

PROPOSED SALE OF AIRBORNE WARNING AND
CONTROL SYSTEM AIRCRAFT (AWACS) TO NATO

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DEPOSITORY

HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL
POLITICAL AND MILITARY AFFAIRS
OF THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS
SECOND SESSION

MARCH 11, 1976

Printed for the use of the Committee on International Relations

RIVERS LAW SCHOOL LIBRARY
CAMDEN, N. J. 08102
GOVERNMENT DOCUMENT

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WASHINGTON : 1976

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PROPOSED SALE OF AIRBORNE WARNING AND CONTROL SYSTEM AIRCRAFT (AWACS) TO NATO

THURSDAY, MARCH 11, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON INTERNATIONAL
POLITICAL AND MILITARY AFFAIRS,
Washington, D.C.

The subcommittee met at 2:05 p.m. in room 2247, Rayburn House Office Building, Hon. Benjamin S. Rosenthal presiding.

Mr. ROSENTHAL. The subcommittee will be in order.

The Subcommittee on International Political and Military Affairs meets this afternoon to consider the proposed sale to the North Atlantic Treaty Organization of E-3A AWACS aircraft.

AWACS—the airborne warning and control system—is designed to provide long-range high- or low-level surveillance of all aircraft under all conditions in order that United States and allied forces can be used to counter any enemy action with maximum effectiveness.

On February 27, 1976, the executive branch notified the Congress under provisions of the Foreign Military Sales Act of this proposed \$2.2 billion sale of 32 E-3A aircraft and associated training and spare parts. Under provisions of the act, Congress has 20 calendar days to act to prevent the sale by adoption of disapproval resolutions by both the House and Senate.

On March 8, 1976, Representatives Patricia Schroeder and Thomas J. Downey jointly introduced House Concurrent Resolution 576 to disapprove this sale. The resolution was subsequently referred to the Committee on International Relations.

To testify on the proposed sale, we are pleased to welcome to the subcommittee both Representative Schroeder and Representative Downey. Following their testimony, we will hear from witnesses from the Departments of State and Defense. In addition, we expect to hear testimony later this afternoon from Senator Thomas Eagleton.

Representatives Schroeder and Downey, please proceed in any order you think is appropriate.

STATEMENT OF HON. PATRICIA SCHROEDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mrs. SCHROEDER. Thank you very much, Mr. Chairman, and I truly appreciate your giving us the speedy hearing.

First of all, I would ask unanimous consent to put my written statement in the record.

Mr. ROSENTHAL. Without objection, it shall be done.

Mrs. SCHROEDER. There are some inserts I would like to put in there with it, too.

Mr. Downey and I have divided this topic between us. I am going to offer the general overview of questions surrounding the proposed AWACS sale to NATO. Mr. Downey will be discussing legal questions that have arisen. In this way, we hope not to duplicate each other.

Mr. Chairman, we are here today to ask the House International Relations Committee to refuse to give its tacit approval at this time to the proposed sale to NATO of the airborne warning and control system—AWACS. We are asking this for two basic reasons. First, there is insufficient specific information available about the sale at this time. Second, there are many serious questions that should be answered before any approval or disapproval of the sale is registered by Congress. These reasons, as I am sure you recognize, are very different from the usual ones behind resolutions of disapproval that are introduced to block a proposed military sale.

The apparent \$68 million price tag for each of the planes discussed in the sale description worries me. The present per plane cost for research and development and procurement is estimated to run anywhere from \$120 million to \$180 million. Because of this, the price as quoted in the administration description of the proposed AWACS sale would be an artificially low one that would have the American taxpayer subsidizing the NATO purchase of the AWACS planes. I really think that this would be most unfair and should receive serious review.

One of the other things that I think should be emphasized is that the passage of this resolution of disapproval would not prevent the sale of AWACS planes to NATO. However, it would be saying that the Department of Defense should not be offering the planes to NATO at this subsidized price. To start offering some of our most sophisticated weapons systems at this kind of subsidized price would be a real change in policy; a real new turnaround for this Government.

Now, part of my problem with this whole thing is why the notice was sent over in such a hurry. Why all of this immediately? Why all of this coming up so rapidly?

Was it only an innocent coincidence that the notice of the proposed AWACS sale was sent to Congress on February 27? The Foreign Military Sales Act as amended last year only gives 20 days to disapprove such a sale. Now, that happened to be 9 days before the committee that both Mr. Downey and I sit on, the Armed Services Committee, was in the process of marking up the procurement bill for the armed services in which they were asking for six AWACS aircraft, each of which would be used for NATO defense.

Now, as far as anyone can tell, not one of the NATO countries has offered to purchase these planes at this time. They are still studying the possibility, and these studies won't be done until late spring at the earliest.

The Appropriations Committee has been studying this issue—and I put things in the record—they have had some very heavy testimony about problems encountered by AWACS during production and testing, and some of the problems the Air Force has had with it. Our committee has had problems with the AWACS system, and it seems rather strange that this notification would be coming in here in February

before NATO was prepared to negotiate to attempt to get this through at these bargain basement prices.

Now, again, I reiterate that we are not asking you to disapprove this sale for the normal reasons. So often people want a sale disapproved because of regional arms race, and they think that is only going to fan it up; or because they are concerned about military juntas getting weapons. Those things are irrelevant in this case. We certainly respect our NATO allies. However, the question here is whether or not the United States should be offering—in this offhand manner—such sophisticated weapons at significantly reduced prices. My concern—and I may sound very cynical in saying this—is that this all-out effort to induce NATO interest in the system appears to be a quick justification of why we have dumped so much money into the program and should continue to proceed with it. As I say, I really think that this transaction should be disapproved until the Congress, the Armed Services Committee, the Appropriations Committee, our NATO allies, everyone has time to finish all their studies of the AWACS plane and its utility to NATO defenses.

I hope that this puts the proposed sale in perspective. My testimony lays it out in much more order. Inserts from the House Appropriations Committee report of last year include some very harsh language accusing the Air Force of “wanton disregard for economy” in its advocacy and direction of the AWACS program. I am also including for the record an excerpt from House Report No. 94-199, issued by the House Armed Services Committee, to accompany the fiscal year 1976 military authorization language.

I would like to put those in along with the November 1975 Defense and Foreign Affairs Journal¹ which discusses many of the issues surrounding the NATO purchase, and also, I think, will point out to the committee members why the purchase is still up in the air and why NATO isn't ready to go through with it.

Mrs. SCHROEDER. So often when you introduce the offer of sale and ask the Congress to go along with it, you assume the other side has agreed to the purchase. But this is not the case in this instance.

On February 27, the Defense Department notified Congress of its intent to offer NATO 32 AWACS planes at \$2.2 billion. I submitted a series of questions on this sale. We received the answers only about 50 minutes before this hearing began. But again, I have also got the letter here in which they are answering some of the questions, and I think it is very interesting.

Question No. 9 says: “NATO ownership is anticipated but not resolved.” So again they haven't pinned this down.

So the real issue is the subsidized price of the sale—and it is a very heavy subsidy; almost a 40-percent reduction at the price described in the February 27 notice. And the question is, why are we so anxious to push the sale so fast; why don't we wait until the deal with NATO is cut; why don't we demand more specific information about the sale—and then approve it?

With that, I will turn it over to Mr. Downey.

[Mrs. Schroeder's prepared statement, together with attached material, follows:]

¹ The document will be retained in subcommittee files.

PREPARED STATEMENT OF PATRICIA SCHROEDER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF COLORADO

Mr. Chairman, I am coming before this subcommittee this afternoon to request your speedy passage of House Concurrent Resolution 576, a resolution of disapproval introduced earlier this week by myself and Mr. Downey in an effort to block the administration's plan to sell 32 Boeing E-3A airborne warning and control systems (AWACS) to NATO for \$2.2 billion.

The per plane price of this sale is approximately \$68.75 million, including initial spare parts and training for people to operate the system. This \$68 million price tag is in stark contrast to the cost to the United States of producing the planes—almost \$120 million apiece. The difference of almost \$50 million per plane would of course be subsidized by the seller—the U.S. Government.

Notification of the Administration's plan to send such a letter of offer to NATO was filed with Congress on Friday, February 27—13 days ago. Under the current provisions of Section 36(b) of the Foreign Military Sales Act, Congress has only 20 calendar days to block the sale. This leaves us with a very short deadline to meet. If this resolution of disapproval is not passed by March 18, one week from today, this deal will slip through. Should the International Relations Committee agree that this Administration proposal is unjustifiable, quick action will be necessary within this time frame. I certainly appreciate the quick attention which this matter has already been given by this Committee.

I should emphasize that this resolution is not intended to prevent the possibility of a United States sale to NATO of the Airborne Warning and Control System. The resolution before this Committee would only prevent the Administration from offering the AWACS planes to NATO at the terms specified in the February 27 notice.

The issues which have prompted this resolution of disapproval are not the usual ones which cause Congress to question a proposed foreign military sale.

The sale of the AWACS planes to NATO would not be contributing to a regional arms race. In fact, the Boeing planes are strictly defensive in nature. The aircraft are modified Boeing 707's equipped with sophisticated radar systems to let them keep track of enemy aircraft movements. The AWACS radar plane is unarmed.

The sale of 32 AWACS planes to NATO would also not be adding to the strength of a foreign country's military junta—also a frequent concern when we consider the impact of U.S. military sales policy overseas.

What House Concurrent Resolution 576 would do, if passed, is short-circuit the Administration's attempt to increase NATO interest in this highly controversial systems by offering the exorbitantly priced planes at a significantly subsidized price.

The issue is this: Should the United States be subsidizing the foreign sale of sophisticated weapons systems in an effort to convince other countries that a controversial aircraft system is, in fact, a good deal? I don't think the United States should. We aren't in the business of offering bargain-basement prices for major weapons systems that are brandnew. If the system is a good one, then our NATO allies will undoubtedly decide to purchase it for use in their defense. If the AWACS system is not a good one—then its production should not have been continued once the program began to run into problems.

The Administration is very aware that it desperately needs a NATO purchase to prove its contention that the system is a good one, and that it is worth the billions of dollars that have been poured into it. The February 27 proposal—designed to make this boondoggle attractive to our allies—smacks of desperation tactics.

In the interest of time, I would like to offer just a few questions for the International Relations Committee to consider when reviewing this Administration proposal.

First, why did the Administration feel so pressed to send Congress their notice of intent to issue a letter of offer to NATO for sale of the AWACS planes in February? The NATO decision about whether to purchase the AWACS system is not due until *at least* May or June of this year.

Second, can we reasonably and in all honesty assume that the notification of this proposed transaction—which clearly creates the impression of an imminent purchase decision—by simple coincidence was transmitted to Congress only nine days before the members of the House Armed Services Committee sat down for our final markup of the fiscal year 1977 military authorization bill? The significance of my committee's consideration of the fiscal year 1977 bill is this:

Included in the bill submitted by the Administration was a request that \$474.7 million of the Air Force procurement funds be earmarked for procurement of six (6) additional AWACS planes. Congress has already, in previous years, approved expenditures for 13 AWACS planes that will be available for use in defense of the continental United States. According to Department of Defense estimates of the U.S. requirement for the planes to be used for this purpose, this number should more than fulfill our needs.

So, we can logically infer from the available information that the money being requested in this year's budget will be used to procure E-3A AWACS planes for the remaining mission which has so far been identified by the Air Force: NATO defense. This request has been made in spite of the fact that the NATO membership, which we have been told will be purchasing the planes for their use, has yet to decide whether they will, in fact, buy the planes.

The Department of Defense is well aware of the history of Congressional interest in holding up funding for production of AWACS planes to be used for NATO defense until the NATO members themselves have made a commitment to the purchase. To illustrate this Congressional interest in the NATO purchase—a transaction that has been discussed as imminent for quite some time—I would like to include in the record excerpts from two House Committee reports. The first report is that of the House Committee on Armed Services which accompanied the FY 1976 military authorization bill; the second is the report issued last year by the House Committee on Appropriations to accompany the FY 1976 defense appropriations bill.

The Appropriations Committee comments are especially interesting. What the committee describes is a consistent pattern of evasion, with the Air Force constantly changing cost estimates and requirements for the AWACS system over recent years. In fact, the Appropriations Committee in its report accuses the Air Force of a "wanton disregard for economy" in its handling of the AWACS program. This background is an important one against which the members of the International Relations Committee should consider yet another set of facts supplied by the Department of Defense about the AWACS program.

It is unfortunate that in the minds of many Members who have been trying to pin the Pentagon down on any aspect of the AWACS program, the credibility of their statements and estimates has long since been destroyed. I regret to say that this proposed "sale" is only the latest incident in a pattern of confusion created to blur the problems of the AWACS program. Because of this history, I feel very strongly that no request of the Pentagon which concerns this program should be given only a few days consideration before approval. I am especially concerned by the possibility that the Administration has attempted to create the impression of an imminent NATO sale for the purpose of slipping through this year's procurement request for the planes. I admit that this is a very cynical perspective, but it is not a bias that I came to the AWACS program with; it is a suspicion that has developed over three years of reviewing the program's progress as a member of the Armed Services Subcommittee on Research and Development.

In short, Mr. Chairman, there are simply too many questions which remain to be resolved about the sale for Congress to quickly approve the Administration proposal for the transaction. The case of AWACS is, unfortunately, anything but routine as I think you will soon discover.

Again, I would like to thank the committee for its speedy action on our resolution of disapproval and sincerely appreciate the opportunity to appear before you to discuss the reasons for the introduction of the resolution by Mr. Downey and myself.

REPORT ON H.R. 9861, DEPARTMENT OF DEFENSE APPROPRIATION BILL, 1976, HOUSE COMMITTEE ON APPROPRIATIONS, SEPTEMBER 25, 1975, pp. 245-246

* * * * *

E-3A AIRBORNE WARNING AND CONTROL SYSTEM AIRCRAFT

The budget includes \$415,500,000 for six additional E-3A Airborne Warning and Control System (AWACS) aircraft, plus \$15,000,000 in advance procurement funding for another six aircraft to be budgeted in fiscal year 1977. This aircraft is not only the most expensive aircraft bought by the Air Force, but one of the most controversial. There also have been differing opinions on the results of the AWACS performance during the most recent tests involving Navy EA-6B electronic warfare aircraft in a "free play" environment. The speculation

on whether or not NATO will buy this aircraft continues, and there are various opinions as to the optimum number of AWACS required for our own forces.

Congress has previously funded a total of three research and development aircraft and in fiscal year 1975 six production aircraft were funded. The current total program cost is \$3,800,000,000, of which \$1,500,000,000 represents research and development effort. The total program would fund 34 aircraft, including the three research and development vehicles to be modified later as operational aircraft. NATO is scheduled to make a long leadtime funding decision by December 1975, with a production decision scheduled for about July 1976.

During fiscal year 1973 budget hearings, AWACS was justified as a strategic system for the continental air defense role. The total program then was 42 aircraft, of which 10 aircraft were justified for support of tactical forces when they deploy. During fiscal year 1974 budget hearings, the Committee was told that AWACS was moved from the strategic to the general purposes forces category, but that the move would have no impact on the program one way or the other. The total program remained at 42 aircraft. During fiscal year 1975 budget hearings, Air Force officials advised that the total program was reduced to 34 aircraft as an economy measure; nevertheless it was the judgment of the Joint Chiefs of Staff that a minimum of 41 unit equipped AWACS are required either for the tactical or the strategic defense mission. At that time the Committee learned of the NATO interest in AWACS and the encouragement to NATO to buy the aircraft. However, the Air Force planned to buy 34 aircraft first, which would be followed by a NATO production. During fiscal year 1976 budget hearings, the Committee was told that even if NATO purchased a significant quantity of AWACS aircraft, the U.S. requirement would remain at 34 aircraft.

It would appear from the foregoing that the Air Force is determined to buy 34 AWACS aircraft, regardless of the fact that the missions' priority had 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 current 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 this Government to pay 25 to 30 percent of the cost of AWACS aircraft for NATO, than 100 percent of the cost of 34 aircraft programmed by the Air Force.

The Senate Armed Services Committee, in its report on the fiscal year 1976 Defense authorization bill, questioned the number of AWACS aircraft programmed. It was that Committee's opinion that a total of 21 to 24 planes should provide the Air Force with an acceptable quantity of aircraft to operate with United States forces in their potential areas of direct conflict. The Secretary of Defense testified this year that the Air Force requires 15 AWACS aircraft to satisfy non-NATO requirements.

It is the considered judgment of the Committee that since the primary role of AWACS now is to support the tactical mission, originally described by Air Force officials as requiring 10 aircraft, and since NATO is seriously considering buying a meaningful quantity of aircraft to support the NATO requirement, then no more than about 10 aircraft can be justified for the United States non-NATO mission. NATO should be encouraged to buy AWACS in order to assume their fair share in the defense of NATO forces in Europe.

The Committee recommends, therefore, \$260,000,000 for two AWACS aircraft for fiscal year 1976 as a buy-out of the United States requirement. These aircraft should be added to the six aircraft funded in fiscal year 1976. The two aircraft this year, plus the six funded last year and the three research and development aircraft that will be modified for operational use, will provide a total of 11 AWACS to support our own deployed forces.

The above recommendation will provide time for a NATO long leadtime funding decision in December 1975 and a production decision next year. The Committee recommendation will result in a reduction of \$155,500,000 and 4 aircraft plus \$15,000,000 in advance procurement funding that will no longer be required, for a total reduction of \$170,500,000.

* * * * *

REPORT ON H.R. 6674, AUTHORIZING APPROPRIATIONS, FISCAL YEAR 1976 AND THE PERIOD BEGINNING JULY 1, 1976 AND ENDING SEPTEMBER 30, 1976, FOR MILITARY PROCUREMENT; RESEARCH AND DEVELOPMENT [AND OTHER PURPOSES,] HOUSE COMMITTEE ON ARMED SERVICES, REPORT NO. 94-199, MAY 10, 1975, P. 18

* * * * *
AWACS (E-3A)

The Department of Defense for FY 1976 and the transition period requested a total of \$520.5 million in the procurement account for AWACS. This program was discussed at length during the R&D hearings as well as during the full committee procurement markup. The testing program was criticized and questions were raised as to the sufficiency of the R&D effort insofar as the program goes.

As a result of the discussion and expressed dissatisfaction of the test program to date, the Committee voted to reduce the procurement account by fifty percent and conditionally authorizes \$260.25 million for three additional AWACS systems. These funds may not be expended until the Air Force continues comprehensive tests to allay the concerns of the Committee. These concerns, which relate to AWACS performance, are classified and are delineated in a letter to the Secretary of Defense dated March 26, 1975. Further, these tests must demonstrate the ability of the AWACS system against formidable jamming systems such as the EA-6B's in a realistic free play environment. *The Committee requires that the Secretary of Defense provide written certification that these tests are viable and have been accomplished as directed herein.*

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 Committees on Armed Services of the Senate and House of Representatives.

Mr. ROSENTHAL. Would you want to read for the record the relevant portions of either the Appropriations Committee report or the Armed Services Committee report that you think sheds some light on this subject?

Mrs. SCHROEDER. I could do that, or we can simply put them into the record. Whatever you would prefer to do.

However, since the inserts are rather long I think I might just put them in unless you would prefer to discuss them at this time.

Mr. ROSENTHAL. I looked at the paragraph on page 18 of the House Armed Services Committee report that reads as follows:

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 consummation of any agreement with any foreign government relative to the sale of AWACS until the expiration of 30 days after 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.

Is the action taken by the Department of Defense consistent with those constraints?

Mrs. SCHROEDER. No, it isn't. We have not received that 30-day notice in my committee. And I would be happy to say, too, that our commit-

tee, when marking up the fiscal year 1977 military authorization this week, decided to hold up the \$474.7 million procurement money for the next six AWACS planes until the terms of the NATO sale were negotiated, and NATO had decided to purchase the planes. The House Armed Services Committee and the Appropriations Committee have both felt very strongly about the need to have NATO commit themselves to AWACS.

STATEMENT OF HON. THOMAS J. DOWNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. DOWNEY. If I can explain that point in some detail.

We already have 13 AWACS in our own inventory, production AWACS, two R. & D. models, which can be converted for domestic use. So when Pat mentioned the fact our committee had to take action, we have money in the authorization bill for procuring six additional AWACS. And the issue in the Armed Services Committee is why should we produce six more aircraft, six more AWACS in this case, if they are not for our own use?

So the House Armed Services Committee acted and put in money in escrow pending the outcome of the sale simply because we don't need any more AWACS for domestic use. This is clearly a foreign sale.

Mr. ROSENTHAL. The Appropriations Committee report on page 246 says as follows:

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 had been changed and that NATO may buy aircraft to support the NATO requirement. This attitude seems to express a wanton disregard for economy.

Is that essentially the point you are making?

Mrs. SCHROEDER. Yes, this is essentially the point I am making.

As I said, the Appropriations Committee and the Armed Services Committee have really been in tandem on trying to figure out what the Air Force is doing with the AWACS program. My experience with this program forces me to ask: Why does DOD come running in only 9 days before we mark up our authorization bill with this offer when the NATO countries have not completed their study and have really not made an offer to purchase? You really must wonder. It seems like somebody is shoveling smoke or something.

Mr. DOWNEY. Thank you, Mr. Chairman.

I would like to read my statement. It is short and deals essentially with the question of cost that Mrs. Schoeder has addressed herself to.

Since they first began funding the program, the Department of Defense has played Hamlet with AWACS: DOD has never really made up its mind about what the plane should be used for or how much it would cost.

The Defense Department once thought that the plane would be used to direct air strikes over enemy territory in Europe. Then they realized that over hostile territory the radar plane would either be jammed or shot down. So now the plane is to be used over friendly European territory to coordinate air defense.

The Defense Department also planned to buy, at one time, 42 AWACS at a then-estimated cost of about \$63.4 million apiece. But so far, DOD has spent more than \$180 million per plane to put 13

working aircraft in the U.S. inventory. And the GAO, in its February 27 Report on the Financial Status of Major Acquisitions, an excerpt of which I am submitting for the record,¹ has said that the United States would have to buy another 19 AWACS (at a cost of \$1 billion) to bring the unit price below \$110 million per plane.

The Department of Defense says that we should subsidize the sale to our European allies of a plane which we are now producing primarily for their use. This sense of generosity is not entirely unwarranted since Western Europe's security does in many ways contribute to our own. But there are many ways in which to subsidize a sale.

One way is to sell this plane to our European allies at a reasonable price and offer to defray 25 percent or more of their total expenses through the normal system of NATO cost-sharing arrangements. I believe the exact figure is 24.2 percent, depending upon which countries are becoming involved.

This is hardly an extraordinary proposal; we have been sharing NATO's expenses for years.

As an alternative, we could decline to pay a proportion of Western Europe's total costs, but could subsidize the purchase price of the aircraft to the individual countries who chose to buy it.

However, Mr. Chairman, in this case the Department of Defense proposes to do both. They want to give away the planes to European buyers at ridiculously low prices and they want to further subsidize one-quarter or more of the total cost of the sale. Simply stated, the plan is at \$68.8 million, which is the price that we are selling the plane. If you consider 32 planes at \$2.2 billion, we are offering them at a substantially reduced rate to begin with. Then in the normal course of events, in terms of cost sharing with our European allies, we normally pick up an additional 24 or 25 percent of the cost. So we are subsidizing them twice.

DOD wants to sell 32 AWACS to the Europeans for \$2.2 billion, or approximately \$68 million per plane, even though the lowest estimate of U.S. cost that I have seen is \$104.1 million per copy.

Furthermore, the Defense Department wants NATO to contribute about \$190 million toward AWACS R. & D. expenses in connection with their purchase of 32 AWACS even though the U.S. Air Force has paid over \$1.4 billion in research and development costs to put 15 AWACS in the U.S. inventory. So we are not recouping very much of our R. & D. expenses.

According to a GAO letter released December 18, 1975, the Department of Defense established in August 1975 a policy of recouping a pro rata share of R. & D. expenses in foreign military systems such as AWACS that have been in production 5 years or less. Under this policy, according to the GAO, the DOD requires that the Secretary of Defense approve any proposed waivers of this recoument policy.

Simply stated, it is now the Department of Defense position, according to one of their own directives, that when we sell these aircraft, major weapon systems within the last 5 years, that we recoup a pro rata share in R. & D. Obviously this is the sort of thing in this

¹ The document will be retained in the subcommittee's files.

particular instance we would want to do, considering the fact that we are producing this aircraft for the Europeans.

Mr. Chairman, if NATO were to purchase 32 aircraft its pro rata share of R. & D. expenses would be in excess of \$950 million. Under the proposed sale, we would, as I said, recoup about \$190 million. This proposed sale, therefore, runs counter to established Department of Defense policy. In addition, I am familiar with no waiver by the Secretary of Defense in this instance to permit this bargain sale to be consummated. I submit that this GAO letter, a copy of which I will furnish to this committee,¹ provides additional reasons why this sale should be disapproved.

Mr. Chairman, I might also add that, as Mrs. Schroeder pointed out, we managed to get the latest figures approximately 20 minutes before we came before this committee. One of the things that members of the subcommittee should be alerted to—and I am sure they have dealt with this in the past—is there are four essential costs one looks at. There is fly-away cost, which is the cost of the airplane; there is the procurement cost, which is the cost of the airplane and the initial spares; there is the program cost, which is the cost of the airplane, the initial spares and the pro rated R. & D.; and there is the life-cycle cost of an airplane, which is the initial spares, the R. & D. pro rated, if it is a unit, and then the cost of operation and maintenance over the course of the lifetime of the particular defense weapon system.

Nobody has any idea what the life-cycle cost of this airplane is. Despite the fact that there have been reams of information, hundreds of questions asked, I have never seen a program cost of the airplane, although procurement costs seem to abound. We see a lot of fly-away costs because they happen to be the lowest figure. And I submit not only is the sale premature but the facts surrounding the sale are so disjointed, so confused, that rational men, I don't think, can disagree we do not have all of the information concerning, and to approve the sale at this point I think would be far from being premature; I think it would be not in the best interests of this country or our European allies.

Mr. ROSENTHAL. Without anticipating the position of the Defense Department, do you see a distinction between subsidizing a plane for countries in other parts of the world as compared to the NATO alliance? In other words, the Defense Department spokesman said the United States would, and I quote, "participate in paying the cost," the theory being this is a mutually interested alliance and that we get some residual benefit out of anything the alliance does.

Mr. DOWNEY. Certainly. And I think that, as I mentioned, there are a number of ways to subsidize a sale. What we are not sure of at this point is how we are going to subsidize this one. Are we going to subsidize it twice; in essence, offering them a reduced price for the aircraft and then subsidizing them as we do normal NATO expenses, which is two bites of the apple, which is essentially what this sale contemplates, or let's assume, taking the somewhat mystical missions that plan has been given over the last 5 years—and I might add that if one examines carefully its mission over the CONUS, you might have

¹ See appendix, p. 69, for copy of Dec. 18, 1975, letter from GAO.

reason to believe that we might want to give NATO allies all our airplanes since its mission over the Continental United States I find to be somewhat loosely argued.

