the gentleman from New York, Mr. Bingham.

On line 5 after the word "to"—that is, Military Sales Act with respect to the proposed offer of sale," and likewise on line 3 of the be it resolved it would read "to the proposed offer of sale"; in section 2, line 2, "to the proposed offer of sale"; on line 3 of section 2, "with respect to the proposed offer of sale"; in section 3, line 5, "to the proposed offer of sale."

Chairman MORGAN. All in favor of the amendment of the committee resolution—

Mr. BUCHANAN. Since our friend from New Jersey is no longer with us, I would point out that you don't need to have this in all the places so I hope the staff will keep that in mind.

Chairman MORGAN. All in favor of the amendment offered by the gentleman from Wisconsin so indicate by saying the word aye; all opposed no.

The committee resolution is amended.

PASSAGE OF COMMITTEE RESOLUTION ON AWACS

I wonder if we can vote on—

Mr. DERWINSKI. I would just like 30 seconds. As the chairman and members know, I do worry about my dear colleagues and their becoming captive of their rhetoric and positions. I just would like to remind you before you get totally wrapped up with wanting early warning and early, early warning and early, early, early warning of proposed sales that if this committee was so obsessed with that subject in October of 1973 when over \$1 billion of unauthorized, unappropriated material was shipped to the Middle East, Israel would have gone down the tube while this committee was demanding an early warning. So just don't get too totally captive of your own political positions.

Chairman MORGAN. All in favor of the committee resolution offered by the gentleman from New York as amended will so indicate by saying aye; all opposed no.

The ayes have it and the resolution is adopted.

Mr. FINDLEY. Mr. Chairman, the resolution is adopted?

Chairman MORGAN. Yes.

Mr. FINDLEY. Let me make a little legislative history.

The way it reads, then this would be considered without prejudice. The other interpretation is that this committee will consider a resolution of disapproval assuming that such will be before the committee. I don't think anyone intended that second interpretation. Would there be disagreement with that?

Chairman MORGAN. The committee stands adjourned until further notice.

[Whereupon, at 11:54 a.m., the committee adjourned.]