In any case, we can subsidize, we can give our NATO allies the planes for what it cost the American taxpayers and participate to the tune of 24 percent, or we can bargain on a country-by-country basis with the countries who are interested in purchasing the airplane. There are a number of different ways to consummate the sale, not necessarily this one.

Mr. ROSENTHAL. Is there some other manufacturer that has a less expensive version of this aircraft that would generally fulfill the same mission?

Mr. DOWNEY. There are two airplanes that fulfill this mission. One that fulfills the mission for the Navy is called the E-2C, and the Department of Defense has, in the last year, gone over the relative merits of the E-2C and AWACS. The E-2C costs approximately one-fourth the cost of the AWACS, accomplishes essentially the same mission. You would have to purchase more E-2C's because it is a smaller plane, it would not have the same number of hours on station. But I think a very effective argument could be made to the fact that our Israeli allies are purchasing E-2C's; our Iranian allies are interested in purchasing E-2C's, and so are our Japanese allies interested in purchasing E-2C's, both because of cost and because of performance criteria.

Mr. ROSENTHAL. E-2C is manufactured by Grumman?

Mr. DOWNEY. Yes, Mr. Chairman, it is what they call the slow ball, manufactured by Grumman.

Mrs. SCHROEDER. I would like to point out neither the Grumman E-2C or the Boeing E-3A are made in Denver, Colo. It is very possible to be concerned about the AWACS program without having an apparent interest in the E-2C. I would also point out that the House Appropriations Committee is in the process of finishing a report that is comparing these two systems very objectively.

Mr. ROSENTHAL. They are evaluating both aircraft?

Mrs. SCHROEDER. They are evaluating both aircraft, one-on-one.

Mr. ROSENTHAL. Mrs. Schroeder, does the Armed Services Committee still expect a full report on the terms of any sale of AWACS 30 days before DOD takes any action on the sale?

Mrs. SCHROEDER. I think we do. There has been absolutely no amending of the prior language.

Mr. ROSENTHAL. Is it your position that the Department has subverted both the intent and specific language of the Armed Services Committee?

Mrs. SCHROEDER. That is my position. I would also like to point out that my colleagues on the Armed Services Committee have only recently reasserted their interest in the NATO purchase of AWACS. In the fiscal year 1977 military procurement authorization bill, H.R. 12834, the following language accompanies the \$474.7 million authorized for procurement of six AWACS planes: the \$474.4 million authorized for procurement of six E-3A Airborne Warning and Control System (AWACS) aircraft shall not be expended until a favorable decision is made by the North Atlantic Treaty Organization allies for procurement of the system. My committee's interest in the level of

NATO commitment to this sale is very high. However, we have not received any information—as specified in our report last year—advising us in advance of the proposed sale we are discussing here today.

Mr. DOWNEY. I think it is particularly persuasive considering that our committee being somewhat conservatively oriented would certainly not make this sort of move unless they were very sure that there was some question as to whether or not the sale should be consummated as quickly as it seems the Department of Defense wants to consummate.

Mr. ROSENTHAL. It seems unusual to me both the Armed Services Committee and the Appropriations Committee, who have a long history of association and interest in the mission of the Department of Defense, would take such a strong position, and notwithstanding that the Department of Defense would seem to be making an end run around both of these very significant committees.

Do you have any explanation for this? Do you think there is an ulterior motive or anything?

Mr. DOWNEY. I think that if you examine the cost of the AWACS to this country there is no question but that the Department of Defense would like to sell some of these airplanes to our NATO allies so we can begin to defray and lessen obviously the unit program cost of the airplane, because if we do not sell the airplane to NATO it is going to cost us \$180 million for the planes that we have already produced.

Now, if we sell it to our European allies it will cost us less, so obviously, there is some concern about selling it.

Mr. ROSENTHAL. They can recoup some of their original cost even if they dispose of them at a discount?

Mrs. SCHROEDER. A larger total of AWACS planes produced would cut the per plane R. & D. expenses, unless additional R. & D. were required to adapt the AWACS F-3A for use in NATO defense.

Mr. ROSENTHAL. Even at a discount?

Mr. DOWNEY. To give you that. If we decided to sell them at the discount rate that we are offering them we would be able to recoup \$190 million of R. & D. of the \$1.4 billion in R. & D. the country has already sunk into the cost of the airplane. It would be doing this despite the fact that the European sale constitutes 68 percent of the total number of AWACS.

So even if we do consummate the sale at that bargain basement price we bear the lion's share of the R. & D. My contention is if you want to go ahead and sell AWACS, that is another story, in terms of its mission requirements. If you want to sell it to our European allies at least let them pay a prorated R. & D. for the aircraft, let them pay the same thing that the U.S. Air Force pays. I do not think that is too much to ask.

Mr. ROSENTHAL. If we do not make the sale we are stuck with the whole bulk of the R. & D. cost?

Mrs. SCHROEDER. It would become a problem of throwing good money after bad; when do you stop the program? If the Armed Services Committee had moved ahead and allowed production of these six planes to begin before NATO decides to buy the planes—with no use for them in the U.S. inventory—then suddenly we end up with six planes, no domestic requirement and no one to buy them at all.

Mr. DOWNEY. By your theory we could—

Mr. ROSENTHAL. I am merely trying to get all the facts out, it is not necessarily my position. Go ahead.

Mr. DOWNEY. Under that position there is really nothing to say that the figure of \$68.8 million per plane is sacrosanct. If we wanted to guarantee a sale, we could maybe offer it to them for \$25 million and recoup even a lesser percentage of R. & D.

The point is recouping such a smaller portion now one wonders what the impetus for the sale might be, and I think this goes directly to the question you were asking us before, that the planes are subject to tremendous cost increases in terms of inflation. The sooner you consummate a sale the sooner you make a tender offer for a sale and establish the figure. That insulates future sales from any additional inflation. If you agree, the foreign NATO allies agree to purchase for \$68.8 million, and suddenly it becomes a bit more expensive to produce, they are still going to get the plane at the price we offered it to them for absent any increases in inflation.

There are some of the reasons why they want us to move quickly— inflation being one of them.

Mr. ROSENTHAL. Mr. Winn.

Mr. WINN. Thank you, Mr. Chairman.

Mrs. Schroeder, you said the Armed Services Committee has had problems with AWACS. What kind of problems are you talking about?

Mrs. SCHROEDER. Well, the Air Force has changed the plane's official mission several times. At this point, using the original Air Force figures given to Congress, we have purchased all that we feel are needed for the U.S. continental defense purposes. Given this why are they still in our procurement budget? Normally we procure things that we intend to keep for our inventory. Obviously, these are for sale, but the problem has been to find out what the sale terms will be, who the planes will be sold to and whether or not we should appropriate the money to procure the planes before their use has been determined. You hate to buy something that you do not need that might be sold— and then again might not—or that might have to be sold at a great discount to induce the buyer's interest. The committee could be very embarrassed if it appropriates money to produce the planes for NATO use and then suddenly finds out the planes are not going to be bought by NATO members.

Mr. DOWNEY. I might add to Mrs. Schroeder's response, some of the problems that AWACS has had, considering only now its European mission and not its domestic mission. Originally the plane was supposed to direct sorties over the FEBA, which is the forward battle area in Europe. When this was originally contemplated there were tests done to evaluate the AWACS performance.

As you know, it is a 707 with a cone that has very high-powered radar that looks down and intercepts fighters, vectors our own fighters against their fighters and does command and control. The problem with its original mission to direct these sorties were twofold. One, it was determined that with ground jamming much of the radar would be rendered useless. The other problem was that during one of the tests, in which a member of the Armed Services staff participated, he programmed EA-6B, which is a Navy jammer, against the AWACS and followed in behind this jamming plane, two F-106 fighters. They

managed to kiss the AWACS, which indicates the fact they would be able to blow it out of the sky. Part of the problem with the AWACS was its vulnerability. So not to be denied the AWACS, the Department of Defense decided that rather than have it vector fighters or flying over the forward edge of the battle area, since it had a look-down capability, they would move it back so there was a change in mission.

I have seen in briefings by the Air Force, the AWACS located in West Germany, in Great Britain, and Maine in the United States, and it always has been somewhat of a mystery to me exactly where this plane is going to fly. I think we can now determine that we have 13 of them to the United States which will wait for either the Backfire bomber, should we ever engage in strategic warfare, or the Bison bomber, which is a turboprop plane, we will be able to identify these airplanes when they fly in and shoot them down with this supposedly Air National Guard F-106. That is what the mission of the AWACS is in this country. The mission in Europe has changed from the forward edge of the battle area to be removed to just look down and give our fighters some opportunity to know what is coming at them. Very questionable. I still believe the airplane is very vulnerable.

Mr. WINN. Well, Mrs. Schroeder, is it your position that the Air Force AWACS should not be approved unless NATO buys AWACS and, on the other hand, the Congress should disapprove NATO being offered AWACS?

Mrs. SCHROEDER. My position is NATO should not be offered AWACS at this bargain basement sale.

Mr. WINN. Other than that, you have no objection to AWACS?

Mrs. SCHROEDER. If NATO, after reviewing its airborne early warning needs, wants to purchase AWACS, NATO certainly should be free to do so. However, I think they ought to pay the fair price and that certainly we should not be doubly subsidizing the NATO purchase. There are too many very sophisticated and complicated issues involving several congressional committees in this House for the issue of the NATO purchase to be indirectly approved in this manner. At this time we have neither a specific buyer, price, or quantity to review. The total number of planes involved in the sale is anything but firmed up. In fact, one of my staff people called DOD to ask how the number of 32 planes included in the notification to Congress was arrived at. The answer was, "We really did not know, but we assumed that would be the outside number." The details of the proposed transaction are far too vague for Congress to have to decide whether to approve or disapprove the sale at this time.

What we are saying if you pass this resolution of disapproval, it would not stop the sale or offer of AWACS to NATO. It holds back congressional approval of the sale at what appears to be a bargain basement price.

Mr. WINN. Would you vote for it if they paid the full price?

Mrs. SCHROEDER. You bet—if they want to pay somewhere between \$120 million and whatever the prorated R. & D. costs are, according to the existing requirements of the DOD directive, then I think that is fine. We will be happy to make them for NATO at that price.

Mr. WINN. Would you vote for it?

Mr. DOWNEY. I believe I would if it were for the prorated R. & D. cost.

Mr. WINN. I am a little confused on the total price. In Mrs. Schroeder's prepared testimony, I believe she hit on this—quoted the figure of \$68 million as the offered price to NATO, but that it cost \$120 million.

Mr. Downey a few minutes later says that the \$68.8 million offered price and \$104 million. I am a little confused. Which one is right?

Mr. DOWNEY. The fact that you are confused, I think, is indicative of the confusion that surrounds the sale, because we have spent a great deal of time attempting to get the figures, and let me try and justify some of our own confusion.

Everyone can agree that there are 32 planes that we propose to sell to NATO. The total cost of the aircraft sold to NATO should be \$2.2 billion. And if you divide that out, you find that it comes out to be \$68.75 or \$68.8 million per copy.

When you attempt to figure out what the cost of the plane is to the U.S. Air Force, you run into two problems. No. 1, if we do not consummate the sale, then you have to include the production costs, R. & D. cost, add that together, divide by the 13 or 15 number, and you can divide by 13 if you want to just take a look at what operational AWACS we have. You can divide by 15 if you want to fix up the two R. & D. models, and then you can come out with two different figures just to determine what the cost is to the U.S. Air Force. That is one problem.

If you do that, if you use the figure 13, and divide it into the amount of money that we have spent to produce it, and the amount of money we have spent to develop it, you come up with the figure that it cost the United States \$180 million per plane. That is one figure.

If you figure that that sale is going to be consummated at the cost, then you can come up with a figure of \$104 million per plane, because that includes the anticipated sale to NATO.

So the fact there is confusion concerning the figures is, I think, justified by the fact that there is confusion concerning the sale.

Mrs. SCHROEDER. Your biggest problem, of course, is, how many planes can you divide the research and development costs among? And right now if we do not procure any more, it is clear that the cost is \$180 million a plane. We both agree that the offer is at \$68.75 million a plane to NATO. We both divide the same way exactly. The total cost per plane would be determined by how many planes NATO offered to buy. They could offer to buy 10. Then the real cost of the plane is going to be much different than if they offer to buy 30. That is why the discrepancy.

Mr. WINN. There is a discrepancy, but have we not already met most of the R. & D. cost, and if we do not sell it to NATO we are stuck with the subsidy anyway, are we not?

Mrs. SCHROEDER. We are not subsidizing anyone if we stop the production line because of no need for future planes requested by the Air Force.

Mr. WINN. I mean, based on what they have already produced and where we are at this stage of the game.

Mrs. SCHROEDER. No; I think that what we want to do is recoup some of the R. & D. costs because at \$180 million a copy that plane

ends up being the most expensive plane we ever had, and it seems only fair when you are selling an item commercially you should recoup some of the R. & D. costs that have been sunk into the program. DOD even agrees with that.

Mr. WINN. If we sell it?

Mrs. SCHROEDER. If we sell it. If we do not sell it, there is no need to make any more of the planes. We should not be spending very precious tax dollars on items that nobody is going to buy or no one needs.

Mr. WINN. We have already spent the R. & D. money, have we not?

Mrs. SCHROEDER. Why should we spend more money for the overall program just to cut the per plane costs? What's more, we would be contributing to the NATO purchase at two levels—as buyer and seller. We are not just talking about one “subsidy.”

Mr. WINN. I understand.

Mrs. SCHROEDER. Why should we be spending tax dollars to create an artificially low price for the plane? Have we become so desperate for NATO purchase of AWACS even if our allies decide a more economical airplane might better suit their needs? Other allies such as Japan and Israel have expressed interest in cheaper similar planes. Perhaps the Department of Defense is putting on pressure to increase foreign interest in AWACS so we can get the lower per plane cost of those AWACS already in our own inventory.

Mr. WINN. The E-2C is not big enough to cover all of Western Europe, is it?

Mrs. SCHROEDER. The mission would require a larger number of planes, but that choice should be left to NATO without our sweetening the pot. However, the Appropriations Committee should be finishing its own review of the E-2C and E-3A, very shortly. I attempted to get hold of it but Chairman Mahon felt that the report should not be made available until that committee has finished reading it. They are just now in the final stages of finishing it. I think he is correct. I also think, however, that the report should help to shed some light on an increasingly murky subject.

Again, my point here today is that the proposed sale should not come steamrolling through here before we have really gotten all of the facts about it. Otherwise we could sit down here with a lot of egg on our faces in spite of the many warning signals we have had.

Mr. WINN. You both made statements that you tried hard to get all of these costs, particularly Mr. Downey. Did you write the Air Force?

Mr. DOWNEY. We wrote the Secretary of Defense a day or two after we learned about the offer of sale and—

Mr. WINN. And you just got the information back?

Mr. DOWNEY. Yes; which in fairness to the Air Force, it takes them time and they want to be accurate and sometimes it takes a week or so. But this is some of the problem. Getting all of the information attendant to the AWACS program has not been that easy. For instance, for some time there has been a report that compares the AWACS and the E-2C within the Department of Defense, that I received last week. I believe it was, and I had been asking for it for about a month and a half. And I think that had we had that information a little sooner it might have been important for our NATO allies to have seen that report in terms of deciding which planes they would like to purchase.

Mr. WINN. The E-2C is built by Grumman, is it not?

Mr. DOWNEY. It is built by Grumman.

Mr. WINN. And it is built in New York?

Mr. DOWNEY. The E-2C is built by Grumman. It is built in the Third Congressional District. The airborne instrument labs that make, I believe, some of the displays for the AWAC is built in my district.

Mr. WINN. So you have—

Mr. DOWNEY. I am a net loser and a net gainer, depending upon which we get. If we decide to build more E-2C's, people are employed, and if we decide not to build AWACS, people in my district are not employed. I am concerned. Both are built in and around my district.

Mr. WINN. Your opposition is not based on political judgment as to the nature of the threat of the system but it is designed, that the system is designed to meet, or on a technical judgment on capability and vulnerability of the system.

Mr. DOWNEY. It is, and I think, Mr. Winn part of the problem is I do not carry an order pad for Grumman when I go before committees and I think it is sometimes very difficult to appear to come here in good faith and say to you this sale is a bad idea because there are too many subsidies in the AWACS airplane compared to the E-2C, I do not care who builds the E-2C, I think if you take a look at the secret reports your eyebrows will be raised in terms of the fact E-2C does much of what the AWACS does, much of it better. You need a few more, but you would be a—

Mr. WINN. Do you not think the experts in the Air Force have taken a good look at the E-2C and AWACS and any other plane?

Mr. DOWNEY. Yes; I do, and not to impugn their integrity, I think when you consider the amount of money that has been sunk into the AWACS, that they are somewhat reluctant to come forward and say we made a couple of billion dollar mistake here, we did not take a look at E-2C quite in the same light we would like to. That is why the Department of Defense, Mr. Parker, who is not beholden necessarily to the Air Force, did the survey between E-2C and AWACS, and the survey is there for you to read, and there for technical experts to read and make their evaluation.

Mr. WINN. Well, Air Force could well have made a mistake. As I recall 2 or 3 years ago the Grumman people were notorious for their mistakes.

Mr. DOWNEY. Yes, sir.

Mr. WINN. We are all human.

Mr. DOWNEY. That is right, and rather than to err again in this sale, that is why we bring the resolution before you.

Mr. WINN. Thank you.

Mr. ROSENTHAL. Mr. Buchanan.

Mr. BUCHANAN. Thank you. I know we have a time problem and—

Mr. ROSENTHAL. We will adjourn on the second bell and come back 6 or 8 minutes later.

Mr. BUCHANAN. There seems to be a substantial difference of opinion as to the difference in quality of these two aircraft and their capabilities between you and the Air Force or the Department of Defense, as I understand it. Time will probably catch up with me, Mr. Chairman, but I am going to read from a March issue of Government Executive magazine which was placed in my hands.

Mr. ROSENTHAL. Why do we not adjourn and restate the question later so we do not lose track of the continuity.

[A recess was taken.]

Mr. ROSENTHAL. While we are waiting for Mr. Buchanan we might continue on.

The letter of offer was for how many airplanes, do you know?

Mrs. SCHROEDER. Thirty-two.

Mr. ROSENTHAL. Was it for 32 or less than 32? The reason it becomes relevant is the apportioned cost both for research and development then becomes significant.

Mr. DOWNEY. I think that, if I recall, the offer was up to 32—it does not necessarily have to be 32, it could be less than 32.

Mr. ROSENTHAL. If you do not know what the number is, you do not know what the proportion is for research and development.

Mr. DOWNEY. If you do not know the number it becomes exceedingly difficult to determine how much it is going to cost and how much we are apportioning for R. & D.

Mr. ROSENTHAL. The letter of transmittal says 32. It does not say up to 32.

Mrs. SCHROEDER. It says 32.

Mr. DOWNEY. I stand corrected.

Mr. ROSENTHAL. But, Mr. Greener, who is the public relations person for the Pentagon, sort of unilaterally amended the letter of offer, because he says it means up to 32. I do not know if you can do that.

Mrs. SCHROEDER. I do not know, and especially since there is no firm offer for any number, that is why it is impossible to figure out the per-unit cost included in the proposed sale. The notice says \$2.2 billion total sale value, and that is how we arrived at the per-plane cost of \$68.75 million. That was the best estimate we could make with the information available.

Mr. DOWNEY. It would be an interesting theory in first year contracts at law school to really determine whether this is a legitimate offer under the Uniform Commercial Code since it did not specify amount.

Mr. ROSENTHAL. The point is the letter of offer says 32 aircraft at a total estimated value of \$2.2 billion, and then Mr. Greener apparently amended that in the press conference on Tuesday, March 2, at 11:30 a.m., during the following question and answer:

Question. Well, if they buy 32 then the cost comes to \$2.2 billion; is that correct?

Answer. Not necessarily so.

Question. That is what your announcement says.

Answer. Up to 32 and up to 2.2.

That is an incorrect statement of what the letter of offer says.

Question. But your announcement does not say up to 32.

Answer. Then I am making the statement now.

I do not know if you can do that legally. There is no way of allocating the apportionment of the R. & D. costs unless you know specifically how many aircraft. It may be that General Fish can shed some light on this.

Why do we not yield to Mr. Solarz until Mr. Buchanan returns, if Mr. Buchanan returns.

Mr. SOLARZ. Thank you, Mr. Chairman. I first would like to congratulate our two colleagues for making this presentation this after-

noon. I certainly applaud their concern for economy and I think that we are very much indebted to them for raising some very serious questions.

For the purpose of the record, I would like to clarify some of the economic arguments that have been presented.

We have been given to believe that this plane is being sold at a very significantly reduced and subsidized price since, according to the gentleman from New York, the lowest cost per copy that he had ever seen was about \$104 million, and the plane is being offered to our NATO allies for \$68 million.

Now, does this mean, with respect to the sale of each plane, that we will be paying an additional \$34 million of our own to make up the difference between the \$68 million and the \$104 million?

Mr. DOWNEY. That is correct, essentially.

Let me just try and put it in—

Mr. SOLARZ. When you say essentially, what I am trying to get at, does this mean that the U.S. Treasury is going to have to pay the manufacturer of this plane \$34 million together with the \$68 million that is paid them by NATO?

Mr. DOWNEY. The way it works, Steve, we have already sunk the cost to develop the airplane into the airplane. That has already been authorized and most of it, I do not know most of it, but part of it has been appropriated.

Now, what we have to understand is that in order to recoup that money we would have to charge a higher pro rated share of R. & D. per plane than we are charging them.

Let me give you an example: If the \$1.1 billion and R. & D. cost were evenly allocated among the 47 AWACS, that would mean that each AWACS would have to bear \$29.27 million of the R. & D. OK. What that would mean, for this sale, in particular, is, it would increase the amount of money that the European allies or European allies would have to pay from \$2.2 billion to \$2.976 billion, an increase of about \$763 million, if we were to apportion the R. & D. over the 47 aircraft, 32 to NATO and 15 that we have in our own country.

Mr. SOLARZ. Of the \$68 million which each plane will cost, I gather that the standard NATO formula for cost-sharing would require us to lay out 25 percent, or roughly \$17 million per plane?

Mr. DOWNEY. Approximately.

Mr. SOLARZ. And if you then wanted to figure out the total amount of new obligational expenditures that this sale would cost us, you would then take the \$17 million per plane that we were going to be selling and multiply that by 38, presumably.

Mr. DOWNEY. Thirty-two.

Mr. SOLARZ. Thirty-two, which is the total number of planes that are being sold.

The total cost would exceed, would it not, the \$190 million which NATO will be paying back to us as their share of the R. & D. expenses?

What I am trying to ascertain is, if you look at the net figures involved, whether the argument is valid that though NATO is reimbursing us for a percentage of the R. & D., we nonetheless will not get our money back. Given our share of the NATO purchase—which is 25 percent of the \$68 million for the 32 planes—doesn't our share

of the cost of the 32 planes, even at a subsidized price, exceed the NATO pay back for R. & D.?

Mr. DOWNEY. Right.

Mr. SOLARZ. Consequently, in purely economic terms, one would have to view this sale as a net loss to the Treasury rather than as a net plus. That is not to say we should not go ahead with the sale.

Mr. DOWNEY. The reason I am uncomfortable with that, since the money has already been authorized and will be appropriated, it is difficult to talk in terms of the taking away from. It is a question of what we are not getting, if you will. I think that would be not only the accurate way to view it but I think to phrase it another way would be misleading.

Mr. SOLARZ. The \$190 million which the Defense Department wants NATO to contribute toward the R. & D. costs would be apportioned on a per unit basis for each of the planes that they would be securing as a result of this sale, or is that \$190 million lump-sum payment above and beyond the \$68 million per plane?

Mr. DOWNEY. The \$190 million is a percentage of the total, approximately 13 percent of the total U.S. R. & D. costs that have been sunk in the plane, and that is what our European allies would be paying for the R. & D. That is the apportioned R. & D. cost.

Mr. SOLARZ. Is that on top of the \$68 million per plane?

Mr. DOWNEY. That is included.

Mr. SOLARZ. That is included in the \$68 million?

Mr. DOWNEY. Yes.

Mr. SOLARZ. I thought it would be helpful to straighten that out. It seems to me that there is a potential inconsistency in your argument. On the one hand, you come to the committee and you say that from an economic point of view this represents the kind of subsidy to our NATO allies which is difficult to justify because the planes are costing us far more than they are costing NATO. But you say, on the other hand, if the price is a fair one then you would be both willing to support it.

You have also said in terms of the performance of the plane it leaves a lot to be desired, that there are strong reasons to believe that in the event we ever need it it would not work effectively. That would seem to suggest that, even if we got a fair price for the plane, it might not make sense to go ahead with the sale, particularly in view of the fact that we would have to contribute 25 percent of the cost. How can you justify our supporting the sale of a plane which you yourself contend does not work?

Mrs. SCHROEDER. Well, I really think this is a part of the argument that we should not get into in this type of hearing; since to really compare the two planes accurately, we probably ought to do it in closed session with a technical expert on hand. I think NATO should make the decision about the plane's utility for its defense and NATO will make that decision. I don't think it is our place to come in and tell NATO, "No; you cannot have the plane, you have to have this plane," I think that is too paternalistic. I am saying that approval of \$474.7 million to procure planes whose need has yet to be determined is premature. The utility of AWACS for NATO defense is undergoing extensive study by the NATO members.

Many questions about the appropriate airborne early warning aircraft have been raised, and the decision will not be made by NATO until late May. NATO's requirements are being thoroughly reviewed.

Mr. SOLARZ. Have you reached any conclusions, based on your study of this question as a member of the Armed Services Committee?

Mr. DOWNEY. Well, I have, but I do not think they are relevant to this and I really do not think that is something that should be taken into account in a 20-day period on whether you approve or disapprove a sale, and the subsidy issue comes in and R. & D., all these things. It seems to me that is what we should be really focusing on and talking about, which one is best for their scenario. I think they are the ones that can best determine this.

I think it is important to understand that is a decision that is made by NATO ministers and by the United States as part of NATO and it is a decision that they have made that this airplane for their purposes, meets some mission requirement that they would like to have met. They would like to know, for instance, since their ground radars cannot cover every aspect of Europe, especially the forward battle area—they would like to know more about the airplanes in a hostile environment that are coming across, the type of jamming that would be occurring, and it is their feeling that some airborne warning and control system, whether it be the AWACS or E-2C, is something they think is important. My question to you, one of the issues on the merits, and I agree with Mrs. Schroeder, this is really not the place for it, is the whole question of what the AWACS does over the continental United States.

We talk about what we are spending our money for, what is it defending? It is defending against strategic attack against Soviet bombers that will arrive 9 hours after Soviet missiles have arrived. Is it going to defend the country from a tactical air attack, from what country, for what purpose? I do not think any of these questions have been answered.

I think, with respect to AWACS over Europe, you could make a better case. AWACS over the continental United States, you are straining the credibility of even the most willing.

Mr. SOLARZ. I was about to yield back my time to the gentleman from Alabama, but I would be happy to yield.

Mr. WINN. Just briefly. My understanding is NATO has been working on an airborne control system for 3 years and we have been involved in it. I cannot believe all of these experts in NATO are going to sit around and not make these decisions.

Mr. DOWNEY. They will. I mean, assuming they will.

Mr. WINN. I cannot believe we do not know what direction they want to go if we have been involved in it.

Mr. DOWNEY. If we do—

Mr. WINN. I am going to have to take their decision over yours.

Mr. DOWNEY. Mr. Winn, that is a judgment you have to make. Some people may know what decision they have made. The Congress of the United States does not appear to.

Mr. SOLARZ. As of this point you are both saying NATO has not yet made a final and formal decision that they want this system?

Mrs. SCHROEDER. That is my understanding, they have not come forward and said we want to buy 32 of them at \$2.2 billion. We are saying to them we will offer you 32 of them at \$2.2 billion.

Mr. SOLARZ. I must say in my brief experience on this committee, I cannot recall another situation where we were asked to approve a letter of offer for a sale of military equipment that the intended recipient of that equipment had not already requested of us. It would appear to be an example of putting the cart before the horse.

Mrs. SCHROEDER. That in essence is my position. This is not saying we should not sell NATO AWACS. We are saying, why all this, why now, and what is it all about at this point?

Mr. ROSENTHAL. I think sometimes we get sidetracked. The issue is both committees, the Armed Services and Appropriations Committee, have laid down certain mandates and constraints to what should happen and it is your position, as I understand it, that they are subverting both the intention, the spirit and the direction of the committee, is that correct?

Mr. DOWNEY. I think that is implied in the committee testimony that we have placed in the record.

Mrs. SCHROEDER. May I also say we are still going through the DOD answers to our questions which were received just before the hearing. Answer No. 11 is very interesting. It says in February 1976 NATO requested that the United States develop an initial letter of offer to be delivered in May as part of the contract definition process. If a letter of offer has been requested for May, why are we having to review it during 20 short days in February before all the facts are in? Especially with two committees that would like 30 days' notice? If NATO requested we come forward with something by May there is plenty of time to notify both committees to go through the proper procedures.

Mr. DOWNEY. If I might respond to one of the points you made. If in fact our NATO allies have been working for 3 years, and let us assume for argument sake they have been working for 3 years to try and decide which airplane to buy, whether AWACS or E-2C, it would seem to me that we would have gotten some signals long before of the definite intentions. In fact, there have been rumblings that they are concerned about the cost of this plane and one of the other things that was not communicated and is not known is exactly who will build this airplane. You know we have got arrangements with the British, for example, to possibly buy some of their Harrier aircraft, which is a V/STOL airplane, for the Marines for close combat support, and the British have been saying, well, you know, we would like to have this AWACS but it is awfully expensive and there has been a lot of background negotiations that we are not privy to. But that all baits the question. The essential question is not whether they worked on it for 3 years or 33 years and whether they want this or the E-2C. All we are saying is that in order to rush ahead prematurely and approve a sale with the R. & D. money really does not even match what we are paying, our Air Force is paying, is a mistake and that is what we want you to look at and that is the essential question.

Mr. SOLARZ. Supposing it turned out that NATO decided that it did want the AWACS system and it felt in terms of its strategic and tactical requirements the AWACS was superior to Hawkeye—but that it could not afford to purchase the system if in fact we applied the standard formula. In other words, if the situation is that NATO said to us that we would like AWACS but we can only afford it at the price con-

tained in this particular letter of offer, what would be your reaction at that point?

Mrs. SCHROEDER. I think at that point we should all sit down and talk about it. But I do not think we are at that point now. We are not anywhere close to that point and as a result, have been forced to speculate on scenarios. We can play the scenario factory all afternoon but this offer should not be approved or disapproved based on conjectures.

Mr. SOLARZ. If in point of fact there is reason to believe that a higher price would put AWACS out of their price range—that is purely not a hypothetical consideration—are you in effect telling us to be harder bargainers and get the best deal possible, but in the final analysis, if NATO wants and, needs the planes, we ought to approve it? Or are you saying, as a fundamental principle, no matter how much NATO may want it, unless we apportion the R. & D. costs and establish a price which is fair in comparison to our previously existing formulas, we should not go ahead with it?

Mrs. SCHROEDER. I think I would be saying what we want to be sure we are not doing its offering them to NATO at a bargain price simply so that we do not look like we spent too much money on the weapon system of limited utility. We would have a bigger pool to divide the R. & D. cost against and we will not be faced with the \$180 million per plane price tag we now have. We want to make sure we are not pushing this sale simply as a face-saving measure in our own weapon procurement program. When we get to a specific NATO offer on AWACS, if we get one, then we should be hard bargainers. In any case it seems silly to make your lowest offer your first offer.

Second, what do we do about the U.S. position of creating an artificially low cost to our NATO allies as both buyer and seller of the plane? I think we want to say if we give them a lower price, then what do we do about our 25 percent contribution as a purchaser? These are all hard issues we should talk about.

Mr. ROSENTHAL. For the record, the letters that either of you sent to the Defense Department, or both of you sent to the Defense Department, with their reply, ought to be included in the record, and without objection, shall be included, and the record will be open for any supplementary material you think would be pertinent to the inquiry.¹

Thank you both very much for coming. We want some time with our distinguished friend from the Defense Department, General Fish. You bring with you your associates to testify in support of the proposed sale. We are pleased to have you with us. From the Department of Defense, Lt. Gen. Howard M. Fish, who is accompanied by Maj. Gen. Kendall Russell, Assistant Deputy Chief of Staff for Research and Development, Department of the Air Force; Mr. Benjamin Forman, Assistant General Counsel for International Affairs, Office of the Secretary of Defense; Mr. Theodore S. Wilkinson, Special Assistant to Director, European and NATO Region, Office of the Assistant Secretary of Defense (International Security Affairs).

To answer any questions relating to the foreign policy aspects of the proposed sale we have available from the Department of State, Mr. Charles C. Flowerree, Director, Office of International Security Policy, Bureau of Politico-Military Affairs, Department of State;

¹ See appendix, p. 71, for letters referred to.

and Mr. Eric Rehfeld, Office of NATO and Atlantic Political and Military Affairs, Bureau of European Affairs, Department of State.

General Fish, we are very pleased to have you once again before this subcommittee.

STATEMENT OF LT. GEN. HOWARD M. FISH, DIRECTOR, DEFENSE SECURITY ASSISTANCE AGENCY

BIOGRAPHY

Lt. Gen. Howard M. Fish is the Director, Defense Security Assistance Agency, and Deputy Assistant Secretary of Defense (International Security Affairs) for Security Assistance.

General Fish was born in Melrose, Minn., on Aug. 1, 1923, and graduated from St. Cloud Cathedral High School, St. Cloud, Minn., in June 1941. He entered the Army Air Forces in 1942 and served as an aerial gunner at Tyndall Field, Fla. He entered advanced navigator training at Monroe, La., in November 1943, and received his navigator rating and commission as a second lieutenant in the Army Air Corps in July 1944.

During World War II, from October 1944, he served as a navigator in the European Theater of Operations on a B-17 aircraft crew with the 419th Bombardment Squadron, 301st Bombardment Group in Italy. He was shot down over Vienna, Austria, in February 1945, and spent the remainder of the war as a prisoner of war in Germany.

In November 1945 he attended a student navigator refresher course at Ellington Field, Tex., and at Fairfield-Suisun Air Base, Calif. In February 1946 he was assigned as assistant statistical control officer, Chanute Field, Ill., and in April 1946 he was transferred to Orlando, Fla., for statistical control indoctrination training.

General Fish returned to Germany in July 1946, serving first in Berlin at Tempelhof Air Base, and later in Wiesbaden as a statistical control officer. He also flew in the Berlin Airlift.

He returned to the United States in July 1949 and trained as a navigator-bombardier at Mather Air Force Base, Calif. In April 1950 he was assigned to the 84th Bombardment Squadron at Langley Air Force Base, Va.

During the Korean War, in July 1950, he was transferred to the 162d Tactical Reconnaissance Squadron, which was immediately sent to Korea where he flew 63 combat missions. General Fish later served as a navigator with the air crew of the Commanding General, Eighth Army, in Korea. In March 1951 he was assigned as Chief, Program Analysis Section, 374th Troop Carrier Wing, Far Eastern Air Forces.

He returned to Langley Air Force Base in June 1951 to train replacement combat crews for B-26 aircraft units in Korea. Initially, he served as a squadron navigator in the 4400th Combat Crew Training Group and later as a squadron executive officer and group director of operations and training.

In January 1954 General Fish attended the Air Command and Staff College, Maxwell Air Force Base, Ala. He returned to Langley Air Force Base as executive officer for the 405th Fighter Bomber Wing.

In June 1956 he entered the University of Chicago and graduated in August 1957 with a master's degree in business administration. He became a member of the business scholarship fraternity, Beta Gamma Sigma.

He was transferred to Europe in October 1957, serving first as Wing Comptroller for the 60th Troop Carrier Wing at Dreux Air Base, France, and then as Comptroller, 7310th Air Base Wing, Rhein-Main Air Base, Germany.

In July 1960 he entered the Armed Forces Staff College at Norfolk, Va., and in January 1961 he was assigned as Director of Data Automation, and later as Assistant Deputy Chief of Staff, Comptroller, Headquarters Eastern Transport Air Force, McGuire Air Force Base, N.J.

In August 1963 he entered the Air War College, Maxwell Air Force Base, Ala., and while there received a master's degree in international affairs from The George Washington University. In July 1964 he was assigned as a plans and programs officer in the Directorate of Plans, Headquarters U.S. Air Force, Washington, D.C. He was named Assistant for Analysis to the Deputy Director of Plans for Force Development in December 1967.

In March 1969 he was named Director of Tactical Analysis, Seventh Air Force, Tan Son Nhut Airfield, Republic of Vietnam.

General Fish returned to Headquarters U.S. Air Force in July 1970 as the Deputy Director of Doctrine, Concepts and Objectives, Deputy Chief of Staff, Plans and Operations. He was appointed Deputy Director of the Budget, Office of the Comptroller, in February 1971 and became Director of the Budget in October 1973.

In August 1974 General Fish became Director, Defense Security Assistance Agency, and also the Deputy Assistant Secretary of Defense (International Security Affairs) for Security Assistance.

His military decorations and awards include the Legion of Merit with one oak leaf cluster, Distinguished Flying Cross with one oak leaf cluster, Air Medal with four oak leaf clusters, Air Force Commendation Medal, and the Purple Heart. He holds a master navigator rating.

General Fish is married to the former Jamie Katherine Tom of Corpus Christi, Tex. They have one son, Howard Math.

He was promoted to the grade of lieutenant general effective Oct. 4, 1974, with date of rank Oct. 3, 1974.

General FISH. Thank you, Mr. Chairman. I appreciate this opportunity to appear before you concerning the proposed sale of the airborne warning and control systems (AWACS) aircraft to the North Atlantic Treaty Organization. On February 27, 1976, under the provisions of section 36(b) of the Foreign Military Sales Act of 1968, as amended, the Congress was notified of this proposed sale of AWACS aircraft to NATO.

Utilizing a modified Boeing 707-320B airframe topped by a 30-foot rotating radome and redesignated as an E-3A aircraft, AWACS will employ a newly developed radar system to detect and track aircraft flying at high and low altitudes over both land and water. It will be able to look down and separate targets from the ground clutter returns which confuse present-day radar. AWACS has two dominant features: flexibility and mobility. With the hardware elements housed in a jet aircraft, the survivability of the system in warfare is dramatically increased over a fixed system. In the event of loss of one of the airborne systems, rapid replacement can take place denying the opportunity for the intruders to fly undetected. Surveillance volume for both high and low targets is increased with the elevated radar.

The AWACS capability is urgently needed in NATO Europe. In the May 1975 meeting with the Defense Planning Committee, NATO Ministers endorsed the undertaking of a contract definition activity to establish a basis for subsequent decisions, now projected to begin in June 1976, on whether NATO should procure an airborne early warning (AEW) system, based on a variant of the E-3A. They further endorsed the establishment of a provisional NATO AEW Program Office to manage the contract definition and potential follow-on phase under the guidance of a steering committee.

At the December 1975 ministerial meeting, the NATO Defense Planning Committee approved continuation of the contract definition activities and endorsed preparatory phase activities which are to be funded by interested nations.

The United Kingdom, the Federal Republic of Germany, and Canada have made tentative offers to share in the early prefinancing costs for preparatory phase activities comprising research and development for a NATO version of AWACS and other planning activities. The United States will also be expected to contribute funds as a participant in this NATO project. We hope that additional NATO nations will join in the financing.

A draft statement of understanding on prefinancing by interested nations is currently being worked out at NATO Headquarters, and, subject to agreement or any amendments, may be signed as early as April 1976. This statement of understanding covers preparatory phase activities leading into a potential procurement phase anticipated to begin during calendar year 1977.

I think there are three basic issues that have been raised in front of the committee. One is why now, why do we notify the committee at this time? Second, is the price, and third, is NATO interests.

I have and will submit for the record a classified letter that I received on the 23d of February, directed to me, requesting a letter of offer from NATO. So we have a formal request for a letter of offer.¹

We also have as a result of our negotiations, a plan to have a statement of understanding, signed early in April, which will involve financing by NATO nations, and if the Congress agrees and approves and appropriates the money, U.S. participation.

It has been our practice under 36(b), and in appearing before this subcommittee, to inform the subcommittee as early as possible of these arrangements so we do not commit the United States to a course of action of a sale of over \$25 million, and this certainly will be over \$25 million, without coming to the committee and informing them. This is without prejudice to some of the issues raised by the previous witnesses.

In the letter that I furnished to Mrs. Schroeder was a statement which you will be able to review, in its entirety, that commits the Department of Defense to completely comply with the 30-day notification that the Armed Services Committees have requested. But we want to maintain our credibility with the Congress. We want to comply with the rules, as we have in previous practice. And I will remind the committee that last year when we signed the memorandum of understanding on the F-16, although we have still not signed the letter of offer on the F-16 and we are still negotiating details of it, we came to the subcommittee and gave advanced notice underneath 36(b) procedures. There was no intent to in any way steamroller, or rush. We felt an obligation. I had the advice of counsel before I decided whether it was necessary at this time. The reading of the law is that we must come forward and let you know and have the time, the statutory time run before we could sign the statement of understanding with the NATO nations.

Mr. ROSENTHAL. Would it not have been better to begin the 30-day process the Armed Services Committee mandated and at the end of those 30 days submit the letter of offer?

General FISH. As I understand the mandate from the Armed Services Committee, they wanted the terms-conditions proposed for such a sale be reported to the Committees of the Armed Services of the Senate and House of Representatives. We do not know the detailed terms of the conditions. They are still open to negotiation. There are many different alternatives that can eventuate here. We will bring those forward to the Congress before we consummate a sale.

Mr. ROSENTHAL. But then, it seems to me that this notice under 36(b) is premature.

¹ The letter is maintained in the subcommittee files.

General FISH. No, sir; because we have the responsibility to inform you before we sign the statement of understanding and have \$12 to \$15 million of NATO money committed which would include United States, commit ourselves to this sale, taking the first step in committing ourselves to this sale.

This is our standard practice. This is what we did.

Mr. ROSENTHAL. How many planes are involved in the proposed sale?

General FISH. We do not know, sir, but what we have is a statement of understanding to negotiate further.

Mr. ROSENTHAL. Then the letter of offer is defective, it seems to me. It is ambiguous. Maybe Mr. Forman wants to address himself to that. You do not know how many planes will be sold. That fact supports Mrs. Schroeder's contention that there is no way of allocating the R. & D. unless you can divide it by the number of planes.

General FISH. I was going to get to the question of price. Let me address the first part of your question. I think we have a very good answer to the question of price and the allocation of the R. & D. costs.

But as to your first question, why the letter of offer. We do not have a letter of offer. We are notifying the Congress of an intent to provide a letter of offer, as is our standard procedure. We cannot provide a letter of offer to a foreign government until we have gone through the notification procedure. It has been my understanding that the desire of the subcommittee and the Congress is to get the Congress involved in this on the front end so they know about them so they can influence the terms and conditions. We are asking for permission to provide a letter of offer within the scope of 32 aircraft and \$2.2 billion.

Mr. ROSENTHAL. The letter of offer that I read says transmittal 76-41, notice of proposed issuance of letter of offer pursuant to section 36(b). It says, total estimated value, \$2.2 billion. Description of articles, services offered, 32 E-3A airborne early warning aircraft, parts, and support equipment. It does not say up to 32, it says 32.

General FISH. Yes, sir; and we are asking permission to—

Mr. ROSENTHAL. But you propose to sell 1, 2, 3, or what?

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

Mr. ROSENTHAL. I understand that. The way I read the transcript of the press conference, Mr. Greener attempted to amend the letter of offer, which you cannot do, by saying it is up to 32. This letter of offer says 32.

General FISH. There is no letter of offer. The letter of offer does not exist. There is nothing to be amended. What we have is a notification to the Congress of an intent to prepare a letter of offer subject to negotiations, and hopefully some version will be signed.

Mr. ROSENTHAL. I understand what you are saying, General, and I appreciate your presentation. I can only say what it says in English. It says notice of proposed issuance of letter of offer. When I read that I would assume that letter of offer would be consistent with this proposed issuance and will not vary in any way. I do not think frankly, under law, you have any right to vary this upward, downward, and sideward. I do not think so.

General FISH. That is a different interpretation than what we have been practicing in many other letters of offer that we have come forward with.

Mr. ROSENTHAL. The other letters of offer I have been familiar with, you were very precise, you knew what you were going to sell, 16 Hawk battalions, or whatever they were.

General FISH. The final negotiations may be less.

Mr. ROSENTHAL. It does not say that in here. It does not say subject to negotiation.

General FISH. No, sir; but I think the testimony and the legislative record will show that we have pointed out in the past that the final details of these letters of offer are subject to negotiation and that as long as we are within the scope that has been cleared with the Congress, that we proceed. If they significantly exceed the scope then we have to come back.

Mr. ROSENTHAL. I think you are suggesting that you can unilaterally amend the proposed letter of offer. I do not know that you can do that. I do not know there is any authority with that ambiguity. I think it is an ambiguity. There are two other pragmatic considerations that you should have. One is this statement on page 18 of the Armed Services Committee report that says as follows:

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 U.S. 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 as to the terms and conditions—

and so forth.

In my judgment, no action means not even sending a letter of offer.

General FISH. You said consummation.

Mr. ROSENTHAL. It says take no action. I would like to have this side of the case in a lawsuit. It says take no action toward the consummation of any agreement. No action includes sending a letter of offer. I cannot for the life of me understand why you seem to be choosing to aggravate your principal supporters in the Congress, the Armed Services Committee and Appropriations Committee, and it looks to me like you are trying an end run. It puts our committee, very frankly, in a very embarrassing situation.

General FISH. Nothing could be further from any intent. We are trying to be completely forthcoming to Congress.

As Mrs. Schroeder has been informed in my letter to her, we fully intend to comply with that before we sign a letter of offer and send it to NATO as an offer, a signed letter of offer. We will comply with the will of the Congress. But we have another responsibility, and I will ask Mr. Forman to elucidate on this, to notify you as far in advance of our intent to do this even though we will not consummate it without providing the notification to the Armed Services Committee, before there can be any participation of it on the U.S. side which would be an absolute concomitant of the arrangements that we expect to eventuate. We would have to have it authorized and appropriated by Congress, including the committees that the former witnesses sit on.

So this will get reviewed but we have a responsibility to the Congress as a whole and specifically to this committee to inform you of our intent to proceed.

STATEMENT OF BENJAMIN FORMAN, ASSISTANT GENERAL COUNSEL FOR INTERNATIONAL AFFAIRS, OFFICE OF THE SECRETARY OF DEFENSE

Mr. FORMAN. Well, first, let me address the earlier comments about the variance or alleged variance from the notification.

Again, as General Fish has said, and as the legislative history will show, there are many of these letters of offer which either get rejected or not accepted by the country which requested the letter of offer or the final, ultimately signed letter of offer does differ from the notification because some items drop out during a course of either pricing refinements or as a result of a negotiation because the country decides it does not want them.

As you will recall, about a week or so ago when we were testifying before this committee on a different resolution for a different country, it was pointed out that the final price of one of the items which had previously been reported under section 36(b), was ultimately signed with some \$300 million less than the price which had been reported officially as the proposed price, because some items dropped out. This is true across the board.

Mr. ROSENTHAL. I understand that. In simple English, this letter of offer says 32 aircraft.

Mr. FOREMAN. And General Fish—

Mr. ROSENTHAL. Do you have the authority? Is it your legal opinion that you have the authority under the statutes to amend this unilaterally?

General FISH. That is not a letter of offer. It is improper to describe it. It is a notification of an intent to prepare a letter of offer.

Mr. ROSENTHAL. I will read it to you again. Maybe I am misreading. I am not misstating it. I might be misunderstanding it. It says: "Notice of proposed issuance of letter of offer."

When I read this I assume that the letter of offer that is issued pursuant to this authority will be consistent with these statements. I assume that. If I am wrong, you can correct me.

General FISH. Yes, sir, it will be consistent with that. It will not exceed that scope.

Mr. ROSENTHAL. It does not say that.

General FISH. No, sir.

Mr. SOLARZ. I appreciate the gentleman yielding.

If I understand what the general is saying here, in effect, this is not a letter of offer as a letter of offer is understood within the terms of 36(b). In other words, the Congress is not being given 20 days within which to pass judgment on this document which has been sent up to us.

If I understand what you are saying, you are informally notifying the committee?

General FISH. No, sir.

Mr. SOLARZ. We have under consideration making a letter of offer to our NATO allies for this equipment and no congressional approval or disapproval is required at that point?

General FISH. No, sir, absolutely not. This is precisely and exactly in accord with the legal interpretation of 36(b) notification requirement, and the reason it is consistent with our past practices, 1 year ago, not quite a year ago, in June, we notified the Congress of the F-16 and that was because our next action was to sign a memorandum of understanding with the Europeans to sign a letter of offer in the future.

Mr. SOLARZ. Your understanding is that from the day that document arrived, according to the existing law, we had 20 days within which to disapprove it, assuming we were against this sale?

General FISH. Against. If you were presuming you were against the sale of AWACS to Europe.

Mr. SOLARZ. Up to 32?

General FISH. Thirty-two aircraft, \$2.2 billion.

Mr. SOLARZ. Then, we would have to disapprove it now. If at the end of those 20 days Congress had not voted to disapprove it, then at that point the administration would have the authority to go ahead and negotiate an actual sale within the framework of that document that you sent up to us?

General FISH. Except in this particular case another requirement has been imposed by the Congress—that before the letters of offer actually are sent over and consummated we report an additional 30-day waiting period to the Armed Services Committee of the Senate and House of Representatives on the exact terms and conditions of the sale which we will comply with.

Mr. SOLARZ. What would happen at that point if the Armed Services Committee decided that even though we had not disapproved the original letter of offer, they thought the transaction should not proceed?

General FISH. I would be of the opinion—I will defer to legal counsel—that there would be no way that it could go forward.

Mr. SOLARZ. Pardon?

General FISH. It could not go forward.

Mr. SOLARZ. On what basis would it be legally terminated?

General FISH. First of all, one particular point is that since the terms and conditions of the negotiations are clear that it will involve U.S. participation, there is no way you can get funds authorized and appropriated for this purpose without going through the Armed Services Committees. So they will have plenty of opportunity to review this. The concerns are unwarranted. There is no way this could be end-run. We are just doing our duty to you to inform you.

Mr. SOLARZ. I will yield back my time.

General FISH. Mr. Forman had a point.

Mr. SOLARZ. I simply want to make the observation that while there may be subsequent opportunities to review the transaction as the negotiations proceed, I think this subcommittee still has a responsibility to make its own judgment on the merits of the transactions. Once the 20 days have run their course, we will have then lost our opportunity to act on our own initiative.

General FISH. I would submit the entire Congress will have its opportunity because the entire Congress will have to vote the funds, authorize and vote the funds. Point 1.

Second, as I understand, this committee's interest is to whether there should be a sale or not be a sale, if it furthers our foreign policy interest to have a sale. We think that the record is abundantly clear that it does further our foreign policy and defense policy interests to have NATO supplied with this capability. They have requested it. We think it is better for us to do it this way rather than supply it ourselves unilaterally and at much higher cost, and we think it greatly improves the effectiveness of the alliance and I think that is the issue.

Mr. ROSENTHAL. General Fish, that is not the issue. I happen to agree with you in terms of the military support mission. I think you are absolutely correct. I think all of us have to follow orderly procedure whether we like it or not. My own personal view is that this subcommittee would have to support a resolution of disapproval, considering the language of the Armed Services Committee. We do not even have any authority because when it says in here no action toward the consummation of any agreement, that includes sending this notification. This is action. You cannot wish this away no matter how you like it. I really do not understand why you sent this, whatever you want to call it, this transmittal, prior to any kind of agreement with any country. I mean, the agreement seems to me to be in almost an embryonic stage.

General FISH. All of our letters of offer we send up here are in a stage where we have a lot of negotiations to continue. This is no different than the others. This is not unusual.

Mr. ROSENTHAL. This is the first one I came across where two very important committees had thrown up a red light. That is what really bothers me.

General FISH. Sir, that will be fully complied with. I have stated in my letter the Defense Department position.

Mr. ROSENTHAL. My guess is had this resolution of approval gone to the Armed Services Committee for them to be consistent they would have had to vote for it in support of their own language.

General FISH. No, sir; because we fully intend to before we tender a letter of offer, a signed letter of offer, with the conditions that we have worked out in the negotiations with the NATO allies, that it will go up to the Congress for approval. Let me give you the opposite case, maybe this will help. It could be argued, and we would fully expect it to be argued, if we would have entered into an agreement with NATO on a statement of understanding, not a letter of understanding, but for some 15 or so millions of dollars for R. & D. funding of a NATO program, still to be negotiated as to the details. We would be criticized for not having notified the Congress under 36(b).

Mr. ROSENTHAL. Not by us you would not be because there would not be any 36(b) and we would not be here this afternoon. We have a problem we did not ask for.

General FISH. We have a responsibility to notify you if the eventual sale is going to be over \$25 million.

Mr. ROSENTHAL. My own personal judgment is, I think you had no authority to do what you did. I do not know.

Mr. WINN. Well, I do not have a question. I think both of you make a good point.

In the transmittal the chairman was talking about, it could be misconstrued, just to be ridiculous about it, that we could, since it is still to be negotiated, sell one airplane. We could sell one airplane to NATO for \$2.2 billion because it does not say up to. I am saying I am being ridiculous about it, but the way this thing is worded, it says 32 early warning AWACS, training, spare parts and support equipment.

General FISH. Of course, we go to the act. The act is supposed to indicate the quantity that we intend to offer and the dollar value, the estimated dollar value of the sale, and that is what we were complying with. Of course, I recognize that any argument reduces to a ridiculous as Mr. Winn said, that would be just that ridiculous. We do not expect that to happen. We expect it to be negotiated out in something close to that number. That is the best estimate. And that is what the language of the act says we are supposed to provide you our best estimate of these things and the very fact it says estimated, I think implies that what we have—

Mr. WINN. Coming to \$2.2 billion.

General FISH. That there is a variance here.

Mr. WINN. What you are trying to do is live up to section 36(b) ?

General FISH. Yes, sir.

Mr. WINN. Informing Congress of anything over \$25 million ?

General FISH. Yes, sir.

Mr. WINN. Which you have done in the past.

General FISH. Yes, sir. This is not unusual.

Mr. WINN. You never had a directive by two other committees ?

General FISH. We had the directive from the House Armed Services Committee and we have said we fully intend to comply with that directive and we fully intend to comply with that and we have so informed the committees. When we know what the terms are, and we have got the details ironed out, we will, before we send a signed letter of offer, come to the Armed Services Committee 30 days beforehand to get their approval. We also know we had to inform this subcommittee before we start this negotiation.

Mr. ROSENTHAL. One of the additional problems with section 36(b) is it says for each letter of offer to sell under paragraph 1 and 2, the report shall specify the foreign country or international organization to which the defense article is offered, (b) the dollar amount of the offer to sell under paragraph 1 of the completed sale. It does not say the estimated amount. It does not say up to.

General FISH. We will—

Mr. ROSENTHAL. We have a tough legal problem here.

Mr. FORMAN. Mr. Rosenthal, if I heard you correctly, or reading the statute to say the dollar amount of the completed sale? That is a contradiction in terms.

Mr. ROSENTHAL. Dollar amount of the offer to sell under paragraph 1 or the completed sale under paragraph 2. But it says the dollar amount. I would read that to say whatever the deal is, that is what it has to say.

Mr. FORMAN. It is impossible, Mr. Rosenthal, to report to you under section 36(b) what the dollar amount is of a completed sale when section 36(b) prohibits from even issuing a letter of offer to make a sale.

Mr. ROSENTHAL. I understand it is an anticipated sale.

Mr. FORMAN. Yes, sir.

Mr. ROSENTHAL. I understand that. But it does not say in there an estimated or approximation, it says the dollar amount of the proposed sale. And when I pick this up, particularly in light of Mrs. Schroeder's interest in the cost thing, I assume we are going to sell 32 at \$2.2 billion. Anyhow, it is a problem.

Mr. WINN. I have no further questions.

General FISH. I would point out that the notification says, respective purchaser, NATO, total estimated value, \$2.2 billion. Description of articles offered, 32 E-3A airborne early warning training, spare parts and support equipment, and so on. But we have always said estimated value. This is not unusual. This is exactly the way we have done it for 14 months since the requirement has existed and it is again consistent with the similar case where we are selling to NATO allies in the case of the F-16.

Mr. ROSENTHAL. You are not complying with the law. The law does not say estimated value.

General FISH. There is no way we could know precise value because, as we have testified frequently in front of this subcommittee, it is subject to further negotiation, as Mr. Forman points out.

Mr. FORMAN. Let me make the further point that you cannot give an actual, even if you knew an actual, because the law says we cannot sell except on a basis where we are paid the full cost that we have to pay our suppliers, and unless we have a firm fixed price with our suppliers, which is a most unusual way of doing business, there is no way to know what the final cost of anything is that you are selling until after the delivery and a final settlement of a contract and all billings.

Mr. ROSENTHAL. You had better get the law changed.

General FISH. We provided to the committee on numerous occasions copies of 1513, which is the letter of offer and acceptance, which is prescribed in there, and we discussed in front of this committee—

Mr. ROSENTHAL. You have been extraordinarily forthcoming and overwhelmingly cooperative. It may be that with all those good points, none of us are in compliance with the law.

Mr. FORMAN. We pointed this out to the committee at the time the law was enacted. If you will look even further down, you will see the last item, I think, listed in section 36, I think says date of sale—which is a total impossibility. And that is why in our report we say the date reported to the Congress rather than the date of sale.

General FISH. I make the further point that 1513, it says that the country concerned will pay full cost even if they go up from what they agreed to. Because we have had occasions where we have had to go back and get more funds. They undertake to cover what our costs are which, of course, goes to the basic issue of price that has been raised by previous witnesses.

I can assure the subcommittee and the Congress, as was testified in front of the Senate yesterday, these aircraft will be sold at no lower

price than it costs us to buy our own, and because of the 4-percent recoupment on R. & D. and 2-percent administrative charge, there is only one thing. They can only cost more than it does to purchase our own.

Mr. ROSENTHAL. OK. Let me read from the committee report that this committee issued when 36(b) was enacted. It says a letter of offer is a formal indication that the negotiations have reached a stage where substantial agreement has been reached with the prospective purchasers. That is not the case. You should not have sent this letter of offer up here.

Mr. FORMAN. If that is what the committee report says, and I don't recall such a statement, it is inaccurate.

Mr. ROSENTHAL. What is inaccurate?

Mr. FORMAN. The committee report.

Mr. ROSENTHAL. How can the committee report be inaccurate?

Mr. FORMAN. Very simple. It is written by people who are fallible just like everybody else is fallible.

Mr. ROSENTHAL. We have to be bound by our own committee report until it is amended or changed by the law. I know what you are saying. You are saying that what is in the law is very difficult in real life to comply with, and you are bending and twisting to try and be well intended.

Mr. FORMAN. I am not saying that at all. I think there is a fundamental misunderstanding, perhaps, when you say when the negotiation has reached a certain stage.

Mr. ROSENTHAL. It says substantial agreement has been reached.

Mr. FORMAN. Well, substantial agreement has been reached to the extent that the country is interested in asking for a letter of offer.

Mr. ROSENTHAL. That is not what we meant by substantial agreement. Substantial agreement meant as to the deal.

Mr. FORMAN. How can you negotiate and reach substantial agreement when you have no authority under section 36(b) to issue the letter of offer? Moreover, I cannot find any such statement in the committee report.

General FISH. As we further testified in front of the full committee, the question has been raised to me personally, why do you come forward with this so late and tell us that we cannot really effect this, without doing serious damage to our relations with another country or with an international organization, because you have proceeded so far down that now we are informally at least committed in an attempt to be forthcoming? The point Mr. Forman raises, I will introduce for the record a request for letter of offer from NATO.

I will also introduce the letter, a classified statement by Admiral Weinel, with your permission, sir; it was presented to the Senate yesterday, outlining in detail the need for and to the extent there is NATO agreement.¹

We think there is substantial agreement and that we were obligated to come forward to the subcommittee and tell them so at this time.

Mr. ROSENTHAL. It would seem to me that number is one of the absolute elements of substantial agreement. Nobody has a number in this case.

¹ Both documents are maintained in the subcommittee files.

**STATEMENT OF MAJ. GEN. KENDALL RUSSELL, ASSISTANT
DEPUTY CHIEF OF STAFF FOR RESEARCH AND DEVELOPMENT,
DEPARTMENT OF THE AIR FORCE**

BIOGRAPHY

Major General Kendall Russell is Director of Development and Acquisition, Deputy Chief of Staff for Research and Development, Headquarters U.S. Air Force, Washington, D.C.

General Russell was born on Jan. 25, 1925, at Fort Leavenworth, Kans. He graduated from St. Albans School, Washington, D.C., in 1942, and entered the U.S. Military Academy at West Point, N.Y. He graduated from the Academy in 1945 with a bachelor of science degree, his pilot wings and a commission as a second lieutenant in the Army Air Corps. He has master of science degrees from Purdue University (nuclear physics) and the George Washington University (business administration).

He completed transition training and during 1946-47 served in Germany as a fighter pilot successively with the 366th Fighter Group and the 27th Fighter Group.

In July 1947 he returned to the United States and served as a fighter pilot with the 522d Fighter Squadron, Kearney Airfield, Nebr. In June 1948 he entered Purdue University, Ind., under the Air Force Institute of Technology program, and graduated in June 1950 with a master of science degree in nuclear physics.

He then was assigned to the Air Research and Development Command, Wright-Patterson Air Force Base, Ohio, as a nuclear weapons effects officer in the Directorate of Research. In July 1951 he was transferred with the command to Baltimore, Md., and served in the same capacity in the Directorate of Nuclear Applications. In May 1955 he was named Chief, Weapons Effects Section, Directorate of Development.

General Russell was transferred to the Air Research and Development Command's Ballistic Missile Division in Inglewood, Calif., in January 1957, and served in advanced systems planning involved with the evaluation of alternative intercontinental ballistic missile concepts. From September 1960 to June 1961, he attended the Air Command and Staff College, Maxwell Air Force Base, Ala.

He next was assigned to Headquarters U.S. Air Force, Washington, D.C., as a space systems staff officer in the office of the Deputy Chief of Staff, Systems and Logistics and later became Advanced Space Projects Officer in the office of the Deputy Chief of Staff, Research and Technology (now Research and Development). In May 1963 he moved to the Directorate of Development as a space development plans officer. During this tour of duty, he was awarded the Legion of Merit. From August 1965 to September 1966, he was a student at the Industrial College of the Armed Forces, Washington, D.C. He completed requirements for a master's degree in business administration from the George Washington University during this period.

General Russell was assigned to Headquarters Air Force Systems Command, Andrews Air Force Base, Md., in September 1966, where he became Director, General Purpose and Airlift Systems Planning, in the office of the Deputy Chief of Staff, Development Plans.

In July 1968 General Russell assumed duties as Director, Airborne Warning and Control Systems (AWACS), Headquarters Electronic Systems Division (ESD), L. G. Hanscom Field, Mass., a post he held for five years. He served briefly as Vice Commander of ESD and in July 1973 was reassigned to Headquarters U.S. Air Force as Director of Development and Acquisition.

General Russell is married to the former Polly Puckett of Columbus, Miss. They have four children: Sherard, Kendall, Andrew, and Letitia.

He was promoted to the grade of major general effective June 8, 1973, with date of rank July 1, 1970.

General RUSSELL. Mr. Chairman, implicit in appreciation of our discussions is a necessity to understand the extreme complexity of people who have to come into agreement. We are dealing with over a dozen sovereign nations, each with their own Parliaments, with their own social and economic problems. We are talking about the largest joint venture that NATO ever undertook. The only other similar cooperative program that could be made a rather close analogy would be the undertaking of the NADGE system—the NADGE system being the firmed ground air defense command and control system of Europe. That

was jointly funded by NATO in a very complex arrangement which also required many years of negotiations to establish how the funding should be shared and how the participation and production and so forth, would take place.

Here we are talking about a program, a venture of many larger proportions. Each nation has to have the right to understand what it is getting into, how much is it going to cost, how much is it going to cost me, my Nation, what do I get out of it, what are the trades between numbers of aircraft capability per aircraft, and the only way they can get valid data is to request it of the producing nation.

We have entered into a contract definition effort with them. On this endeavor the Congress was informed last May. It is a definition effort to define the proper configurations.

This is in the business world of NATO as compared to the military world which has already established its firm requirement and its operational concept. They have defined the job to be done. And as one makes the trades between configuration and numbers, than there is a process to define price and sharing, and we are at the front end of that. We are approaching the first, the end of the year's contract definition effort which will result in a document which is capable of being a baseline for negotiations. That will be the initial letter of offer.

General Fish has described the notification to the Congress of our intention to respond to their request for that letter of offer.

Mr. ROSENTHAL. Thank you very much. Mr. Solarz.

Mr. SOLARZ. Thank you. I, unfortunately, never got up to offer and acceptance in contracts in law school, since I left after the first 3 months, so I hope you will not mind if I switch from the procedural to some of the substantive questions.

General Fish, why does NATO need this system? They seem to have gotten by fairly well since the end of World War II without it. Why do they need it now?

General FISH. I will ask General Russell to address that subject.

Let me just say that we did have a very detailed presentation yesterday in front of the Senate Armed Services Committee, and I would recommend that as a part of the official record describing the requirement. It is basically a multiplier of our effectiveness over in NATO.

General Russell.

General RUSSELL. Thank you, Mr. Solarz. I appreciate this opportunity very much. It is germane to review NATO's involvement in the AWACS program.

As you well appreciate, the invention of radar had a very profound effect on how we did things during World War II. For the first time we could see in the dark, we could see at long range and could see in bad weather. The one restriction that still remained was the line-of-sight restriction. Our big surveillance radars had to be mounted on the ground, and we could not see low fliers. Ever since World War II, people who design offensive systems have taken to designing low-altitude attack systems.

You also appreciate that with jet engine technology you take an enormous penalty to fly at low altitude, both in range, speed, and payload. Nevertheless, we have been willing to pay that penalty, and in the final analysis that enormous penalty was just taken to underfly radar. There has been a switch in the equipment the Soviets have been supplying to the Warsaw Pact in the post-1960 time period. They switched

from defense fighters to offensive strike fighters, Fencers and Floggers. These are posing a very severe threat to the European environment where distances are particularly short and, therefore, time scale enormously short.

There is the common knowledge of a pressing need to be able to gain warning time and to be able to see how a surprise attack might take place.

The temptation is that one could make a surprise attack out of maneuvers that are held at periodic intervals. If one could watch those maneuvers, one would lower the opportunities where successful attack could be threatened. I think a little surprising to me is that some of the opponents of this AWACS system have been of a bent of mind where we ought to see a stabilization rather than a sharpening of the confrontation situation. AWACS is a very stabilizing presence.

Mr. SOLARZ. Are you saying that given the equipment currently available to the Warsaw Pact, and the radar equipment presently available to NATO, that the pact nations now have in fact the capacity to launch a surprise attack that would elude our efforts to detect?

General RUSSELL. There are routes through that area where there would be no radar detection.

The main radars that provide the early warning even for airplanes at high altitude, many of those heavy radars are on political borders where as you know, there are great big white domes, and we could not expect them to last even minutes.

Mr. SOLARZ. So the establishment of this system presumably would give us the capacity to detect a surprise attack which we do not have now?

General RUSSELL. And lower the temptation for anybody to ever want to select that solution. So for a deterrent value, it is major.

Mr. SOLARZ. Would it still be possible to launch a surprise attack that even this system would not be able to detect?

General RUSSELL. It would be far more difficult by many orders of magnitude. This radar is by far the most electronic countermeasure resistant radar we have built. It was one of the major reasons why NATO focused its attention on this as its solution.

Mr. SOLARZ. Do we have an offensive capacity in terms of an ability to launch a surprise first strike comparable to what the Warsaw Pact countries have?

General RUSSELL. In Europe?

Mr. SOLARZ. In Europe. In other words, you described the Flogger and the other plane, an offensive fighter that could get in under our existing radar. Do we have similar equipment that could enable us to do on the Warsaw Pact countries and the Soviet Union what we are afraid they might do to us?

General RUSSELL. Of course, that is a political decision and we have postured ourselves to absorb a first strike.

Mr. SOLARZ. I am not talking about whether we have plans to conduct a first strike. I want to know whether we have the capacity to do it. Do we have comparable equipment which would enable us to do to them what you say they could do to us?

General RUSSELL. There are many judgments that go into that equation in types of equipment and how one would employ and I

would rather defer that to an operational commander to answer the question.

Mr. SOLARZ. Do the Warsaw Pact countries have a radar alternative comparable to the AWACS system that you are recommending that NATO develop?

General RUSSELL. My answer to that is, no, sir, they have airplanes that look quite similar, called the Moss. In capability it is like our early EC-121 aircraft.

Mr. SOLARZ. If we go ahead with AWACS, we would have a defensive capacity they did not have?

General RUSSELL. Yes, sir, absolutely.

Mr. SOLARZ. Assuming the need for such a system, were any other alternatives considered?

General RUSSELL. Yes, sir.

Mr. SOLARZ. Indigenous European alternatives or other American alternatives?

General RUSSELL. Yes, sir. In 1973, in recognition of this evolving threat, NATO organized a special study team to study solutions to the problem. The first solution they came to was that this airborne early warning was the proper approach. The choices being living with the limitations of ground radar or going to the air. They made the choice of going to the air. Subsequently, they formed another special study team to study the various alternatives of having an airborne early warning capability. There were three nominees. The United Kingdom offered a variant of their Nimrod aircraft with a radar yet to be developed. The United States, in late 1973, offered either of two systems—either a system based on the E-2C or based on E-3A.

Mr. SOLARZ. Which one of those is the Hawkeye?

General RUSSELL. E-2C is the Hawkeye.

Mr. SOLARZ. And E-2C is AWACS?

General RUSSELL. E-3A is AWACS. This study team studied these three aircraft as they were proposed and as NATO envisioned they might want to modify them. The decision was that the U.S. E-3A was the proper approach to take and that decision was referred to the Conference of National Armaments Directors who endorsed that decision and passed it to the Ministers.

Mr. SOLARZ. Were those decisions arrived at unanimously?

General RUSSELL. Yes. The decision that AWACS was the proper approach was a unanimous decision.

Mr. SOLARZ. The British concurred in that, even though they were offering one of the three alternatives?

General RUSSELL. Yes; that is their approved preferred approach.

Mr. SOLARZ. You will forgive me if I ask these questions because I am relatively new to the debate. Looking at some of the literature that has come out in our own country a number of people seem to be arguing that while the Hawkeye system did not have the complete capacity of the AWACS system, it seemed to make more sense on a cost-effectiveness basis, because it was far less expensive. Any Hawkeye limitations vis-a-vis the AWACS could be more than compensated for by purchasing a greater number of Hawkeye's than AWACS—which would from an economic point of view—leave us better off than if you went for the more expensive AWACS system.

Could you address yourself to that objection?

General RUSSELL. Yes, sir; NATO made that direct judgment and came to the conclusion that AWACS was the more cost effective.

Mr. SOLARZ. Who came to that conclusion?

General RUSSELL. The NATO group.

Mr. ROSENTHAL. Was that military people or Defense Ministers?

General RUSSELL. It was done in both contexts, sir. The trimilitary NATO commanders, that is SACEUR, SACLANT, and CINCHAN, they prepared a requirement for an airborne early warning system that could only be satisfied by the AWACS. They also wrote an operational concept and these two efforts were endorsed by the military committee of NATO, which is our highest military body. Incidentally, that was unanimous.

Mr. ROSENTHAL. Would you yield? Just so the record is straight, the NATO Defense Ministers neither confirmed the requirement for an early warning and control capability nor agreed to purchase such a capability, and they delayed their consideration until their spring ministerial meeting.

General RUSSELL. I was referring to the Military Committee, which accepted the requirement and acknowledged it as a priority 1 NATO requirement.

Mr. ROSENTHAL. I think that is correct. So the record is correct, the Defense Ministers have not approved this yet.

General RUSSELL. What the Foreign and Defense Ministers have done at the Conference of National Armaments Directors, which reports to the Ministers, accepted that the proper approach was a derivative of the AWACS system. That has been reported to the Ministers in May 1975.

Mr. ROSENTHAL. The Defense Ministers?

General RUSSELL. They further acknowledged what the Conference of National Armaments Directors supplied them in the Fall of 1975 and endorsed interested nations in—

Mr. ROSENTHAL. Have the Defense Ministers approved this yet?

General RUSSELL. I have difficulty with the word approval in that there is no way that such approval can be done all at once. They have to go through a step-wise procedure to understand such matters as cost and shares before they can ever make a final approval. So far they have endorsed the Military Committee's establishment of a requirement.

Mr. ROSENTHAL. The communique issued by the NATO Defense Ministers in December 1975 says that they had postponed decision until the ministerial meeting in 1976, which has not yet been held. I do not know why, but I am having trouble with English today.

General RUSSELL. Among other things, they endorsed the preparation of costing and assessment of a specific proposal such as a system for consideration at their spring 1976 meeting, and that is what we were addressing today, the preparation of this information so that they can make a judgment.

Mr. SOLARZ. Your prior testimony was that this committee, which presumably submits a recommendation to the—

General RUSSELL. That is the military side of NATO now and they have established the requirement, yes, sir.

Mr. SOLARZ. But in order for NATO to officially request it, what has to be done?

General FISH. Let me address that. I said I would submit this for the record. But I believe that even though it is classified, let me quote one sentence. On behalf of NATO nations, in accordance with the guidance from the high level group, NAPO, which is the NATO AEW program office, requests U.S. Government to provide a letter of offer for sale of a variant of E-3A aircraft to the NATO nations. There is more. I will submit for the record.¹ We have an official request from NATO on behalf of the NATO nations.

Mr. SOLARZ. How did the AWACS system compare in price to the other two alternatives that were under consideration?

General FISH. I think again, we can get all that for you for the record.

Let me say that yesterday at the Senate, the Director of Defense Research and Engineering testified that the recent study that they accomplished, showed that the E-2C could not do the job required in NATO Europe. That is his testimony.

There was a recent study, which is classified as to details, that supports that. It was one that previous witnesses referred to and that is the way it was characterized by the head of the Defense Research and Engineering.

Mr. SOLARZ. From a technical point of view?

General FISH. It cannot do the job.

Mr. SOLARZ. And the Nimrod system?

General FISH. The Nimrod system was not addressed.

General RUSSELL. The Nimrod was considered by the NATO study group and was not selected.

Now, I would say that if a NATO AWACS program did not come about, I would think that the United Kingdom would pursue their Nimrod solution. At this time the United Kingdom clearly prefers, despite their economic problems at home, I might add, and their employment problems, to join in a joint venture as opposed to going their own way. If there is no joint venture they will be forced to go their own way because the military requirement is that pressing.

Mr. SOLARZ. I just have one final question. Assuming the validity of everything you have said with respect to the method by which this decision at least tentatively was made by the NATO alliance, it would appear from a technical point of view, of the three alternatives, this would be the most effective. That leaves, I think, the question of price to consider. I wonder if you could address yourself to, first, what I was understanding was the existing DOD regulation which requires the full recoupment of all R. & D. costs associated with a particular system—which I gather is not the case here. Second, could you address yourself to the point our distinguished colleague from New York made in his testimony that in effect, there is a kind of double subsidy here? On the one hand, we are going to be selling them the system at about \$68 million per plane despite the fact that when according to his research, the lowest price he has seen is \$104 million. Above and beyond that, whatever the final agreed-upon price was, we will be obligated to pay 25 percent of it.

Why are we not requiring them to pay the entire R. & D. share of that purchase and, why do we appear to be selling it at such a significantly lower level than the amount that we have paid on a per plane basis so far?

¹ The document is maintained in subcommittee files.

General FISH. I would like to. We are not selling it at bargain prices. We will sell the airplane at full recovery of our production cost plus an R. & D. surcharge of 4 percent, and I am going to have Mr. Forman address the regulation—we do not think it was proper to characterize it earlier.

The difference here is fundamental. The difference is the sunk R. & D. costs which have been spent, as some of the questioning, I think brought out earlier. From here on we either can recover some of the R. & D. or not. The thing is we are building 13 of these airplanes for ourselves so far. The committees have authorized long-lead procurement for six additional aircraft. And incidentally, they were for our own force, and the costs of those aircraft are going to be reduced if we sell to NATO, and we will not be selling these aircraft at less than our costs but rather for production costs plus R. & D. recoupment of 4 percent and 2 percent for administrative charge.

I would like to have Mr. Forman address your earlier question as to policy on R. & D. recoupment charge.

Mr. FORMAN. Mr. Solarz, the previous witness, I believe it was Mr. Downey, in stating either his understanding of what the regulation requires or what the GAO had allegedly summarized it to require was, I believe, an error.

As I recall that testimony, it was to the effect that the imposition of a 4-percent surcharge in this case constitutes a waiver or departure from the general requirement of the regulation for a complete pro rata share. In fact, what has happened here is just the reverse. The regulation which is Department of Defense directive 2140.2, states that—I am reading from section 4(a) of that regulation—“that no nonrecurring research and development costs applicable to the model under consideration normally will be applied.”

Let me emphasize the word “normally” will be applied in an amount not greater than 4 percent of the total FMS or direct sales price for a major defense equipment. However, when major defense equipment items have been in production for less than 5 years the Director of Defense Research and Engineering may request that the Director of Defense Security Assistance Agency obtain a greater recovery of R. & D. costs for selected items.

In summary, what the directive says is you normally charge 4 percent and on an exceptional basis the Director of D.D.R. & E. which is Dr. Currie, may recommend to General Fish that in that particular case we deviate from the normal and ask for more.

Now, in this case we followed the normal, because of reasons which have been previously stated on several occasions going back 2 years, to a number of committees of Congress, that the 4-percent normal is what should be followed here rather than a deviation.

Let me add in this respect that this requirement for charging R. & D. is not a statutory requirement. It has never been a statutory requirement. This was imposed internally within the Department of Defense and has been in existence for some 10 or more years. It is an internal matter, a matter of discretion by us. The pending legislation before the conference committee right now on security assistance legislation for fiscal year 1976 does not change that in any respect insofar as con-

cerns the House version. The House version is silent. It would still impose no requirement for such surcharge at all.

The Senate version in contrast, provides that there should be a proportionate amount recovered but then significantly in the context of this hearing, goes on to say that the President may reduce or waive the charge which would otherwise be considered appropriate for particular sales that would if made, significantly advance U.S. Government interests in NATO standardization.

Mr. ROSENTHAL. General Fish, Senator Eagleton is here. We are very anxious to hear from him. I wonder if you fellows could stay in order to respond to further inquiry. If you want to develop anything further we would be happy to do that at that time.

We are very pleased you could be with us. We are delighted to have you.

STATEMENT OF HON. THOMAS F. EAGLETON, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator EAGLETON. I thank you for your courtesy and Congressman Winn, and thank you gentlemen for permitting me this opportunity to testify.

I welcome this opportunity to testify in support of a concurrent resolution to disapprove the Air Force's proposed letter of offer to NATO for 32 airborne warning and control system (AWACS) aircraft at a sale price of \$2.2 billion.

As I will explain more fully, it is my belief that this notification—purportedly submitted in accordance with the reporting requirements of the Foreign Military Sales Act—represents an extralegal effort to receive the tacit congressional approval for a sale the details of which are unavailable. If this proposed offer goes unchallenged, it is my view that it will stand as a precedent which could seriously distort the intent of section 36(b) of the Foreign Military Sales Act, a provision of law intended to offer Congress an opportunity to scrutinize and control, through a veto process, arms sales to foreign nations.

I would like at the outset to discuss the accuracy of the section of this notification entitled "Description of articles or services offered." Under the category the Defense Department has listed "Thirty-two E-3A airborne early warning aircraft, training, spare parts and support equipment."

As this committee has no doubt already determined, there is no practical basis to assume that NATO will purchase 32 AWACS. In fact, it remains a highly questionable proposition that NATO will purchase any of these aircraft. The number 32 was apparently picked out of the air as the optimum number to sell to NATO * * * whether or not the number corresponds to a realistic expectation.

The general category "description of articles * * * raises other questions as well about the individual items the Air Force wishes to sell. It leads one to ask the most element question, "What is an AWACS?"

In the broadest terms, there is an answer to that question. AWACS is a look-down radar and tracking system, designed to command and control friendly aircraft in a tactical air environment.

But describing the AWACS which might one day be used by NATO is a more difficult matter. As a matter of fact, NATO has not yet

decided which of several possible AWACS configurations it will use, if any.

When AWACS was first justified on the basis of a primary mission of tactical command and control, it was to be built in what was called a CORE, or block I, configuration—a bare-bones structure suitable for AWACS' former role, strategic air defense of the United States. In a November 2, 1973, letter to the Secretary of the Air Force, Deputy Secretary of Defense William Clements recognized the need to make major changes in the CORE model when he said :

* * * it is evident that a more capable configuration than the CORE is essential to support general purpose tactical forces.

As a result of Deputy Secretary Clements' directive, a number of tactical subsystems were proposed, including a self-defense mechanism, a secure communications system and a maritime surveillance capability. These systems are still under development today. A December 4, 1974, Defense Department budget memorandum had this to say about the Air Force's efforts to satisfy Mr. Clements' directive :

Despite two Deputy Secretary of Defense memorandums which directed that the Air Force actively pursue a more capable configuration than the CORE * * * the service has continued on a program path which will lead to production of 24 of the (first) 31 aircraft with a CORE configuration * * *.

Last year an independent panel of experts examined charges that AWACS could be easily and inexpensively defeated by electronic jamming. The panel, which was paid by the Defense Department, used great caution in concluding that jamming might be a secondary consideration if certain enhancement features were added to the system to make it more resistant to jamming. These recommendations have been studied. They have not yet been costed or programed by the Air Force.

At the time these studies were being conducted, a NATO technical center was also looking closely at AWACS. In two studies, which were subsequently reviewed by the General Accounting Office, NATO set forth its own preliminary set of enhancement features. Assuming that AWACS would perform the mission set for it by the U.S. Air Force—an assumption later questioned—NATO demanded a plane which had increased tracking capacity, a maritime capability and the ability to interface with the large number of NATO command and control systems operated in Europe.

Mr. Chairman, I have reviewed this history to show the committee that AWACS has many faces, most of which are still on the drawing board. There is no real AWACS beyond the CORE model designed years ago to defend the United States against a Soviet bomber attack. As for the plane offered for sale in this notification, it is impossible to define—it is a myth.

More directly to the point, the proposed buyer here, the North Atlantic Treaty Organization, has never established a configuration for the AWACS it would buy. More recent, informed speculation is that the NATO Council might settle on an austere version, adopting the AWACS radar but using existing ground-based command and control computers for tracking. The following quote from the November 1975 edition of the authoritative military journal *Defense and Foreign Affairs*, reflects the latest thinking within NATO :

* * * as the operational requirement comes nearer to being written, it is increasingly likely that the core of NATO commanders are going to reject this

"command post in the sky" aspect. Their airborne warning aircraft, they state, would be required only to pass track and target information to the ground environment—and that is where senior decisionmakers will operate the NATO combat aircraft.

Mr. Chairman, if NATO ultimately decides to take only the AWACS radar, it is conceivable that the low per-unit price listed in this notification, approximately \$68.7 million, would be reasonable. But until NATO decides on a configuration, Congress cannot make a judgment as to the accuracy of the price information now provided.

Last year Deputy Secretary Clements approved a budget decision which stopped any further production of AWACS. No money would be requested for fiscal 1976 production and, according to that decision memorandum, "Resumption of AWACS production would be dependent on U.S.-NATO agreements on requirements, configuration and cost-sharing." Unfortunately, that decision was later reversed.

However, the plain fact is there are today no U.S.-NATO agreements on requirements, configuration, and cost sharing. Despite this notification, no NATO nation has committed itself to purchase a single AWACS. That is why this notification is premature and, unless rejected, could be subject to serious misinterpretation both in the United States and in Europe.

Mr. Chairman, the failure of the Defense Department to meet minimal standards in the description of this proposed offer raises serious policy questions as to the implementation of the reporting provisions of the Foreign Military Sales Act. The section of that act involved here, commonly known after its author as the Nelson amendment, was intended as a mechanism to control arms sales by assuring prompt and accurate notification of pending sales agreements.

I have heard the argument that this notification was submitted simply to satisfy Congress' desire to be informed at an early stage. As is reflected in the Senate-passed amendments to the Foreign Military Sales Act, Congress does want to be advised at the takeoff with respect to foreign arms sales.

Nonetheless, I think it is safe to say that we do not want to receive official notifications which are amorphous as the one before us. Such formal notifications, of course, trigger the 20-day veto mechanism with all the attendant implications attached to whatever action or lack of action Congress might take. What we should properly demand are informal prenotifications which do not trigger the legislative veto process. That is what is contemplated by the amendments to the Foreign Military Sales Act now in a House-Senate conference.

I think it is also important to recognize that AWACS is in many ways a very special case. The authorizing committees of Congress have stated categorically that the prospect of a NATO sale is the most crucial policy consideration in deciding whether to approve the AWACS program. The Senate Armed Services Committee, for example, in its May 19, 1975, report on the defense authorization bill said:

* * * the committee warns that the United States will not be procuring NATO's share of the AWACS program.

The House Armed Services Committee, concerned that the Department of Defense might try to sell AWACS to our NATO allies for approximately 50 percent of the cost to the U.S. Air Force, stated as follows:

* * * 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.

Mr. Chairman, the full and complete report requested by the House Armed Services Committee was not submitted prior to our receipt of this notification. In fact, it would be impossible to submit such a report on the basis of the information now available on this offer.

What is important to understand is that Congress has been intimately involved in overseeing the prospective NATO sale, long claimed to be imminent. There is, therefore, absolutely no need to gratuitously notify Congress under this highly formal legal procedure. The explanation, therefore, that this notification is simply an effort to comply with Congress' need for prompt information simply does not wash.

The Pentagon has cited an agreement signed in December 1975 by the NATO Defense Ministers as one basis for this notification. If the signing of this document did in fact suggest an impending sale, we must ask why this notification was not submitted even more promptly. If we accept the Pentagon's reasoning, we must ask, "Why did almost 2½ months go by before this notification was submitted?"

More importantly, we must ask whether the December 1975 document does represent a valid basis for a sale notification. That memorandum simply notes the views of the NATO military authorities that an airborne early warning and control capability is required by NATO. The Defense Ministers agreed only to consider a proposal for the acquisition and operation of such a system at their spring ministerial meeting, nothing more.

As is pointed out in an excellent memorandum on this subject prepared by the Library of Congress:

The NATO Defense Ministers neither confirmed the requirement for an airborne early warning and control capability nor agreed to purchase such a capability.

That memorandum points out that even under Defense Department regulations, letters of offer are supposed to be submitted for final DOD approval only at a late stage in negotiations "after substantial agreement has been reached."

The Defense Department has asserted that one or two NATO nations may agree to contribute toward long-lead funding of AWACS in the near future. While I consider this possibility remote, I would suggest that it would be appropriate to notify Congress at such time as an agreement of this type is ready to be consummated.

The Air Force has negotiated intensely with NATO over the past few years. A mountain of information has been exchanged, including price quotations. It is, therefore, erroneous to claim that these negotiations cannot continue in the absence of a 36(b) report. When any NATO nation is ready to show us the color of its money, Congress will anxiously await notification of that fact.

One last important legal point which, in my view, completely invalidates this notification. Under the category "Prospective Purchaser," the acronym "NATO" is listed. Yet, NATO—the North Atlantic Treaty Organization—has absolutely no authority to obligate

its member nations, without their agreement, to purchase weapons or weapons systems.

If a group of NATO nations, but not all member-nations, were to establish an entity to conclude this purchase, the United States, under the Foreign Military Sales Act, could not legally deal with that entity. Such an entity would be classified as an "agent" under the law and the United States cannot sell arms to an agent representing a foreign nation or an international organization.

Short of an unprecedented grant of sovereignty to NATO by its member-states, the only way a sale of AWACS to NATO nations could be transacted would be through each of the participating nations. A separate memorandum of understanding would have to be concluded with the individual buyer-nations. This point is also made in the Library of Congress memorandum to which I have referred.

Mr. Chairman, I ask that this memorandum be made part of the record of this hearing.

Mr. ROSENTHAL. Without objection, it shall be.

[The document referred to follows:]

LIBRARY OF CONGRESS MEMORANDUM TO SENATOR THOMAS F. EAGLETON

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., March 8, 1976.

To Hon. Thomas Eagleton.

Attention Brian Atwood.

From Herbert Y. Schandler, Specialist in National Defense.

Via Chief, National Defense Section.

Subject Arms Sales Procedures.

This is in response to your request concerning the procedures of the Department of Defense in the sale of defense items, and whether those procedures were followed in the offer of the sale of AWACS to NATO.

Department of Defense (DOD) procedures concerning military sales are detailed in the Foreign Military Sales Act and in DOD directives and instructions. These procedures have been brought together and interpreted in the DOD Military Assistance and Sales Manual (portions of which are attached) and in congressional testimony (also attached).

Generally, requests for arms sales come from the foreign country involved. "Only in the case of NATO," according to the Director, Defense Security Assistance Agency (DSAA), "does the Department of Defense participate in the evolution of foreign military requirements." An essential characteristic of military sales, according to the Military Assistance and Sales Manual, is that all sales are negotiated. Both the buyer and the seller must be satisfied before a transaction can be concluded.

It would appear, in general, that the proffering of a formal Letter of Offer is at a late stage in these negotiations after substantial agreement has been reached. The Military Assistance and Sales Manual states that these Letters of Offer should be submitted to the Comptroller, DSAA "when it is in such form that it would be signed and issued to the purchaser" but for the requirement of DSAA authorization.

Insofar as the purchase of AWACS by NATO is concerned, the NATO defense ministers, at their meeting in December, 1975:

* * * noted the views of the NATO Military Authorities that an airborne early warning and control capability was an urgent military requirement for NATO. They agreed to consider (in consultation with other Allied countries), at the Spring Ministerial Meeting of 1976, a proposal for the acquisition and operation of such a system, with a view to making a decision at that time.

Thus, the NATO defense ministers neither confirmed the requirement for an airborne early warning and control capability nor agreed to purchase such a capability. They merely requested financial information on acquisition and operating costs of such a system, and indicated that a decision on procurement would be made next May at their spring meeting.

The proposed Letter of Offer to NATO from the Department of the Air Force on February 27, 1976 for the purchase of 32 E-3A Airborne Early Warning Aircraft, training, spare parts, and supporting equipment is one way of providing to NATO the requested information on acquisition costs of such a system. It is not the only way of providing such information. Defense Department regulations are silent, however, as to what point in the negotiations a Letter of Offer should be processed.

Another question arises, however, as to whether the prospective purchaser—NATO—is indeed a prospective purchaser within the meaning of DOD regulations. NATO as an entity, and as presently constituted, has no authority to obligate its member nations, without their agreement, to purchase weapons or weapons systems. Thus, the prospective purchaser cannot be NATO as a principal unless there is an unprecedented grant of sovereignty to NATO from its member states for this purpose. If the purchase is not to be concluded with member countries, NATO must establish or identify a legal entity to conclude this purchase. The purchase would then be a cooperative venture in which each country which desires to participate must agree as to the extent of its participation and contribution to the system. In this case, NATO or the subgroup it establishes, would be acting in the capacity of an agent for its participating member nations. The Foreign Assistance Act does not address sales to agents, either of nations or of international organizations.

Thus, it would appear that, without an unprecedented grant of sovereignty to NATO by certain of its member nations, the AWACS system will, in reality, be bought and owned by individual nations. A separate Memorandum of Understanding (MOU) will have to be concluded, either with the NATO agency or with the U.S., by each of the participating nations. Recent reports indicate that funds for AWACS would probably come from the U.S., Canada, Britain, and Germany, with some of the smaller countries of the Alliance participating in the purchase of the ground environment equipment. The number of countries to be involved is not known at the present time. Therefore, separate Letters of Offer to the participating nations cannot be prepared.

In summary, this Letter of Offer to NATO for a weapons system would seem to be unique for a number of reasons:

1. While conceivable, it is doubtful that NATO is a "prospective purchaser" within the meaning of DOD regulations and current legislation. More likely, the member nations of NATO will make individual decisions as to their purchase of components of this system, and will receive national ownership of these components.

2. As a member nation of NATO, the U.S. is in the unique position of being the seller as well as participating in the purchase.

3. If ownership of this system passes to NATO or a NATO agency, a unique control problem will be involved. Questions such as the manning, stationing and utilization of this system during peacetime would offer problems not previously faced by NATO. National ownership of systems which are placed under NATO operational control would eliminate many of those problems.

Senator EAGLETON. Mr. Chairman, in light of the issues I have raised today, I think it is fair to say that this notification is highly improper. While, of course, I have no proof, this report appears to be motivated by something other than a desire to keep Congress informed. It raises fundamental questions about the way we, in Congress, want the reporting procedures of the Foreign Military Sales Act implemented.

I think it is clear that we do not want to receive worthless information about a sale which may never take place. It is equally clear that Congress would like some prior knowledge of ongoing negotiations—knowledge we do possess in the case of AWACS. But we do not want this veto mechanism triggered until substantial agreement has been reached as to the terms a letter of offer will contain. It will be impossible to make this provision of law work if we do not insist on at least this measure of commonsense.

AWACS is a controversial system. Its workability has been challenged by military experts within the General Accounting Office and the Pentagon, and Congress has kept the program under careful review. We have made NATO's decision to purchase this system the bellwether for further production of AWACS beyond those few aircraft required for U.S. use.

As an author of this disapproval resolution in the Senate, I can state that its adoption by Congress would in no way prejudice whatever future decisions NATO might make. The Defense Department will continue to have the right to engage in preliminary negotiations on this matter, and Congress would reserve the right to consider an actual sale to individual NATO nations and to authorize the degree to which the United States will participate in a purchase as a NATO member.

While I remain convinced that NATO will not choose to buy this system, I want to assure this committee that I would not object if a legitimate sale to NATO nations were to be proposed.

Mr. Chairman, I urge the committee to recommend House approval of this resolution introduced by my colleagues, Representatives Pat Schroeder and Tom Downey. I thank the subcommittee for giving me the opportunity to testify here today.

Mr. ROSENTHAL. Senator, thank you very much for a very thoughtful and incisive statement.

You have followed this program for a number of years. Do you have any insights as to why this notification was made at this time?

Senator EAGLETON. Well, I would be speculating, Mr. Chairman, but I think it is a classic exercise in self-aggrandizement.

The Pentagon and the Air Force are trying to enhance the marketability of this very beleaguered weapon system that now costs more than \$118 million per copy, the most excessive airplane ever designed by mortal man. And in order to try to give some hope that this staggering price could be reduced, they are holding out the possibility that the NATO nations are going to buy 32 of these planes. I do not think the Pentagon, in their inner recesses of faith, believe this will occur, but this is their showing that NATO is going to buy some of these flying turkeys.

Mr. ROSENTHAL. You think this notification is sheer speculation? Assuming a resolution of disapproval were not voted in the affirmative, could somebody say that that was a tacit approval of the AWACS program?

Senator EAGLETON. Yes, exactly. The 20 days go by and Congress takes no action, then Congress is, to use your word, tacitly approving this situation. We, in essence, tacitly agree that the NATO nations are going to buy 32 of these. It injects us into the process and makes us a part of it, wittingly or unwittingly.

Mr. ROSENTHAL. Is it your view that the process we designed to protect the country and the Congress from these things is being turned around?

Senator EAGLETON. Yes, sir, I think, as a very clever utilization of the process by which we want to be notified of a specific sale, a specific price on a specific delivery date, and we would judge this was a sale that we thought was in the national security or foreign policy interest of this country. This is a clever adaptation of that to get Congress to be a bed partner of the Pentagon on the AWACS system.

Mr. ROSENTHAL. A Good Housekeeping seal of approval.

Senator EAGLETON. Yes.

Mr. ROSENTHAL. I think you have already answered it. But as far as your own bona fides are concerned, if there were a legitimate sale to a NATO country of AWACS, would you file a resolution of disapproval?

Senator EAGLETON. If it were a legitimate sale, if somehow Luxembourg thought for its national survival it needed 10 AWACS—which by the way, would cover the whole country, they could not park them on the runways, they are so big. But if Luxembourg made a specific offer for hard cash to buy some of these, one could say that it would be beneficial at least to bring the per unit cost down. I would wait a long time for any kind of specific offer from any NATO nation to buy even one.

Mr. ROSENTHAL. Why are you so skeptical about a proposed sale to a NATO country?

Senator EAGLETON. Mr. Chairman, the AWACS is this day's version of the ABM. Congress went through that one at the behest of the administration, and we had to design an ABM system for a purpose we did not then know, and we knew at the time we were deploying it, it did not work. It had one major shortcoming. It was very easily blinded. Knock out the ABM radars and it was gone. This is the same thing with respect to AWACS. It is easily blinded by jammers. It depends for its efficacy on radars, and they can be very easily jammed.

GAO did an extensive amount of research on this point, and it was made part of the record, I know, on the Senate side. I believe it was likewise inserted on the House side.

AWACS can be easily jammed in peacetime by Warsaw Pact jammers seeking to mask movement within their territory. In time of war, it is not only easily jammed, but it is about as vulnerable as an aircraft carrier. And in time of war AWACS would be among the first planes to go.

Mr. ROSENTHAL. Do you have any knowledge of or feeling of how any sale along this line might impact on the NATO standardization program?

Senator EAGLETON. Well, the NATO standardization program, I think we have to discuss what we mean by that. The Pentagon seems to mean that standardization is fine if every other nation in the world will take American equipment. They would like NATO standardized to adopt all American designs whether tanks, planes, or what have you. It is standardization if you will go along with us.

The Germans, who try to view it as more of a two-way street, as it rationally should be, have indicated that unless we at least give some consideration to an offer to buy the Leopard tanks, they are not going to buy the AWACS. They happen to think they have the best tank design currently available, and if we are not going to play ball with them on this, they are not going to play ball on AWACS. Indirectly, this becomes part of the standardization debate.

Mr. WINN. Thank you, Mr. Chairman.

Senator, we are glad to have you over on our side today.

Senator EAGLETON. Thank you.

Mr. WINN. You made a statement that if they dealt through NATO, that NATO was an illegal agency for purchasing, as I understand your comment?

Senator EAGLETON. That is from the Library of Congress memorandum.

Mr. WINN. Well, for your edification and ours, too, we are all illegal then, because there is an organization which you are familiar with called NAMSA. That is an agency, and they have been purchasing for NATO for quite some time.

Senator EAGLETON. Well, I am not going to try to debate with you Mr. Winn, the specifics of the Library of Congress' legal opinion. It speaks for itself. It is worth what it is worth.

It is no precedent, as you well know. The fact we may have engaged in some previous illegality that does not give legal sanction to a subsequent illegality. Nonetheless, the distinction the Library has made is that this is the first weapons system—NATO has never bought a weapons system.

Mr. WINN. I am sure you wanted to clarify that in your statement.

Senator EAGLETON. If that be illegal, it has to fall of its own weight, and I am not going to shed any tears.

Mr. WINN. I am not going to say it was illegal.

Senator EAGLETON. AWACS purchased by NATO, if that is the purchasing agent, the Library of Congress has serious doubts about its legal efficacy.

Mr. WINN. I am interested in your statement, Senator, why you are so sure that NATO or NATO agencies or NAMSA, or whoever does the purchasing, will not buy the AWACS system. We have been working with NATO for 3 years now on AWACS system, an airborne warning and control system, and now you are saying that they will not buy it.

Senator EAGLETON. Well, I take it on the same basis as I was convinced that the ABM system would become instantaneously obsolete because of its capability being blinded. The same applies with respect to NATO. They know the deficiencies of this system, and they know the costs.

Second, if we were talking here about an F-16 or F-18 that was coming in at, say, \$10 million or \$12 million, or whatever it might be, per unit, then one might make a case that on an experimental test basis, a nation might buy five, six, seven of these at this cost, and if it works out well, fine. If it does not, well, you have not lost all that much.

When you are talking about an airplane that has a very, very serious vulnerability problem, and you are talking current unit prices of \$118 million, I just do not see our NATO allies putting up their hard cash to buy these.

Great Britain for example, is trying to reduce its defense budget. Giscard is not a rampant military, and if he were, they would be very much interested.

The West Germans have made their case very clear: no AWACS unless we go along with Leopard for standardization. If Italy could keep a government in long enough, they would be in a position to instantly reject it because with their economic situation, they are not going to buy this white elephant.

I think the pragmatics of it are such that AWACS will remain the playthings of the generals in the Air Force the way aircraft carriers are the playthings of admirals in the Navy, and I do not know what the Army has as its favorite thing. I guess the horse brigade.

Mr. WINN. It is our understanding today that there has been a request from the NATO countries for an offer to purchase.

Senator EAGLETON. Oh, well, this is an enormous thing. One can always express an interest. That is how you sometimes engender a favor, a comraderie with someone else, express an interest in his problem and his merchandise, go around and look over a house for purchase, this is a nice home, I am interested in it, et cetera. You know, a vague interest is a long way from a firm commitment to buy a system.

Mr. WINN. I realize that, we go through that constantly. But it is also a starting point for negotiation.

Senator EAGLETON. That is all right, I do not mind that. But what I do object to is that it triggers the 20-day clause of section 36(b). If they had sent a letter up saying, "Dear Congressman Rosenthal and colleagues, we are having some conversations with some of our NATO allies, some of them express some kind of general interest in this, we are just telling you this because we think it would be good to keep you gentlemen on notice." That would be fine. That would be commendable. But what they have done is to purposely trigger the 20-day period veto mechanism. Once the 20 days go by, then they have us as the tacit partner in this thing.

Mr. WINN. Well, I understand your philosophy. I do not necessarily agree with it. You make a good point.

Thank you.

Mr. ROSENTHAL. Mr. Solarz.

Mr. SOLARZ. Thank you, Mr. Chairman.

Senator, we heard testimony shortly before you arrived that the Military Committee of NATO—whatever that is—studied this problem and determined that there was a need for such a surveillance system. Then a second committee looked at the alternative systems that were available and unanimously decided that the AWACS system was the one that made the most sense for NATO.

A classified letter was apparently sent requesting us to give a letter of offer to them.

Now, how do you square your assessment of the lack of interest on the part of the NATO countries for acquisition of the system with the testimony we heard indicating that NATO committees have studied it and unanimously decided this is what they want?

Senator EAGLETON. I guess existing NATO committees are made up of some civilians from the respective countries who are from the defense ministries, plus the military of the respective countries. I guess we can find a couple of Italian generals, a couple of French generals, a couple of Dutch generals, maybe even Prince Bernhardt himself, that would like to have one of these planes in their inventory. It is a big plane with a lot of radar equipment. A general feels very good riding around on one of those.

I think it is an entirely different thing to expect appropriations committees of the parliaments of these countries to appropriate hard

dollars. The British pound, if we could ever find how low it is going to sink—I do not know how they can quote a price. I cannot conceive of the circumstances under which those hard-pressed governments would buy this kind of thing.

Mr. SOLARZ. One final question. If your position is that you would not oppose a legitimate sale to the NATO countries, then in a sense, leaving aside the legal problems raised by the Library of Congress study, I do not see why you would necessarily be opposed to this letter of offer. If it turns out that we do not disapprove this letter of offer, and the NATO countries ultimately decide not to buy it, we have lost nothing. If they decide that they do want AWACS, under those circumstances, you indicate you would have no opposition. Leaving aside that technical legal question, I am not sure I understand the thrust of your argument.

Senator EAGLETON. That is a very good point, leaving aside the Library of Congress question. If the 20 days run, the Pentagon in their request to Congress in the Defense budget for this year and ensuing years will then come up and say, well, as you gentlemen know, because we have gone through the section 36(b) procedure, there is a 32-plane buy for AWACS, and as you know, with this 32-plane buy, the per unit cost that used to be \$118 million per plane is now \$9.98 million. So we will be hung by our own procedure of letting the 20 days run by. That is, we will have in essence agreed that there is some efficacy to the 32-plane purchase. And I think it will be turned around and used as justification for even more AWACS at a lower per unit cost when I do not think NATO is going to buy one of them. In addition, we will have endorsed, by our silence, this particular price tag for AWACS, which is probably too low.

Mr. ROSENTHAL. Thank you very, very much. We are going to adjourn for 6 minutes and give you a chance to further expound on this subject, General Fish.

General FISH. Thank you.

Mr. ROSENTHAL. Thank you.

[A short recess was taken.]

Mr. SOLARZ [presiding]. If we can call the hearing back to order.

Congressman Rosenthal was unavoidably detained for reasons which I am sure his staff is fully familiar with, and asked me to resume and conclude the hearings in his absence. When he asked me if I would be willing, I told him that in light of the fact that this would be the first subcommittee meeting which I chaired, I would not only be delighted but I would always recall it. However, the witnesses need not be concerned about my abusing my power by detaining them too long.

Enjoying the prerogative of the Chair, I have a few questions I would like to ask. I believe our colleague, Congressman Downey, as a gesture of congressional courtesy, should be given an opportunity to ask some questions.

General, Senator Eagleton, I thought, raised some serious questions which I would hope we could get answers to. One in particular struck me as being especially significant. It had to do with the point he made with respect to the fact that we have not yet received, according to him, an official request from the NATO countries for a letter of offer; that the Council of Ministers have not yet approved the purchase of this plane, even if some of the military committees that have studied

it are in favor of it. There is a big difference between a military judgment that the purchase of the system makes sense and a willingness on the part of the political structures in the NATO countries to approve it.

Why do you have to submit this letter of offer now? Why cannot negotiations proceed in the absence of an official letter of offer pending a formal decision on the part of the Council of Ministers, or whatever official NATO body is appropriate, to the effect that they want such a system? At that point, a letter of offer could be submitted which we would then have an opportunity to approve or disapprove.

General FISH. Mr. Chairman, thank you, especially since this is your first time I have been given the opportunity to address you as such. We do have a request for a letter of offer, it is classified, it does mention the figure 32 aircraft. I would like to submit it for the record.

It was dated the 23d of February.

The reason that we believe that we needed to come forward and notify under 36(b) procedures, a notification of a proposed letter of offer, is because in working with the committee and Congress, this has been our normal practice. We have always done it this way in the past and particularly since a part of our procedure here is to have the NATO participating nations, some of them, put up some money in April with a statement of understanding.

I will give you the opposite case. Let me say that there were some other country, say that it was one of the countries in the Middle East that wanted to purchase some piece of equipment, and it was going to cost \$2 billion or thereabouts, and we were about to enter into a statement of understanding that involved them putting up significant moneys, several millions of dollars, \$12 or \$15 million, carefully under \$25 million, and we were to say to the committee we do not need to come tell you about that. We would be remiss, and we think we would be just as remiss to have done it now.

As I have said to you privately earlier, I am willing to testify under oath there is no consideration of tactics here, there has never been any such discussion.

Mr. SOLARZ. General, leaving aside the question of ulterior motives, there is a distinction I would submit between informal consultations on the one hand, designed to let the committee and the Congress know that there is an interest in such a transaction, and a formal notification on the other, which triggers the procedures embodied in section 36(b).

General FISH. I agree, sir. But, you know, there is more than informal hearing. We want to sign up with the NATO countries and have them put money on the line within the next 30 days.

Mr. SOLARZ. I would like you to address yourself to the specific point made by Senator Eagleton that there is an important distinction between an expression of interest in a particular weapon system on the part of the military, on the one hand, and a decision to purchase a system by the political leadership and institutions of the country, on the other hand.

To what extent does the specific request for a letter of offer which you have cited in point of fact reflect a political judgment on the part of the NATO countries that they not only want this system militarily,

but that they are prepared to purchase it within the general financial parameters which you talked about at this hearing today?

General FISH. Sir, you are very much asking a chicken-and-egg question. They asked us for incremental costs, and they mentioned the figure 32. The letter says on behalf of the NATO nations, and we must come to the Congress. This is not as many of the other cases that we bring up, 30 percent of the letters of offer that we submit are never accepted.

Mr. SOLARZ. What percentage?

General FISH. About 30 percent. So we do not have a final decision until after we present the letter of offer, negotiate it, and we come to the Congress before we present the letters of offer.

Mr. SOLARZ. Let me rephrase the question. Supposing we approved the letter of offer or rather did not disapprove it, according to the terms of 36(b), and NATO determined to go ahead with the transaction after further negotiations. Who would have to approve the purchase within NATO? What would have to happen for NATO to authorize officially the purchase of the system?

General FISH. Well, it is going to be a very complex negotiation, as General Russell pointed out. There are a dozen other countries involved with an ultimate decision. They would have to put together a group like we have in other arrangements, F-16 consortium, to do the actual contracting. So I guess my answer to you is that something that is going to have to be negotiated out.

Would you like to enlarge upon that?

Mr. SOLARZ. I want to make sure you reply to the specific question.

What I mean to say is this decision that would be made in some kind of NATO body or would each of the member states of NATO have to secure parliamentary approval within their countries of the decision to go ahead?

General FISH. The latter.

General RUSSELL. Yes, sir, very definitely each nation would have to make up its own mind, then the Ministers will be instructed to act within the NATO forum as each nation instructs them. So these processes are going to have to go back and forth.

Certainly, no Minister has the authority to commit his nation to such an expenditure without his own processes at home, his own parliament.

Mr. SOLARZ. We would have to assume before this matter were submitted to a particular parliament, the government of that country would have had to have made a decision they wanted AWACS?

General FISH. Yes. In fact, I cannot put the figures down in the unclassified record, but there is one of the countries that has already set aside significant moneys for this purpose.

Mr. SOLARZ. Is there any record in the past of situations where the government of a NATO country submitted to its parliament a request for approval to purchase a particular weapon system and the parliament turned them down?

General FISH. I do not know.

General RUSSELL. It is difficult to say because their processes work quite differently than ours. Most of their parliaments do not deal on a weapons system basis, their defense budgets are put together in a different manner and each nation has its own personality.

Mr. SOLARZ. What damage would be done to the ultimate consumation of this transaction if—hypothetically—this letter of offer were withdrawn pending a more formal and official indication from higher levels of the NATO countries themselves that they want to go ahead with this transaction?

General FISH. We have received it on a very high level, appropriate level in judgment, and there was testimony in front of the Senate Armed Services Committee yesterday by people that have been involved in the negotiation that it would be widely interpreted as the U.S. Congress representing a desire not to sell this weapons system to Europe under any terms because that is the way it would be characterized, especially because as pointed out by other witnesses this is a controversial area and there are people in other governments that even though there may be a majority of in favor, there are critics, too, and it would be very, very damaging to the program.

Mr. SOLARZ. I can understand that point, if the Congress passed this resolution of disapproval. But supposing instead of bringing it to a vote in the Congress, the administration withdrew the letter of offer pending further progress in the negotiation?

General FISH. Well, I would have to take counsel on that and see, and I understand the chairman's question. I think the greatest damage in that would be the precedent to our own system of notification here. You know, we have this up here and we are about to sign, if the Congress does not disapprove, a statement of understanding involving over \$10 million, \$12 to \$15 million, funding of the NATO program under a NATO arrangement. So I do not see how we can proceed and sign that without notification giving Congress a chance to review.

Mr. SOLARZ. I think you have notified us.

General FISH. Statutorially—we have to comply with the law.

Mr. SOLARZ. I would point out there is already a precedent for the withdrawal of the letter of offer because that is what happened in the Hawk missile case, although—

General FISH. Yes, sir, we had not to do anything, not to proceed, not to accept any money at all. But what you would do if we withdrew it, then how do we go ahead and enter into the statement of understanding next month? How do we do that? And it is for an eventual sale of over \$25 million.

Mr. SOLARZ. One thing, you do not need 36(b) procedures to approve an expenditure of less than \$25 million.

General FISH. Yes, sir, but—

Mr. SOLARZ. That is the point at which 36(b) is triggered.

General FISH. The way we always interpreted it in the past, and I do not know why we want to make this a special case—if we know the eventual sale is going to be more than \$25 million we bring it up to you and notify you and we have not done this for the first time, this is the way we have operated in the past. We do not want to be in the position where we get cute and say this is a statement of understanding and it is not a letter of offer, even though it is going to lead to a letter of offer, therefore, we do not have to inform the Congress. We are doing this for good valid reasons and the people that testified on the other side of this issue seemed to have completely ignored the fact that the Congress is going to get an opportunity to review all

aspects of this sale and the Congress is going to get at least two more chances to approve or disapprove the sale.

Mr. SOLARZ. I gather it is your confident expectation that when the Council of Ministers meets in a month or two, they will formally approve this decision?

General FISH. Well, better ask General Russell on this. I would like to state if this is disapproved, or we withdraw it, I think we greatly reduce the chances.

General RUSSELL. Thank you.

I cannot imagine the ministers on such a scale effort making up their minds in a sudden way. I would think the kind of activity that might go on—they would endorse “in principle” the acquisition of a force pending nations being able to get their financial arrangements made and address further details which they would expect to be supplied as the year went through. They certainly expect not only to participate in this, they look for a certain amount of industrial opportunities involved. They have to deal with their own social-economic problems. I would think it would be a stepping process.

Mr. SOLARZ. At this time I have just one further question and I will yield to my colleagues. My question has to do with the objections that have been raised by Senator Eagleton and I think Congressman Downey and others. They claim that AWACS is a system which particularly in time of war could be very easily neutralized by the enemy; that it is susceptible to being jammed; that the planes can easily be shot out of the air; and that however much the theoretical merit AWACS may have, given the tremendous costs involved, in time of war AWACS would actually produce limited benefit because of these problems. Can you comment?

General FISH. It is grossly inaccurate as to the facts. That is all I can say. There have been test runs, and I will ask General Russell to elaborate. It is not flat true.

General RUSSELL. I might add I was program manager of the program for quite some time and am eminently familiar with the capability and limitations of the system. The conversation is a little difficult in the use of words, and we have to define them a little bit. The word “jamming” is a difficult word; it implies something working or not working, and that is not the case. The presence of jamming very often indicates the hostile intent.

First, I did make the assertion earlier, and I will remake it, this is the most jam-resistant radar ever built. When one talks about its susceptibility to jamming, you are talking about a relative situation. Many radars in the world at high cost have some degree of ECM susceptibility. Particularly in the airborne environment, AWACS is orders of magnitude more ECM resistant than any other system that has been considered. Several have been named here today. That is a measurable phenomenon. There was an assertion about 106's coming up close to the AWACS. That particular test involved whether those 106's could be screened and get there without being detected. They were certainly detected long before they ever got to the AWACS. That was the nature of the test.

I think I can leave it right there.

General FISH. Dr. Currie yesterday testified that we have laid to rest those previous concerns that have been raised.

Mr. WINN. Thank you. I think it is very interesting that certain Members, and I know they firmly believe this, of the House and now the Senate, who have not been known as the great supporters of our armed services programs—I cannot speak for Mr. Downey because I do not know anything about his record—I do know about Mrs. Schroeder and I do know about my friend Tom Eagleton, and he is a friend. I think the same Members that are up here supporting Resolution 576, are the same ones that would be the first to criticize you gentlemen if you come up here for informal consultation and we did not have the press and we did not have the television and everyone else to hear what you have told us today. I am glad you told us, and I am glad we did not have a closed meeting. I think we might have had a closed meeting had there been enough members here, a quorum here to close this meeting.

I think this has been a healthy discussion. It is hard for me to figure out, however, when we have these concurrent resolutions that are becoming more and more popular by members of this subcommittee and by members of the full committee, by Members of Congress, as a method of blocking what you are trying to do at the request of Congress. You are trying to abide by the rules and the regulations that we in Congress have put upon you to give us the various notices to go to 36 (b) and all of the things, and when you do it you are criticized for it and they try to block you. I do not understand this way of thinking. But it is a prevalent popular public thing to do these days, and I do not envy you gentlemen, but I would say that I have been known to side with you and I have been known to criticize you, and I will continue to do so. I will do the same thing with my colleagues when I think that they are not really trying to serve, and I am sure they are convinced that they are, but in my opinion, they are not really trying to do anything, they are not trying to help sell this, they are not helping to defend NATO, they are trying to block additional spending in the Armed Services Committee and by the U.S. Government.

I honestly feel that way.

Let me ask you another question. Suppose the United States agreed to pay 100 percent of the cost of a NATO-acquired system, would that still be considered a sale under the Foreign Military Sales Act?

General FISH. I would say not.

Mr. WINN. Or would it probably be a grant under the Foreign Assistance Act because of—

Mr. FORMAN. I would say that would be a grant under the Foreign Assistance Act.

Mr. WINN. I would tend to agree with you.

Mr. FORMAN. In this connection, if I may just add to it. During the earlier testimony much was made of a so-called double subsidy, one with regard to the R. & D. which has already been addressed, and the other with regard to the 25-percent share. I do not regard that 25-percent share participation in NATO as a subsidy at all. This is roughly the share we pay for NATO infrastructure and international military headquarters and other similarly funded operations. We pay that because that is our share of what we are doing.

If we are NATO infrastructure, for example, which is paying for the construction of bases and other installations used at NATO, we act as a user nation using more than the 25 percent. Similarly, in the

NATO military headquarters we have our people there, and it is only right we pay our share. We have got a U.S. requirement as part of NATO, and as somebody who presumably will be flying airplanes over there, to have these planes there and to be flying them.

Frankly, I do not see the legal difference, for example, between the AWACS and the F-4's that we have over there now which we fully funded and fly all over Europe.

I would love NATO to pay 75 percent or to have to pay 75 percent of the original acquisition costs of those F-4 planes rather than the United States having paid 100 percent. It is the same thing. It is a NATO cooperative effort, and we are just paying our share of it. I do not regard it as a subsidy at all.

Mr. WINN. Whether it is a subsidy or not, it could be considered to be that way, I suppose. And that is a matter of interpretation. But this is not the first time we have subsidized one way or the other the right of countries to buy, purchase planes, equipment, is it?

General FISH. Oh, no, sir.

Mr. WINN. Why is this a double subsidy or new method of financing?

Mr. FORMAN. As I was talking a moment ago, let us take the NATO air defense ground environment system which this is designed to complement and supplement. There again there is a common NATO effort, a total NATO wide ground environment system to protect our planes, as well as the other countries, and we are paying our share of them.

General FISH. We contracted with a NATO entity to do it.

Mr. WINN. The other way around.

Mr. FORMAN. Similarly, there is another system called NICS/MA, which is the NATO integrated communications system, and it has got a management agency. Again, there it is a NATO-wide communication system that serves our forces as well as the NATO Forces, and we pay our fair share. This is not the first time, as you have just said.

Mr. WINN. All right, you talked about Dr. Currie and when he made the statement in the Senate the United States would pay up to 25 percent of the NATO cost of acquiring AWACS. Did this amount to a commitment of DOD funds, or if so, under what authority was the commitment made?

General FISH. What Dr. Currie stated, that subject to approval of the Congress—

Mr. WINN. That was part of his statement?

General FISH. Yes, sir, we would propose to the Congress, and, subject to their approval, to pay up to 25 percent. But it very carefully had an additional phrase. I do have here a letter that Dr. Currie sent to four committees of the Congress in May 1975 explaining the NATO negotiations and their interest, which we are far beyond that now. We have kept the Congress constantly informed, contrary to some of the testimony I have heard here today, and I would like to submit this for the record. It is a classified letter.¹

And I would add, sir, if the committee would permit some other documents, I would like to submit for your consideration, which include notifications and testimonies about the 4 percent R. & D. recoupment which we have informed the Congress.

¹ The letter will be retained in subcommittee files.

Mr. SOLARZ. Without objection, we can make those documents part of the record.¹

Mr. WINN. I would like to have those in there because I think there have been statements made today that insinuate you are not bringing this information up to Congress, you are not giving it to us, and at the same time the same voices say here you are giving it to us and do not give it to us, it is not right.

You mentioned a little bit there, and I am not aware of Dr. Currie's full statement and the papers that he has presented to Congress and the committees, and I was going to ask, because there is a prepared question here by the staff, that when the United States proposes to pay part of the NATO cost for acquiring military hardware, should not the U.S. share be authorized specifically by Congress?

General FISH. Yes, sir.

Mr. WINN. It is, is it not?

General FISH. That is the point we have attempted to make here, that we are complying with the 36(b) provisions as we understood we were required to do so. The Congress will get another chance to review all the terms before they are presented for approval by the NATO group, by virtue of the operation of the Armed Services Committee prohibition that we do not proceed without bringing the definitive terms to them and give them 30 days to review them. We will meet that.

And then the third opportunity to look at it will be the annual authorization and appropriation process which will be necessary in order to consummate any kind of an arrangement with NATO. Rather than an end run, like it has been suggested, this is an opportunity to get the debate, this dialog out in front in the open here for the Congress and the Congress gets at least two more chances to review it.

Mr. WINN. I am afraid some Members of Congress do not want to be confused by the facts.

I just reached over here in front of Mr. Buchanan's place. About 2½ hours ago he wanted to refer to this magazine, and I do not know what he was going to refer to, but I was reading the headline here on AWACS. I never heard of this magazine before. Maybe it is a well known one. It is called Government Executive and this was the March issue 1976. It says AWACS: Can it cut out ground clutter on Capitol Hill? I think that kind of comes to the point I was trying to get at a little while ago, I think you are running into a bunch of ground clutter and my friend Tom Eagleton is referred to here, and I quote the magazine:

Already under opposition, led mainly by Senator Tom Eagleton, the program has suffered a certain amount of stretch out and resultant inflation-borne program cost increases. It is always a threat when that happens.

General FISH. Unquestionably, sir.

Mr. WINN. Every time you stretch out the airplane is going to cost more, the turkey, as he referred to it.

General FISH. That is true.

Mr. WINN. According to this article six were funded in the year 1975, four more in 1976. Are those figures right?

General FISH. Yes, sir.

¹ See appendix, p. 76, for Department of Defense Directive 2140.2.

Mr. WINN. They do not coincide with what we have been hearing today.

General RUSSELL. There was a little confusion in the figures. Six appropriated in 1975, four in 1976, and three in prior year research and development appropriations. So a total of 13 aircraft.

Mr. WINN. That is where the 13 comes in?

General RUSSELL. Yes. At one point it sounded like it was 15. It is really 13.

Mr. WINN. Well, we got into funding a little while ago. Now, when Senator Eagleton got here he had a different figure and I questioned the one that Tom and Pat Schroeder presented. They had different figures. They explained that there was a lot of confusion based on various things, and then Senator Eagleton came up with another figure of \$140 million. You started to refer to that and you were just getting into the testimony, General Fish, before Senator Eagleton was recognized. And if you have any more, any additional figures that you would like to present to us, I am prepared to be confused by the facts.

General FISH. Thank you, sir. Of course, the systems acquisition report that we submit to the Congress shows that the total program for 34 aircraft, which is the planning figure for U.S. forces, would result in \$3,538,500,000. That is total program costs.

It is in what we call then year dollars. That is in the dollars that would be spent considering inflation for the next 5 years as it turns out. So what we compare that figure, as has been done by some people and by some of the witnesses, to a figure in the letter of offer which is in constant 1976 dollars. So you know immediately that is a grapefruits and grapes comparison. You would have to inflate the 1976 dollars at the \$2.2 billion in order to get an accurate comparison.

I have done that and if you take the NATO letter, proposed letter of offer, the notification that is now in front of us, for which we have the estimated cost, it would come out to around \$69 million in the simple arithmetic of 32 divided into the number.

If you put the U.S. purchase of 34 aircraft to a 1976 dollar figure, and take out the sunk R. & D. costs, because they are gone, it cannot cost us any less or any more, that is gone.

Mr. WINN. As I understand Mrs. Schroeder and Tom Downey, they are trying to retrieve that, recoup that.

General FISH. Yes, sir. But I want to make both of these comparisons on a similar basis. I come out to a figure of \$58.27 million per aircraft for the USAF. My point is—

Mr. WINN. Based on 34?

General FISH. Yes, sir, and the NATO buy is based on 32. It is like we have testified. The NATO aircraft will cost more than our aircraft to purchase from here on out. The difference is because we will recoup a part of the R. & D. costs which we will have no opportunity to if the sale is not made.

So when you do this on a complete apples and apples comparison, the relevant figures are approximately 69 million per copy, on the one hand, and 58 on the other. Those numbers are going to change. It is one thing for sure at this point. But based on the best data available, the NATO airplane, numbers will probably change because there will be further discussions as to the eventual quantity configuration, funding arrangements, and things of this nature?

Mr. WINN. That is the part of your negotiation?

General FISH. That is right. So I hope that that helps clarify this point.

Mr. WINN. It does help. It concerns me when anyone insinuates, maybe I read it wrong, that the Department of Defense was misrepresenting their figures. It depends on how you look at it. And I am glad Mrs. Schroeder and Tom made that point and I think that the information that they had and the figures they could point to and the way they do is not a misrepresentation either any more than yours.

General FISH. They may not have been aware that we do have that problem of our systems acquisition reports are expressed in then year dollars whereas the notification was in the current fiscal year 1976 dollars as far as for the NATO proposed purchase.

Mr. WINN. Well, I think when you supply information to Members of Congress, at their request in writing, I am not for some staff calling on the telephone and wants you to tell the figures, in writing like they said they have done, that that should be pointed out in your answer to them. I do not know, they said they got it 20 minutes before post-time.

General FISH. The systems acquisition report is a fairly complicated document, it gives the base year and shows the escalation that is involved, for instance, on the AWACS. Further escalation, average escalation, rate of 5.3 percent compounded annually.

Mr. WINN. You keep saying it is complicated. I have no doubt. But these are smart young people that are asking these questions and they want to know and if they do not get the answers, no matter how complicated it is, if you do not go out of your way to explain it to them they are going to consider it might be misrepresentation. I can understand their feeling.

General FISH. I take your guidance.

Mr. WINN. It is really hard to understand some of the ways you guys figure.

General FISH. Yes. We regret that and we do attempt and I certainly appreciate your saying Mr. Winn—and we do attempt to make sure that the numbers are understood and we will make additional efforts to do so. It is at the request of the Congress we report the documents and SAR reports on then year dollars. It is NATO that we present the request in terms of 1976 dollars.

Mr. WINN. Senator Eagleton talked about the illegal method of negotiating, that the Department of Defense cannot negotiate with NATO and, of course, we pointed out NAMSA. He was a little vague about his answer. He got his information from the Library of Congress, which I do not understand what that has to do with it at all. It is my understanding there is another agency of NATO that you deal with in contractual arrangements. Is that true, other than NAMSA?

Mr. FORMAN. Yes, sir, that is true.

Mr. WINN. We are illegal again.

Mr. FORMAN. Well, I have not seen the Library of Congress paper, but if accurately quoted, it is astounding to me. The facts are there are two international treaties concerning NATO: One, which is commonly called the military headquarters protocol, and the other, civilian headquarters treaty. Both of them provide for the establishment of subsidiary bodies by the NATO Council and for these subsidiary bodies to have juridical personalities internationally, and pursuant to

these two treaties the NATO Council has over the years established a whole host of subsidiary bodies. NAMSA is one, NADGE/MO is another. NADGE/MO is the management office and NICS/MA is the management office for the NICS system.

Going back to 1960 you had the NATO F-104G project office. The NATO HAWK office. There are a whole host of them which are vested with juridical personality by the NATO Council, pursuant to international treaty which so provides, and regulations have been adopted by NATO which spell out what the terms are of this juridical personality and to what extent one of these organizations can speak in the name of NATO and sign documents for NATO and to what extent NATO collectively is financially bound or just the organization which participates. This varies. But we have been doing business with NATO in accordance with these treaties for, as I say, some 15 years.

Mr. WINN. I appreciate your clarifying that. I have not had a chance to read the entire report from the Congressional Research Service, they are usually objective. This time, if Senator Eagleton quoted them correctly, and I have not had a chance to see what he was referring to, I do not think this is one of their outstanding research jobs.

Thank you.

Mr. SOLARZ. Thank you, Mr. Winn. I think our colleague from New York has been very patiently waiting the opportunity to ask some questions.

Mr. DOWNEY. Believe me it is a pleasure to call you, Mr. Chairman. I suspect it will be many years before we can call each other those things except when more senior Members are missing.

Mr. SOLARZ. The gentleman's time has expired. [Laughter.]

Mr. DOWNEY. Thank you.

Mr. FORMAN, can we agree that if we are selling this airplane with notice or intent to sell or offer to sell, it is not at the pro rated R. & D. cost of the cost of the program?

Mr. FORMAN. If you mean full pro rated cost, the answer is, yes.

Mr. DOWNEY. We are doing it with that 4 percent plus the 2 percent administration fee?

Mr. FORMAN. That is correct.

Mr. DOWNEY. Are you familiar with a memorandum sent to the Secretary of Defense dated December 18, 1975 from Mr. R. W. Gutmann that answers a number of DOD questions concerning recoupment policy on R. & D. for foreign military sales?

Mr. FORMAN. No, sir. This is from Mr. Gutmann to—

Mr. DOWNEY. Gutmann, R. W. Gutmann, who is the Procurement Systems Acquisition Division Director.

Mr. FORMAN. Of what?

Mr. DOWNEY. Of the General Accounting Office. It was in response to some DOD inquiries concerning DOD recoupment.

He says:

DOD Directive 2140.2 provides that under the FMS program and in contractor sales of major defense items for a military purpose R. & D. recoupment normally shall not exceed 4 percent of the product sales price. In August of 1975 a policy was established that R. & D. recoupment under the foreign military sales program should be pro rated—total R. & D. costs incurred by DOD divided by total projected production. The pro rated basis will apply

to military systems that have been in production 5 years or less. On older systems the 4 percent charge will continue.

That seems to contradict—

General FISH. I think I can remove the confusion that exists. The basic directive provides that the normal rate is 4 percent. It also provides that under certain circumstances that if the Director of Defense Research and Engineering requests the Director of the Defense Security Assistance Agency, which I am, to make it a higher than the average, than the policy of 4 percent, that I would entertain that and make a determination of what the proper charge should be.

I think when the GAO came by and discussed it they discussed it with me. I explained to them at that time that we look at each case to see if pro rata would be appropriate, but you know it is a determination at that point.

Additionally, I have the authority delegated from the Secretary of Defense to waive it to zero and not collect any R. & D. surcharge.

I believe that the GAO did not correctly characterize the thing.

Mr. DOWNER. Are you characterizing this report? Let me read some of the other paragraphs which they contradict. What you are telling the subcommittee, we understand since August 1975 DOD policy requires that only the Secretary of Defense may approve waivers of recoupment under the foreign military sales program.

Citing the 4-percent criteria—

We could not establish the reasonableness of the 4 percent rate because of lack of specific information on its origin or basis. When compared to rates used by some NATO allies having recoupment programs, the 4 percent rate is low. For example, Germany and the United Kingdom use 5 and 7½ percent of the sales price. We note, that the 4 percent rate was arbitrarily set.

It goes on to say—

Our observations were discussed with DOD officials who agree that some clarification appeared necessary. We would appreciate being informed of the results of your consideration of the foregoing matters.

Mr. Chairman, I would submit to you that, not to impugn, certainly, the integrity of the witnesses who have come here in good faith to testify in this matter, that there is a great deal of doubt concerning the amount of recoupment that we should receive. Whether or not this directive is accurate or whether or not there is some misunderstanding between yourself and Mr. Gutmann begs the question, the essential question, that in this particular sale we are producing an airplane for NATO use, whether or not this is or is not accurate, that we should receive pro rata share of R. & D. and recoup, if we can, the \$29 million per plane.

Whether or not this is accurate I think can be debated probably ad nauseum, but I think the essential point remains if we are going to provide this plane to NATO something more than 4 percent in terms of pro rated R. & D. should be what this Congress and this country should demand, and that is the only point I wanted to make, Mr. Chairman, and Mr. Winn.

One of the things that is interesting about national security—and I serve on the Armed Services Committee—we always have different views of what it is. I personally think that the NATO alliance and the alliance with Israel and Japan are the most important ones we have, and I want to make sure we maintain them, but I do not think that maintenance is necessarily predicated on giving NATO countries,

particularly West Germany and Britain, this sort of deal. I think that is stretching what we want to do in terms of a healthy alliance and in terms of healthy national security.

General FISH. May I respond to the question on 4 percent? I would like to point out a couple of things.

First, we have a written directive in force, I have characterized it properly, we will submit it for the record, it is still in force.

Mr. SOLARZ. Without objection, we will include that in the record.¹

General FISH. Second, Secretary Schlesinger on February 26, 1975, testified to the House Appropriations Committee, and I will submit an extract for the record, where he decided even prior to the period that Congressman Downey is talking about, August 1975, specifically as early as February 1975, what we plan to add to the AWACS procurement cost for 4 percent R. & D. recoupment. So you know, the Secretary of Defense by his own testimony, had determined that it would be 4 percent not pro rata and we officially informed the Congress, and I will provide other documentation where we informed the Congress that prior to and subsequent to August 1975, that we were charging a 4 percent R. & D. surcharge.

Mr. SOLARZ. Without objection, whatever documentation on that point the General subsequently submits, can be included in the record.²

Mr. DOWNEY. I would just ask yourself and Mr. Winn if possibly you would like to respond to this GAO report, because if it is inaccurate I think this committee should know that, and if it is not inaccurate, I think they would like to know that as well. And if you could respond in writing swiftly, I think that is important.

General FISH. Delighted to.

Mr. DOWNEY. According to this, it would seem there is a directive that requires foreign military sales of later than 5 years—

General FISH. He cites the directive in there, does he? Fine. It is cited in there. Is the directive cited in there?

Mr. DOWNEY. He cites the directive 2140, I believe that is the directive, and he says it is a policy that as of August 1975 the—

General FISH. Does he say what the policy is?

Mr. DOWNEY. Policy has established R. & D. recoupment under foreign military sales should be pro rated.

General FISH. The only directive we have is the one I cited and we will be glad to submit it and we will be glad to have the opportunity to respond.

Mr. DOWNEY. If this is inaccurate you should know and if it is not—

Mr. SOLARZ. If I understand what the General has been saying, it is his contention that is inaccurate?

General FISH. That is right.

Mr. SOLARZ. I want to thank you gentlemen.

Mr. DOWNEY. I want to thank you for allowing one to trespass on the committee's time.

Mr. SOLARZ. The gentleman may be interested to know we have three vacancies on our committee and we would be delighted to have a new member with his potential and promise join us.

¹ See appendix, p. 76 for Department of Defense Directive 2140.2.

² The document will be retained in subcommittee files.

Mr. DOWNEY. I want to preserve my seniority on the Armed Services Committee, which is last.

Mr. SOLARZ. I have just a few concluding questions.

You indicated in your colloquy with Congressman Rosenthal that many of the letters of offer that have been submitted to the committee in the past were ultimately concluded for amounts that differed from those originally indicated in the letter of offer. I would appreciate it for the record at this point if you could submit to the committee a list of each foreign military sale since the enactment of 36(b) which compares the price listed in the letter of offer submitted to the committee to the price that was ultimately agreed upon in the final negotiations.

General FISH. Sure.

Mr. SOLARZ. I gather your judgment is that in many of those instances there were differences between the two?

General FISH. Yes; and I would want to say it is a policy that has to be within the scope.

Mr. SOLARZ. Yes; I think it would be useful for us.

General FISH. If the Chair understands, we would not come to the committee and say we are selling a squadron of F-5's and then subsequently up that to two squadrons of F-5's. But you know in the price category we would leave the price go up because the documents we have submitted to the committee say the price will ultimately be whatever it cost the U.S. Government.

Mr. SOLARZ. Yes.

General FISH. And it goes up.

Mr. SOLARZ. I think the committee would be able to make that judgment itself, and with the information it can.

Now, could you tell us whether we have sold any military equipment to NATO in the past as distinguished from individual NATO countries?

General FISH. Yes, sir, we have.

Mr. SOLARZ. And what kind of equipment has that been?

Mr. FORMAN. Well, spare parts to NAMSA, as Mr. Winn has just said. We have sold radars, other communication equipment, components in the context of NICS/MA. We sold parts for the HAWK system, as I recall.

Mr. SOLARZ. Who will actually be the purchaser of this AWACS system? Will it be NATO itself or will each of the individual countries that choose to participate be the purchaser?

General FISH. We believe it should be NATO itself. That is something we still have to negotiate. You cannot preserve, as my statement points out, benefits of a NATO AWACS to an individual country, because it will look beyond the borders of a single country. So we think all should pay. It is our position, it is the administration position NATO ought to buy this together.

Mr. SOLARZ. So it would be owned by NATO?

General FISH. That is correct.

Mr. SOLARZ. Is there any other military equipment in terms of planes or ground equipment or ships that are owned by NATO?

General FISH. I think a perfect example is the NADGE system because that is the system that this will supplement, it is similar.

Mr. SOLARZ. What system?

Mr. FORMAN. NATO air defense ground environment system, which is a complicated system. But a prime example of equipment owned by a NATO major command as distinguished from NATO as a whole is NATO communications, it is likewise owned by SHAPE, Supreme Headquarters.

Mr. SOLARZ. So there is some precedent for an arrangement?

Mr. FORMAN. Yes, sir.

Mr. SOLARZ. Have the NATO people in their discussions with us on this transaction indicated that they also envision this as a NATO purchase as distinguished from an individual country?

General RUSSELL. Mr. Chairman, the reaction of nations individually, as individual personalities has a twist to it, but there was created a body called the high level group that functions under the Conference of National Armament Directors. The high level group made the decision that the method of purchase ought to be as an FMS case with the United States.

Mr. SOLARZ. Purchased by NATO?

General RUSSELL. Yes, sir.

Mr. SOLARZ. And have they addressed themselves to whether once the purchase was made, that control would remain in NATO as distinguished from each of the countries?

General FISH. Those questions are being addressed and the dialog continues.

General RUSSELL. Yes; the military side of the house has written an operational concept where the trimilitary NATO commanders have made an arrangement of how they would share the assets and delegate the authority to own the system to one of them.

Mr. FORMAN. I might also add the international law aspect whether NATO as such or NATO commanders could own military aircraft was also addressed by the lawyers at NATO. We had a similar question raised as a legal question of whether an international organization could own weapons systems such as aircraft, raised a decade or so ago in the context of what was then called the multilateral force of committed nuclear armed ships first explored in that connection and then reexplored in this connection.

Mr. SOLARZ. What was the answer?

Mr. FORMAN. That it could legally be done.

Mr. SOLARZ. Is the opinion available to that effect?

Mr. FORMAN. Yes; it could be made available.

Mr. SOLARZ. I think without objection, that could be included in the record at this point also.

One of the things which troubles me about this is, if my arithmetic is correct, assuming we sold them 32 planes at roughly \$68 million a plane and picked up the 25-percent share which the NATO formula would obligate us to do, that would cost us roughly \$17 million a plane times 32, which, according to my multiplication, comes out to about \$544 million as the U.S. share of this total buy.

Now, that, of course, is a substantial amount of money. We would have to make a judgment when it reached that point about whether we thought, given the costs involved, this was a purchase which was worth making. Obviously, if it costs nothing, nobody would object. But you can buy an awful lot of other things for half a billion dollars. By the time the sale is ultimately consummated, it could cost even more.

So my question to you is this: As I understand, this system is envisioned in the scenarios for a general war in Europe. Is that the basic situation, a broad-scale conflict with the Warsaw Pact and the other nations?

General FISH. I am going to turn it over to General Russell. It is designed to prevent a war with the warning that it would provide. It would make it very, very difficult for an enemy to attack on a surprise basis, so we like to think of it as preventing a war rather than fighting one.

Mr. SOLARZ. Excuse me, one point: A nation does not necessarily have to feel that in order to go to war it has to have the surprise. There are a variety of reasons which would impel a country to go to war, of which the surprise element might be one. But even if they felt they could not surprise us, that does not mean they might not still decide.

General RUSSELL. Then we have the war-fighting capability. Since military commanders would rather fight on a surprise basis rather than on a forecast basis. Now, I blew it out of my mind.

Mr. SOLARZ. I will tell you what troubles me.

General RUSSELL. Could I just say, the point is in order to provide this capability, we have our own forces there. We are going to have to provide the capabilities somehow for our own forces, and the question is, is it going to be more expensive or less expensive if we do it by ourselves or in conjunction with NATO? What is the total greater effectiveness of the force if we do it on a basis that we could with all of the NATO countries or some significant number participating rather than trying to fight it ourselves?

Mr. SOLARZ. Let me give you the bottom line of my concern and maybe you can address yourself to it. That is, my understanding is that our military doctrine provides that in the event a full-scale war broke out in Europe, we would, if necessary, resort to the use of nuclear weapons. I gather that the conventional imbalance which now exists between the Warsaw Pact and NATO countries is such that if a full-scale war did break out, the only way which we could stem the advance of the Warsaw Pact armies would be through a resort to nuclear weapons. In point of fact, the nuclear deterrent is the most effective military deterrent to a Warsaw Pact invasion of Western Europe.

If in fact that is the case, it is difficult for me to envision a scenario in which these systems would actually be utilized. If the nuclear deterrent did not work and the Warsaw Pact invaded anyway, at that point one of two things would happen. Either we would resort to nuclear weapons, at which point whether or not we had this system it would be fundamentally immaterial because the nuclear exchanges which would initiate from our ICBM's and submarine-based missiles and continental-based bombers would be sufficient to wipe out the Soviet Union. They in turn would retaliate against us. Or, if we elect not to use nuclear weapons in the event a full-scale conflict broke out, their conventional superiority would enable them to triumph anyway, the existence of this system notwithstanding.

So I ask quite sincerely whether or not this is not something which may sound theoretically attractive, which is, given the likely scenarios, a colossal waste of money?

General FISH. You are getting into a whole strategic argument that we have answered in many forums. It is a matter of the military judg-

ment. The bottom line is it is the military judgment of ourselves and our NATO allies that this capability is sorely needed to give us the necessary war-fighting capability in a variety of likely scenarios in NATO. I think that we can satisfy you, sir, in a classified briefing of what I am saying. I do not want to get into too great a detail in open session.

Let me ask General Russell if he would like to make some general comments on this.

General RUSSELL. Yes, sir. First, as to your bottom lines. One of our roles is to provide options, and very definitely we would not want to escalate nuclear prematurely. I would argue that uncertainty breeds overreaction as one worries about the situation.

One of the great assets of AWACS is it provides in real time an appreciation of what is going on in the big picture through and across borders. We would have a large picture as to what is happening, if someone is gathering forces on the other side even before hostility.

Mr. SOLARZ. Do our satellites not give us that information now?

General RUSSELL. Satellites do not track aircraft, so you would not see aircraft.

Mr. SOLARZ. They would track ground deployments. If they were missing their armies for an attack, that would certainly be revealed.

General RUSSELL. General Fish had the right point, these kinds of things are capable of being gone into in exhaustive detail. The fundamental thing about AWACS is that of providing in real time to the top political civilians as well as the military authorities what is going on. Certainly, if you took that Czechoslovakian invasion, we did not know what was going on for a long time. We knew something was going on, we did not know what, and I do not know that we would have reacted any differently, but it certainly must have meant an awful lot to political and military leader's appreciation of the activity that was underway.

The second point I wanted to make was as to the U.S. use of AWACS, say, NATO does not buy. Certainly, it is our full intention to provide our forces this type of coverage. Now, if NATO does buy, we would prefer to participate in their buy, and we would reduce our force objectives by that contribution. So we do not believe we are talking about a net difference. Our force would be much more valuable over there as a part of a larger force where you could get economies of scale and where they are protecting each other's flank than being an isolated capability in Central Europe. But, certainly, we would not deny this modern capability to our own forces even if NATO does not buy.

Mr. SOLARZ. Well, I do not need an AWACS system to know that dinner is being cooked at home and I better get back or I am going to be in bad shape.

Mr. WINN. We will sell you an AWACS. Thank you for coming up and spending so much time, and, if you have any other additional information that you wanted to tell us and did not get a chance to put it in the record, I would appreciate it if you would supply it through the committee as soon as possible.

General FISH. Thank you, sir. We will do so, and thank you for your courtesy.

[Whereupon, at 6:10 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

LETTER FROM GAO TO SECRETARY OF DEFENSE

U. S. GENERAL ACCOUNTING OFFICE,
PROCUREMENT AND SYSTEMS ACQUISITION DIVISION,
Washington, D.C., December 18, 1975.

B-164912

The Honorable
The Secretary of Defense

DEAR MR. SECRETARY: The Department of Defense (DOD) is concerned with two basic types of sales to non-United States Government buyers. The first type involves sales of military equipment by DOD components under the Foreign Military Sales (FMS) program. Instructions covering recoupment of certain costs applicable to these sales are in DOD Directive 2140.2.

The second type involves sales of military equipment and commercial versions thereof by United States defense contractors to all foreign and domestic buyers. Applicable recoupment instructions for contractor sales are in paragraphs 4-109 and 7-104.64 of the Armed Services Procurement Regulation (ASPR). In addition, DOD Directive 2140.2 covers sales of major military equipment by United States defense contractors to foreign governments and international organizations for military use.

In 1973 the Council on International Economic Policy (CIEP) began an interagency study to determine the desirability of a Government-wide policy on the recoupment of research and development (R&D) funds. At the completion of its study, CIEP announced on August 2, 1974, the President's policy decision that recoupment be sought on Government-owned and financed technologies and products when these are proposed for sale to non-U.S. Government buyers. This policy would (1) achieve a return on Government investment and not arbitrarily limit transfers of technology to foreign nations, (2) entail proportionate (i.e., pro rata) cost recovery on product sales, (3) allow a fair market recovery on technology sales, execution to be predicted on a satisfactory interagency determination of fair market pricing policy and procedures, and (4) allow reasonable agency flexibility and discretion in implementation and permit exceptions because of national security, foreign policy, and overriding public interest.

Subsequently, on April 7, 1975, CIEP issued general guidelines and procedures for implementing the approved policy. CIEP requested each department and certain agencies to report by January 31, 1976, on specific steps taken to implement the R&D recoupment policy and the extent of recoupments achieved.

We made a survey of the recovery of R&D funds by the Department of Defense from foreign buyers of defense equipment. We noted certain weaknesses in DOD's recoupment program that we believe should be considered in developing information requested by CIEP.

The primary problem we observed was the absence of centralized responsibility and focus for the total recoupment program. DOD's written instructions on the program are primarily devoted to responsibilities and actions to be taken regarding sales under the FMS program. However, the prescribed procedures were not as specific for sales by contractors to foreign buyers. As a result, actions by the various DOD components lacked consistency and sometimes were taken in the face of uncertainty as to the correct or officially approved procedures and practices. Factors contributing to this situation include:

1. Both ASPR and the DOD Directive provide information on the application of DOD's recoupment policy. We noted inconsistencies between the two sets of instructions as well as instances where the instructions were unclear or subject to different interpretations. For example, ASPR 7-104.64 provides that R&D

recoupments collected by a contractor are to be applied as reductions to the DOD contract or, in the event that the DOD contract has been finally settled, the contractor will make payments to the Government. On the other hand, the Directive provides that R&D recoupments collected by contractors and returned to the Government are to be credited to the most current R&D appropriation account.

We believe the differences between the two documents should be reconciled and instructions provided to clearly identify and spell out the handling of each type of transaction subject to recoupment.

2. DOD Directive 2140.2 provides that under the FMS program and in contractor sales of major defense items for a military purpose R&D recoupment normally should not exceed 4 percent of the product sales price. In August 1975 a policy was established that R&D recoupment under the FMS program should be prorated—total R&D costs incurred by DOD divided by total projected production. The pro rata basis will apply to military systems that have been in production 5 years or less. On older systems, the 4-percent charge will continue.

We could not establish the reasonableness of the 4-percent rate because of a lack of specific information on its origin or basis. When compared to rates used by some NATO allies having recoupment programs, the 4-percent rate is low. For example, Germany and the United Kingdom use 5 and 7½ percent of the sales price, respectively. We noted some evidence that the 4-percent rate was arbitrarily set.

3. The authority to issue waivers of recoupment has not been clearly spelled out in the instructions. According to ASPR 4-109, the Secretary of Defense or his designee approves waivers on all contractors' foreign sales. DOD Directive 2140.2, however, delegates to the Director, Defense Security Assistance Agency (DSAA), the authority to approve waivers on contractors' sales of major defense items to foreign governments for a military purpose, as well as on foreign military sales by DOD.

In the case of sales by the contractor of the commercial CF-6 engine to foreign airlines, the contractor requested and received a waiver from DSAA. DSAA's authority to grant the waiver was disputed by the Air Force which cited its vested contractual rights to recoupment on this type of sale. The waiver was ultimately withdrawn by DSAA and refused by the Air Force. This incident indicates that the delegation of authority to grant waivers on sales by contractors has not been clearly understood by all DOD components and contractors.

We understand that since August 1975 DOD policy requires that only the Secretary of Defense approve waivers of recoupment under the FMS program.

4. DOD-wide data on the extent and scope of recoupment activities was found to be incomplete. There is no apparent requirement for the preparation of data showing, for all types of recoupment activities, how many recoupments occurred during a year, how much was recovered, and what was done with the recoveries. This type of information, in our opinion, would be useful not only for DOD management purposes, but also to enable the Congress to exercise its oversight responsibilities.

In summary, we believe you will want to consider strengthening DOD's R&D recoupment program first by centralizing responsibility for it. In addition, it may be desirable to establish a single body of uniform instructions for consistent application by all components, clearly setting forth (1) the types of transactions subject to recoupment and the uses for which recoupment can be allocated, (2) the rates or other bases for fixing the level of recoupments, (3) the authority to grant waivers to the basic recoupment policy, and (4) a requirement for establishing and maintaining records on DOD's total recoupment activity.

Our observations were discussed with DOD officials who agreed that some clarification appeared necessary. We would appreciate being informed of the results of your consideration of the foregoing matters.

Although this report does not contain specific recommendations, we are sending copies for information purposes to the House and Senate Committees on Appropriations, Armed Services, and Government Operations and to the Office of Management and Budget.

Sincerely yours,

R. W. GUTMANN, *Director.*

LETTER FROM HON. PATRICIA SCHROEDER TO MAJ. GEN. RALPH
MANGLIONE

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 1, 1976.

Maj. Gen. RALPH MANGLIONE,
Director, Legislative Liaison,
Office of the Secretary of the Air Force,
Washington, D.C.

DEAR GENERAL MANGLIONE: I would appreciate the following information on the proposed sale to NATO, valued at \$2.2 billion, of 32 E-3A Airborne Early Warning Aircraft, training, spare parts and support equipment. Notice of the proposed transaction was delivered to Congress on February 27, 1976 (transmittal no. 76-41).

I should note that this inquiry has already been discussed by phone with Capt. Bill Magill of your staff. However, I thought that my submitting the inquiry in writing would be useful for your records.

(1) Of the \$2.2 billion transaction proposed, what would the individual costs be for—

- (a) aircraft procurement;
- (b) training;
- (c) spare parts; and
- (d) support equipment.

(2) What are the proposed terms of payment for the NATO transaction?

(a) How large a downpayment from NATO would be required at the time the order is placed for the E-3A purchase?

(b) If no payment would be required at the time the order is placed, what type of commitment to purchase would be required by the United States before the order for additional aircraft to fulfill the NATO purchase requirements is placed with the contractor?

(3) How will the cost of the E-3A (Airborne Warning and Control System) purchase be shared among all of the NATO members?

(4) What portion of the initial capital outlay for the E-3A purchase will be provided by the United States?

(5) Of the amount specified in No. 4, how much would the United States be providing in anticipation of repayment from other NATO members at a future date?

(6) What is the proposed delivery schedule for E-3As to be purchased by NATO?

(a) When would the first E-3A be required for NATO use in its defense planning?

(b) When would completion of the delivery schedule of E-3As to be purchased by NATO be required?

(7) Since previous Air Force estimates have indicated that 20 airborne early warning aircraft would be needed for NATO defense, how was the proposed 34-aircraft transaction arrived at?

(a) Does the Air Force have any indication that NATO is seriously contemplating an early warning aircraft requirement greater than 20 E-3As?

(b) If so, what?

(8) Will all of the 34 E-3A aircraft proposed for purchase by NATO be owned jointly by the member nations of NATO?

(9) If joint ownership of the 34 E-3As is not planned, how many of the E-3As to be used for NATO defense will remain under United States ownership?

(10) What is the nature of the present NATO commitment to purchase the Boeing E-3A Airborne Warning and Control Systems? What concrete assurances of NATO intent to purchase the aircraft have been received?

(11) If concrete assurance of NATO intent to purchase the E-3A has been received, when did that happen?

Thank you for your attention to this matter. I look forward to receiving the information I have requested in the next few days. As you know, Congress only has 20 days to consider the merits of any such large sales proposed under the Foreign Military Sales Act provisions.

With kind regards.

Sincerely,

PATRICIA SCHROEDER, *Congresswoman.*

LETTER FROM LT. GEN. HOWARD M. FISH TO HON. PATRICIA SCHROEDER

OFFICE OF THE DIRECTOR DEFENSE SECURITY ASSISTANCE AGENCY,
DEPUTY ASSISTANT SECRETARY (SECURITY ASSISTANCE), OASD/ISA,
Washington, D.C., March 11, 1976.

In reply refer to: I-2368/76
HON. PATRICIA SCHROEDER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSWOMAN SCHROEDER: This is in reply to your 1 March 1976 letter to Major General Maglione concerning the proposed sale of AWACS aircraft to NATO which has been referred to me for answer.

Price and Availability Data and a Letter of Offer and Acceptance are currently being prepared for the Foreign Military Sale of the E-3A Airborne Warning and Control System (AWACS) to NATO. Detailed budgetary estimates will not be available until the contractor response to the request for proposal is received and validated by the E-3A System Program Office. Support command inputs must also be obtained and a financial analysis completed before definitized answers to your questions are possible.

It should be emphasized that the \$2.2 billion figure for 32 aircraft was simply an estimate based on an initial contractor definition study and has not been verified by the Foreign Military Sales pricing process.

The following are our best available answers at this time to your specific questions. For the most part these too are preliminary estimates until the Price and Availability data are available and NATO decisions on the procurement/operational employment have been consummated.

Question 1. Approximate breakout of individual costs:

[Constant fiscal year 1976 dollars in millions]

(a) Aircraft flyaway -----	\$1,600
Training -----	50
Spare parts -----	230
Support equipment and data -----	130
(b) Other (NATO peculiar R.D.T. & E. -----	190
 Total -----	 2,200

Question 2. Terms of payment for the NATO transaction have not been addressed to this date. The U.S. has proposed that 25% of the NATO Airborne Early Warning program (which will include aircraft, ground interface costs, and annual operating costs) would be funded by the U.S. Payment schedules must be developed in accordance with Foreign Military Sales procedures so as not to involve financing of the NATO program by the U.S. Government (with the exception of U.S. participation as a member of NATO). It is envisioned that the U.S. share of funds for the NATO program would be provided to NATO and ultimately be returned to the U.S. Government as a part of the total NATO input in accordance with the payment schedule.

(a) NATO funding, to include any long lead funding, would have to be available in accordance with a financial schedule which has not as yet been completed. Payments would be in accordance with established procedures. In essence, the terms of payment will provide that money be available to pay bills as they are submitted to the U.S. Government.

(b) Long lead funds would probably be required at time of contract signature. Funds will include termination costs.

Question 3. Fund sharing arrangements have not as yet been determined. Several methods are being discussed among nations, and this issue will be resolved as part of the procurement decision process expected to begin this summer.

Questions 4 and 5. This will in part be determined by the number of nations participating in the Airborne System Procurement, which will make up the bulk of the program's initial investment costs. The ultimate U.S. share of this effort, as a member of NATO, could vary from about one-fourth to one-third, depending on other nations' actual commitments.

No arrangements have yet been made with regard to capital outlays. Any prefinancing costs will be subsumed in the program's overall procurement costs, so that prefinancing nations are proportionately reimbursed by reductions in their share of the costs.

Question 6. Delivery schedules of one per month and one every other month are currently being examined. In view of the 35-month AWACS production cycle, delivery of the first NATO aircraft is anticipated in early 1980, dependent upon the program-start decision. From that point, a 32-aircraft purchase would be completed from 32 to 64 months later, depending on the production rate selected.

Question 7. The NATO request is for data on 20-32 aircraft. A 34 aircraft transaction with NATO is not anticipated.

(a) Yes.

(b) NATO has requested the development of a Letter of Offer based upon a range of 20-32 aircraft.

Question 8. Ownership of the aircraft is still an open issue. It is anticipated that the aircraft will be owned by NATO and under the operational command of one of the major NATO commanders.

Question 9. NATO ownership is anticipated but not resolved.

Question 10. NATO's commitment to a NATO AWACS program has been evolving steadily during the last few years. In 1972, NATO nations accepted the recommendations of the international Tri-Service Group on Air Defense that an Airborne Early Warning (AEW) capability was an essential element for solution of NATO's critical deficiencies in the detection and tracking of low level airborne targets. Subsequent NATO groups under the Conference of National Armaments Directors determined that a derivative of the U.S. E-3A was the preferred solution, and that a cooperative NATO program was the preferred means of acquiring this capability for the Alliance. In May 1975, both Defense and Foreign Ministers of NATO approved a Contract Definition phase for NATO AEW, and establishment of a provisional, internationally-manned, program office to manage it. Concurrently, the three Major NATO Commanders, (SACEUR, SACLANC and CINCHAN) developed a combined statement of requirements and operational concepts for a land-based AEW system, followed by Military Committee endorsement of a NATO AEW force as an "urgent priority one" requirement. In December 1975, Defense Ministers acknowledged the Military Committee's views, approved continuation of Contract Definition activities, and endorsed a Preparatory Phase of pacing and sustaining activities (to be funded by interested nations) that would further preserve NATO's options for subsequent procurement. A draft Statement of Understanding on prefinancing by interested nations is currently being worked out at NATO Headquarters, and, subject to agreement or any amendments, may be signed as early as April 1976. This Statement of Understanding covers Preparatory Phase activities leading into a potential procurement phase anticipated to begin during CY 1977.

Question 11. In February 1976, NATO formally requested the U.S. to develop an initial Letter of Offer, to be delivered in May, as part of the Contract Definition process. Initial NATO decisions on procurement could be made as early as June 1976, leading to firm decisions as early as December 1976. During this phased decision process, the major issues of configuration, force size, and national participation and cost shares will need to be resolved. Clearly, this process is lengthy, but we must recognize that for many sovereign NATO nations to agree on a program that is unprecedented in its scope is a complex process. Nevertheless, we believe that the NATO nations appreciate the severity of the military deficiencies that AWACS uniquely alleviates.

Previous notifications to Congress have provided interim progress reports on our participation in the potential NATO AWACS program's preparatory activities. In a 7 May 1975 letter to the Chairman of the Armed Services and Appropriations Committees, Dr. Currie, Director of Defense Research and Engineering, summarized NATO's actions and plans with regard to AWACS; and on 18 Decem-

ber 1975, I notified the staffs of the House Committee on International Relations and the Senate Committee on Foreign Relations that a Letter of Offer for 20-32 AWACS for NATO was being prepared and that formal notification to the Congress concerning this potential Foreign Military Sale would be forthcoming. This notification was provided on 27 February 1976, as a routine procedure.

Although the current Foreign Military Sales Act specifies 20 days for Congressional action, in the case of AWACS the House Armed Services Committee directed in its FY 1976 Report that the Department of Defense "take no action toward the consummation of any agreement with any foreign government . . . until the expiration of 30 days after a full report of the terms and conditions proposed for such sale have been reported to the Committees on Armed Services of the Senate and House of Representatives." These terms and conditions will be contained in the Air Force's Letter of Offer which is not scheduled to be delivered to NATO before May 1976. Congress will be provided a full report regarding the terms and conditions of this Letter of Offer and will also be informed of significant changes as they occur.

I appreciate your interest in the potential AWACS sale to NATO, and would like to assure you that you will have every opportunity to consider fully the merits and terms of this transaction.

Sincerely,

H. M. FISH,
Lieutenant General, USAF, Director.

SUMMARY OF AWACS ADDITIONAL TESTING, PREPARED BY HOUSE
ARMED SERVICES COMMITTEE STAFF, IN RESPONSE TO THE REQUEST OF
HON. PATRICIA SCHROEDER, NOVEMBER 17, 1975

The AWACS Systems Integration Demonstration (SID) flight test program was considered by the Department of Defense to have been completed in December 1974. A review of the test plans and results, however, by the Committee generated a number of concerns relating to the viability of these tests. Consequently, Chairman Price informed the Secretary of Defense in a letter dated March 26, 1975 of the Committee's concerns relating to the ability of AWACS to carry out its intended mission. Following extensive hearings, the Committee was convinced that the AWACS test program was not comprehensive and directed that additional tests be conducted. The tests were to: provide data that demonstrated AWACS capability against close formation and maneuvering targets; provide data that demonstrated the capability of AWACS against self-screening and escort jammers; provide data that verified the AWACS tracking algorithms; as well as other tests.

The Air Force in response to the Chairman's letter conducted additional tests during May of this year. As a result of these tests, DoD confirmed the following AWACS limitations:

- (a) precise determination of target altitude;
 - (b) range resolution of jamming targets under certain conditions;
 - (c) automatic accurate tracking data of targets under certain conditions;
- and
- (d) the prevention of enemy detection and location of AWACS when the AWACS radar is transmitting.

While DoD has confirmed these limitations, they believe that they can be overcome through various revisions or techniques. As an example, they contend that the automatic accurate tracking limitation can be overcome by operator intervention as well as through revisions in the present AWACS software package.

The Director of Defense Research and Engineering has reviewed the results of these tests and has provided his comments to the Committee. In addition, the GAO has made an assessment of tests and has documented their comments. The views of the DoD and the GAO are not in full agreement with regard to the AWACS capabilities/limitations and their impact upon the final outcome of an air battle.

The GAO, for example, does not believe that the automatic, accurate, tracking problem can be overcome simply by operator intervention. They believe that the NATO scenario will consist of hundreds of sorties per hour and that operator intervention is not practical or possible in such a dense environment. The GAO in their analysis of the May tests believes that the AWACS susceptibility to jamming presents a more serious limitation of AWACS than the DoD assessment. Finally, the GAO questions the DoD contention that AWACS is survivable because it can operate in a passive mode, because it can maneuver at jet speeds and because it can provide the position of would-be attackers to friendly interceptors and missile systems. GAO contends that AWACS operating in a passive mode is of little, if any, utility. They further contend that it is difficult, at best, to provide the position of would-be attackers to friendly interceptors in the absence of data that provides altitude, size of raid, etc.

The above summarizes the major differences between the GAO and DoD assessment of AWACS capabilities/limitations. While there are other disagreements, they all relate to the discrepancies delineated above.

DEPARTMENT OF DEFENSE DIRECTIVES 2140.2 OF JANUARY 23, 1974 AND
FEBRUARY 1976

No. 2140.2, JANUARY 23, 1974

Subject: Recovery of Nonrecurring Costs Applicable to Foreign Military Sales
(FMS).

Refs:

- (a) DoD Instruction 2140.1, "Pricing of Sales of Defense Articles and Defense Services to Foreign Countries and International Organizations," January 29, 1970.
- (b) Armed Services Procurement Regulation (ASPR) as authorized by DoD Directive 4105.30, March 15, 1959.
- (c) DoD Directive 2140.2, "Recovery of Nonrecurring Costs Applicable to Foreign Sales," March 15, 1967 (hereby cancelled).
- (d) Foreign Military Sales Act (1968), 22 U.S.C. 2751 ff.

I. Proposes and applicability

A. This Directive establishes pricing policies, criteria, and procedures for use by Department of Defense Components (Military Department and Defense Agencies) and by United States defense contractors selling equipment developed with DoD appropriations/funds directly to a foreign government or international organization (hereinafter referred to as a foreign government or customer) for recovery of:

1. Nonrecurring research and development costs for major defense equipments with an investment of \$50 million or more in research, development, test, and evaluation;
2. Nonrecurring production costs for major defense equipments with a production investment, both nonrecurring and recurring, of \$200 million or more;
3. Nonrecurring production costs for non-major defense equipments with a production investment both non-recurring and recurring, estimated to be \$5 million or more but less than \$200 million; and
4. DoD support costs for Government-provided material, services and transportation not included in the prime contract price.

B. The provisions of this Directive will not be applied retroactively to foreign military sales contracts involving defense equipments as defined in paragraph I.A. for which: (1) a fixed price has been agreed upon, or (2) a firm offer, including price quotation, has been made by a DoD Component, or directly by a United States defense contractor prior to the effective date of this publication. (See paragraph VIII. below.)

C. Reference (c) is hereby cancelled.

II. Objective

The objective of this Directive is to insure that a purchasing foreign government pays a fair share of nonsecuring costs not otherwise recovered by the Department of Defense from the customer.

III. Definitions

A. Foreign Military Sales (FMS) means a sale of defense articles and services to foreign governments under authority of the Foreign Military Sales Act, reference (d).

B. Direct Sale means a direct sale by a United States contractor of equipment, material, and/or services developed with DoD appropriation/funds to a foreign government for military uses. Excludes sales from a U.S. defense contractor to a U.S. or foreign private firm as a commercial non-FMS sale.

C. Major Defense Equipment means a defense equipment or weapons system having a total research and development investment for hardware of \$50 million or more, or a total estimated production cost, both recurring and nonrecurring, of \$200 million or more. Additionally, when a major component of such a defense

equipment is sold separately under FMS the provisions herein applicable to Major Defense Equipment shall apply.

D. Non-major Defense Equipment means a defense equipment or weapon system, other than a major defense equipment, with a production cost of \$5 million or more and less than \$200 million.

E. *Nonrecurring costs include:*

1. Research, development, test and evaluation costs for the equipment model under consideration is referred to throughout this Directive, as "research and development" to avoid confusion with production test and evaluation performed using production funding. This includes costs of any engineering change proposal (ECP) initiated prior to date of acceptance by the customer of the Letter of Offer and Acceptance, DD Form 1513.

2. Production costs are limited to those incurred after the implementation data in the DD Form 1513 for the production run from which delivery to the FMS customers is anticipated. These costs include those for the improvement of the safety, reliability, delivery schedule or operational effectiveness of the model and are allocated to all units of the current production run for DoD and FMS. Such costs are incurred for real property, industrial plant equipment, special tooling, special test equipment, production engineering, preproduction costs including instruction/training and start-up, pilot model production, and production test/evaluation, except as otherwise provided in ASPR 13-406, reference (b).

3. FMS production costs incurred at the request of or for the benefit of the customer.

IV. *Policy*

Each DoD Component and United States Defense contractor submitting a sales offer to a foreign government will include in the offering price an amount for nonrecurring costs, except as provided in Sections V.A. and VI.

A. Nonrecurring research and development (R&D) costs applicable to the model under consideration normally will be applied in an amount not greater than four percent of the total FMS or Direct Sale price for a major defense equipment. However, when major defense equipment items have been in production for less than five years, the Director, Defense Research and Engineering (DDR&E) may request that the Director, Defense Security Assistance Agency (DSAA) obtain a greater recovery of R&D costs for selected items. Such higher charge will be calculated on a pro rata basis of applying identifiable R&D costs for the model under consideration to the total anticipated production, past and projected, for DoD and FMS. Sales and production projections should be in accordance with those stated in the applicable Selected Acquisition Report (SAR), if available and if the total quantity to be procured is shown.

B. A pro rata share of nonrecurring production costs will be applied as defined in paragraph III.E.2. to the FMS contract or order. Such costs may be applied on a percentage basis to recover the equitable portion applicable to the sale.

C. The full amount of nonrecurring FMS production costs, as defined in paragraph III.E.3., will be applied to the current production run for each FMS or Direct Sale.

D. In determining whether the cost of a DoD weapons system meets the threshold to qualify as a "Major Defense Equipment" as defined in paragraph III.D., the costs incurred to date for the life of the weapons system will be accumulated including those for related prior, current and planned models and sub-systems. However, the nonrecurring research and development to be applied to the sale under consideration will be only for the model of the weapons system being offered for sale and will be computed in accordance with paragraph IV.A.

E. For coproduction agreements, a nonrecurring costs surcharge should be assessed unless: (1) the model of the weapons system to be coproduced has been in production for 10 years or more, and/or (2) the model of the weapons system to be produced has been superseded for Department of Defense production requirement by a more advanced model. In the above exception, consideration may be given to the assessment of a royalty charge appropriate circumstances.

V. *Procedures*

A. Each DoD Component and United States defense contractor negotiating the sale of a major defense equipment to a foreign government will include non-recurring research and development costs in the price as follows:

1. Components will review their programs of research and development for the past ten years and calculate a unit charge for identifiable costs applicable to major defense equipment. In this calculation, the Components are authorized to

use estimates where it appears that more precise data will not justify the additional work involved. This nonrecurring R&D cost data will be submitted to the Director, Defense Security Assistance Agency (DSAA) with a request for a determination of the amount to be applied to the pending FMS case. DSAA will determine this amount. If this amount is otherwise available or has been previously approved by DSAA, separate submissions are not required.

2. When a United States defense contractor negotiates a Direct Sale of a major defense equipment to a foreign government he will obtain the amount of nonrecurring R&D charges to be applied from the DoD Component sponsoring the major defense equipment. If this amount is otherwise available or has been previously approved by DSAA, separate submissions are not required. The DoD Component will advise the contractor of the amount to be charged based on previous guidance from DSAA as indicated in paragraph V.A.1. or request and obtain cost from DSAA.

B. Each DoD Component and United States defense contractor negotiating the sale of a major or non-major defense equipment to a foreign government will include the following nonrecurring production costs in the price :

1. A pro rata share of nonrecurring production costs for the current production run as defined in paragraph III.E.2. These costs will not be applied retroactively but to those incurred after signing the DD Form 1513. Costs may be applied on a percentage basis to recover the equitable portion applicable to the sale. On non-major defense equipment sales, the percentage may be based on experience to eliminate unproductive accounting provided that the factors are equitable.

2. The full amount of FMS production costs as defined in paragraph III.E.3. incurred for the benefit of the customer. However, when a subsequent purchaser requests the same specialized features which resulted in added nonrecurring production costs, as stated in paragraph III.E.3., a pro rata share of these costs may be paid by the subsequent purchaser with a credit granted to the original purchasers. No more than one credit a year will be granted to the original purchaser. Credits will not be granted after the model sold is no longer offered for sale, when three years have elapsed since customer acceptance of the DD Form 1513, or delivery of the last unit of equipment on the sale subject to credit allowance.

C. Each DoD Component will include :

1. A clause in all future contracts falling within the provisions of paragraphs III.C. and III.D. that will require a United States defense contractor selling defense equipment directly to a foreign government to collect the nonrecurring R&D costs specified in paragraph IV. A. and the nonrecurring production costs specified in paragraph IV.B. for the account of the United States Government.

2. An additional clause in such contracts, requiring the United States defense contractor to inform foreign governments purchasing directly from the contractor that any United States Government furnished goods, services and transportation required for fulfillment of the contractor's sales contract (i.e., the U.S. Government support costs as stated in reference (a)) can be provided only by means of an FMS case executed by the sponsoring DoD Component and the foreign government. At the option of the foreign government, it may designate the contractor to act as its agent in executing the DD Form 1513 in the name of the foreign government, and/or to receive possession, or performance, of the goods, services, and transportation.

D. Upon receipt of payment for nonrecurring costs from the foreign government for an FMS case or from a contractor for a Direct Sale, the DoD Component will credit such funds to the most current applicable appropriation. For example, funds collected for R&D costs on an FMS sale should be deposited to the account current for research and development appropriation and for nonrecurring production costs to the account current for procurement/production. DoD Components will maintain sufficient records in order to provide, upon request, the amounts of nonrecurring charges by contracts awarded, amount collected for each FMS case, and amount deposited to the credit of each defense appropriation.

E. The Assistant Secretary of Defense (Comptroller), (ASD(C)), will provide liaison with other U.S. Government agencies to determine the portion of the charge of nonrecurring costs allocable to the other agency to cover their portion of the nonrecurring costs. When the proper distribution to such agency cannot be determined, payment will be made into Miscellaneous Receipts, United States Treasury.

VI. Deviations

A. The head of a DoD Component, a foreign government or a defense contractor (vice president or higher) may request a waiver of the nonrecurring costs surcharge for a Foreign Military Sale (FMS) or a Direct Sale, as defined in subparagraphs III.A. and B. respectively, when he considers such action to be in the best interest of the United States (1) to satisfy a demonstrable right of the manufacturer of the purchaser or (2) to obtain advantage to the Department of Defense. Requests for such deviations will contain a summary statement of the facts, benefits expected and justification thereof.

B. For a Direct Sale by a contractor, when the market environment suggests waiver of the R&D charge in whole or in part, consultations will be held by the DoD Component involved with the producer to determine an equitable sharing between the DoD and the producer of the necessary price reduction—such sharing on the part of the DoD affecting the extent of the waiver, and on the part of the producer affecting the extent of reduction of his pricing elements other than production costs. Such consultation will be carried out by the Director, DSAA, who will also approve the agreed sharing formula.

C. If approval is granted for any request for deviation it will be stated in writing by the Director for Acting Director, Defense Security Assistance Agency (DSAA). This authority will not be redelegated. When it is estimated that a deviation of \$100,000 or more for nonrecurring R&D costs is involved, DSAA will request the concurrence of the Director, Defense Research and Engineering. For a deviation of \$100,000 or more for nonrecurring production costs, DDSA will request the concurrence of the Assistant Secretary of Defense (Installation and Logistics). Recommendations for approval or disapproval of these requests for deviations will be processed expeditiously, and within seven days after receipt of the request. A copy of each approved deviation will be forwarded to the Assistant Secretary of Defense (Comptroller).

D. A foreign government or Defense contractor submitting a request for a deviation to the Director, DSAA, will provide an information copy to the cognizant contracting officer and foreign military sales office of the sponsoring DoD Component. In acting on the request of a foreign government or defense contractor, the Director, DSAA, will provide information copies to the sponsoring DoD Component, who will advise the cognizant contracting officer.

VII. Responsibilities

The Assistant Secretary of Defense (International Security Affairs), (ASD (ISA)), shall monitor the application of this Directive, and exercise control over the program to insure effective compliance and balance-of-payment programs.

VIII. Effective data and implementation

A. This Directive is effective for all offers made on or after 60 days following publication of this Directive.

B. Within 120 days, the head of each DoD Component shall submit to the ASD (C) two sets of implementing procedures.

W. P. CLEMENTS, JR.,
Deputy Secretary of Defense.

No. 2140.2, FEBRUARY 1976.

ASD (C)

Subject: Recoupment of Nonrecurring Costs on Sales of USG Products and Technology.

Refs.:

- (a) DoD Instruction 2140.1, "Pricing of Sales of Defense Articles and Defense Services to Foreign Countries and International Organizations," January 29, 1970.
- (b) Armed Services Procurement Regulation (ASPR) as authorized by DoD Directive 4105.30, March 15, 1959.
- (c) DoD Directive 2140.2, "Recovery of nonrecurring Costs Applicable to Foreign (FMS)." January 23, 1974 (hereby cancelled).
- (d) Foreign Military Sales Act (1968), 22 U.S.C. 2751 ff.

I. Purpose and applicability

A. This Directive establishes a policy designed, to achieve a return on government investment, and not to arbitrarily limit transfers of technology to foreign nations or domestic organizations; to entail proportionate (i.e., pro-rate) cost

recovery on product sales; to allow a fair market recovery on technology sales; and to allow reasonable DoD flexibility and discretion in implementation, and permit exceptions because of national security, foreign policy, and overriding public interest.

B. This Directive establishes pricing policies, criteria, and procedures for use by Department of Defense components (Military Departments and Defense agencies) and by United States Defense contractors selling products and technology developed with DoD appropriations/funds directly to a foreign government, international organization, foreign commercial firm, or domestic organization (hereinafter referred to as a customer) for recoupment of:

1. Nonrecurring research, development, test, and evaluation costs with an investment of \$25 million or more for products and technology.

2. Nonrecurring production costs for products with a defense production investment of \$100 million or more. Recoupment costs will also be assessed on subsequent nonrecurring costs of \$5 million or more.

3. Support costs for government-provided materiel, services and transportation not included in the contract price.

C. This Directive also applies to special research and/or nonrecurring production costs over \$5 million as defined in III.F.3.

D. The provisions of this Directive will not be applied retroactively to sales contracts involving products or technology in cases when a recoupment clause was not included in the contract between the DoD and the contractor.

II. Objective

The objective of this Directive is to insure that a purchasing customer pays a fair share of the DoD investment costs in the products or technology not otherwise recovered by the DoD from the customer.

III. Definitions

A. Sale and Purchase include, in the case of technology, license and licensee respectively, except where otherwise inappropriate in the context.

B. Government Sales means a sale of articles and services to customers by any DoD Components under authority of appropriate Legislative Acts. This includes Foreign Military Sales (FMS) as defined in paragraph F below.

C. Direct Sale means a direct commercial sale by a Defense contractor of products, technology, materiel, and/or services developed with DoD appropriations/funds to a customer for his use.

D. Domestic Organization means any U.S. nongovernmental organization or private commercial firm.

E. Technology. The application of scientific and technical knowledge to some practical end.

F. Investment Costs Include:

1. Research, development, test and evaluation costs for the product or technology under consideration. This includes costs of any engineering change proposal initiated prior to date of the contract with the customer.

2. Nonrecurring production costs are those incurred for the production run from which delivery to the customers is anticipated. These costs include those for the improvement of the safety, reliability, delivery schedule or operational effectiveness of the model and are allocated to all units of the current production run. Such costs are incurred for real property, industrial plant equipment, special tooling, special test equipment, production engineering, preproduction costs including instruction/training and start-up, pilot model production, and production test/evaluation, except as otherwise provided.

3. Special Research and Development and Production costs are those incurred at the request of or for the benefit of the customer which will be wholly absorbed by the customer.

G. Pro rata means the proportionate share of costs according to number of products in a production run and percent of similarity of the product.

H. Pro rata recovery is designed to recover for the Defense Department its investment in the development of the product being sold.

I. Fair Market Price is the negotiated (or estimated) price which is acceptable to both the buyer(s) and the seller(s). It infers a monetary return based on demand and the potential market for the ultimate product produced from the technology.

J. Fair Market Pricing Recovery is designed to recover the fair market value of the technology being sold irrespective of the Government's investment in the development of that technology.

K. Foreign Military Sales (FMS) means a sale of defense articles and services to foreign governments under authority of the Foreign Military Sales Act, Reference (d).

L. Model is the generic term applied to a basic item and all modifications to that item.

IV. Policy

Each DoD Component (or Defense contractor in a direct sale) submitting a sales offer to a customer will include in the offering price an amount for recoupment of DoD investment costs except as provided in Section VI.

A. Research and Development (R&D) costs normally will be applied as a pro rata share of the total R&D costs applicable to the product. R&D costs recoupment will be calculated on a pro rata basis of applying identifiable R&D costs for the model or portion under consideration to the total anticipated production, past and projected.

B. A pro rata share of nonrecurring production costs will be applied to the contract or order. Such costs may be applied on a proportionate basis to recover the equitable portion applicable to the sale. OASD (T&L) will be the final authority on production cost issues.

C. The full amount of nonrecurring special production costs will be applied to the current production run for each sale. However, a pro rata share of these costs may be recovered pursuant to paragraph V.d.2.

D. In the case of technology sales the amount of recoupment will be predicated upon the fair market price.

E. In determining the amount of DoD recoupment, consideration will also be given to non-monetary returns which are advantageous to national security, foreign policy, and the public interest.

V. Procedures

A. Procedures will be implemented in a nondiscriminatory manner.

B. DoD R&D contracts will include an obligation upon the contractor to pay specified amounts to the DoD upon the contractor's direct sale of products or technology developed under the contract.

C. Each DoD Component and United States Defense contractor negotiating the sale of products and technology will include research and development costs in the price as follows:

1. Components, at the time a sale is evident, will calculate a unit charge for identifiable costs applicable to the products and technology. In this calculation, the Components are authorized to use estimates where it appears that more precise data will not justify the additional work involved. However, the Components should be prepared to demonstrate that they have adopted a reasonable approach. The R&D cost data will be submitted to the DDR&E with a request for approval of the amount to be applied to the pending case. In the case of Foreign Military Sales (FMS), the approval request will be coordinated with the DSAA. Agreements already negotiated will not be affected by the implementation of the policy in this document. If this amount is otherwise available or has been previously approved, separate submissions are not required.

2. When a United States Defense contractor negotiates a direct sale of a product or technology to a customer, he will obtain the amount of R&D charges to be applied from the Component sponsoring the technology or product. If this amount is otherwise available or has been previously approved by DDR&E, separate submissions are not required. The Component will advise the contractor of the amount to be charged.

3. In determining the recoupment cost of a product, the costs incurred to date for the life of the product will be accumulated including those for related prior, current and planned models and subsystems. However, the research and development cost to be applied to the sale under consideration will be only for the model of the product being offered for sale and will be computed in accordance with paragraph IV.A.

4. For co-production agreements, a nonrecurring costs surcharge should be assessed unless: (1) the model of the system to be co-produced has been in production for 10 years or more, and/or (2) the model of the system to be produced has been superseded by a more advanced model. In the above exception, consideration may be given to the assessment of a royalty charge under appropriate circumstances.

D. Each DoD Component and US defense contractor negotiating the sale of a product to a customer will include the following nonrecurring production costs in the price.

1. A pro rata share of nonrecurring production costs for the current production run. Costs may be applied on a percentage basis to recover the equitable portion applicable to the sale. On equipment sales, the percentage may be based on experience to eliminate unproductive accounting provided that the factors are equitable.

Production engineering costs and test and evaluation costs performed with production funding should be prorated in the same manner as R&D costs.

Co-production agreements with foreign nations or foreign contractors should provide for appropriate recovery of US nonrecurring costs.

2. The full amount of Foreign Military Sales (FMS) R&D and special production costs incurred for the benefit of the customer will be recovered. However, when a subsequent purchaser requests the same specialized features which resulted in the added nonrecurring R&D and product costs, a pro rata share of these costs may be paid by the subsequent purchaser with a credit granted to the original purchaser. Credits will not be granted after the model sold is no longer offered for sale or when five years have elapsed since customer acceptance of DD form 1513. No nonrecurring recoupment charge will be made to the US Government if it adopts the features for its own use or provides equipment containing such features to another country funded by the US Government under the Grant Aid Program.

E. Each DoD Component negotiating the sale of technology to a customer will recover the fair market price of such technology.

F. The cognizant Component will include:

1. A clause in all future contracts falling within the provisions of this document that will require a US defense contractor selling products and technology directly to a foreign government, international organization, foreign commercial firm, or domestic organization to collect the DoD recoupment costs for the DoD component. In joint DoD/direct sales, the contractor normally will be required to collect the nonrecurring costs associated with the direct sale portion of the customer's purchase.

2. An additional clause in such contracts, requiring the Defense contractor to inform customers purchasing directly from the contractor that any defense furnished goods, services and transportation required for fulfillment of the contractor's sales contract (i.e., the DoD support costs) can be provided only by means of a Foreign Military Sales case executed by the sponsoring Component and the customer. At the option of the foreign government, it may designate the contractor to act as its agent in executing a purchase agreement. In the name of the customer and/or to receive possession, or performance, or the goods, services, and transportation.

G. Upon the receipt of payment of recoupment costs from the customer for a DoD case or from a contractor for a direct sale, the cognizant Component will credit such funds to the most current applicable appropriation. For example, funds collected for R&D costs on a DoD sale should be deposited to the account current for research and development appreciation. Nonrecurring production costs incurred prior to the production for customer delivery and which are applicable to the total production will be credited to the current procurement account. Components will maintain sufficient records in order to provide, quarterly, the amounts of recoupment charges by contracts awarded, amounts collected for each DoD case, and amount deposited to the credit of each Component appropriation. This information will be forwarded to OSD Comptroller annually 60 days following the close of the fiscal year.

H. Components will maintain liaison to determine the portion of the charge of recoupment costs allocable to each Component so that they can arrange for distribution of their portion of any recovered nonrecurring costs. When the proper distribution to such Component cannot be determined, an allocation will be made by the Office of the Assistant Secretary of Defense (Comptroller).

I. The Assistant Secretary of Defense (Comptroller), (ASD(C)), will provide liaison with other US Government agencies to determine the portion of the charge of nonrecurring costs allocable to the other agency to cover their portion of the nonrecurring costs. In unique cases where DoD resolution is unlikely an interagency group, under the President's Council for International Economic Policy (CIEP), will review the case. For example, the State Department must be

involved in any reviewing mechanism dealing with foreign sales, contracts, or transfers that could involve foreign policy issues, munitions or export control procedures, significant amounts of recoupment or cases where quid pro quos could be obtained from the foreign purchaser's government. The CIEP inter-agency group would make recommendation to the President for final decision.

VI. *Deviations*

A. The head of a DoD Component, a foreign government or a defense contractor (vice president or higher) may request a waiver of the nonrecurring costs surcharge for a Government sale or a Direct Sale, as defined in subparagraphs 111.B. and C. respectively, when he considers such action to be in the best interest of the United States (1) to satisfy a demonstrable right of the manufacturer of the purchaser or (2) to obtain advantage to the Department of Defense. Requests for such deviations will contain a summary statement of the facts, benefits expected and justification thereof, and sent to the Director of Defense Security Assistance Agency for all FMS and direct foreign sales and to the Assistant Secretary of Defense, I&L for domestic organizations.

B. For a direct sale by a contractor, when the market environment suggests waiver of the R&D charge in whole or in part, consultations will be held by the DoD Component involved with the producer to determine an equitable sharing between the DoD and the producer of the necessary price reduction—such sharing on the part of the DoD affecting the extent of the waiver, and on the part of the producer affecting the extent of reduction of his pricing elements other than production costs.

C. If approval is granted for any request for deviation, it will be stated in writing by the Director, Defense Research and Engineering (DDR&E) for domestic R&D costs, the Director DSAA for R&D associated with FMS, and the Assistant Secretary of Defense for Installation and Logistics (ASD, I&L) for all production costs. This authority will not be delegated. When it is estimated that a deviation of \$100,000 or more for nonrecurring R&D costs of FMS is involved, DSAA will request the concurrence of DDR&E. Recommendations for approval or disapproval of these requests for deviations will be processed expeditiously, and within seven days after receipt of the request. A copy of each approved deviation will be forwarded to the Assistant Secretary of Defense (Comptroller).

D. A foreign government, domestic organization or Defense contractor submitting a request for deviation to the Director, DSAA, or Assistant Secretary of Defense, I&L will provide an information copy to the cognizant contracting officer and military sales office of the sponsoring DoD Component. In acting on the request of a foreign government, domestic organization or defense contractor, the Director, DSAA, or ASD, I&L will provide information copies to the sponsoring DoD Component, who will advise the cognizant contracting officer.

VII. *Responsibilities*

(The Assistant Secretary of Defense (International Security Affairs), (ASD (ISA)), shall monitor the application of this Directive, and exercise control over the program to insure effective compliance with the balance-of-payment programs in the case of Foreign Military Sales.

VIII. *Effective date and implementation*

A. This Directive is effective for all offers made on or after 60 days following publication of this Directive.

B. Within 120 days, the head of each DoD Component shall submit to the ASD(C) two sets of implementing procedures.