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Israel's Qualitative Military Edge and Possible U.S. Arms Sales to the United Arab Emirates

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SUMMARY

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Jeremy M. Sharp, Coordinator
Specialist in Middle Eastern Affairs

Jim Zanotti, Coordinator
Specialist in Middle Eastern Affairs

Kenneth Katzman
Specialist in Middle Eastern Affairs

Christina L. Arabia
Analyst in Security Assistance, Security Cooperation and the Global Arms Trade

Clayton Thomas
Analyst in Middle Eastern Affairs

Israel's Qualitative Military Edge and Possible U.S. Arms Sales to the United Arab Emirates

This report provides background and analysis on a possible U.S. sale of the F-35 Joint Strike Fighter and other advanced weaponry to the United Arab Emirates (UAE) in light of select U.S. policy considerations, including Israel's Qualitative Military Edge (QME) over neighboring militaries, as well as concerns about an arms race and strategic competition with other arms suppliers. The F-35 is the United States' most advanced stealthy, fifth generation combat aircraft. Its proposed sale, along with other items, to the UAE comes amidst broad support in Congress for an Israel-UAE normalization agreement announced in August 2020 and signed in September 2020. UAE's National Day holiday, December 2, 2020, may be a target date for formalization of a U.S.-UAE arms sale.

U.S.-UAE relations on security matters have been close for more than 20 years, and successive Administrations, with authorization from Congress, have sold the Emiratis sophisticated U.S. weaponry, such as the F-16 Desert Falcon.

While many Members of Congress have praised closer Israeli-Emirati ties, some have expressed their views that the sale of the F-35 must not imperil Israel's QME in the region. Other lawmakers have expressed concern that the sale of advanced U.S. weaponry to the UAE could risk compromising U.S. national security if the sale resulted in F-35 technology falling into the hands of China, Russia, or other U.S. adversaries, such as Iran. The UAE's role in wars in Yemen and Libya also has drawn congressional scrutiny in recent years.

This report provides an overview of recent UAE-Israeli relations and internal decision-making for each, an assessment of how the proposed sale could affect Israel's QME, an analysis of the UAE's handling of sensitive technology and foreign policy, and descriptions of congressional involvement with previous sales of advanced U.S. weaponry to Middle Eastern countries.

In past decades, Congress has at times played a central role in shaping U.S. arms transfers to the Middle East (or pressure the administration to cancel a sale), frequently, but not exclusively, in an effort to mitigate possible risks to Israel's security. Previous congressional involvement may or may not inform how lawmakers review a potential sale of F-35s and other advanced weaponry to the UAE. The Appendix to this report includes several related case studies.

For additional background, please see the following CRS Reports.

CRS Report R44245, *Israel: Background and U.S. Relations in Brief*, by Jim Zanotti.

CRS Report RS21852, *The United Arab Emirates (UAE): Issues for U.S. Policy*, by Kenneth Katzman.

CRS Report RL33222, *U.S. Foreign Aid to Israel*, by Jeremy M. Sharp.

CRS Report R44984, *Arms Sales in the Middle East: Trends and Analytical Perspectives for U.S. Policy*, by Clayton Thomas.

CRS Report RL30563, *F-35 Joint Strike Fighter (JSF) Program*, by Jeremiah Gertler.

CRS Report RL31675, *Arms Sales: Congressional Review Process*, by Paul K. Kerr.

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Overview

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While many Members of Congress have praised closer Israeli-Emirati ties, some have cautioned that the sale of the F-35 must not imperil Israel's QME in the region. Other lawmakers have expressed concern that the sale of advanced U.S. weaponry to the UAE could risk compromising U.S. national security if the sale resulted in F-35 technology falling into the hands of China, Russia, or other U.S. adversaries, such as Iran. The UAE's role in the wars in Yemen and Libya also has drawn congressional scrutiny in recent years.

This report provides an overview of recent UAE-Israeli relations and internal decision-making for each, an assessment of how the proposed sale could affect Israel's QME, an analysis of the UAE's foreign policy and handling of sensitive technology, and descriptions of congressional involvement with previous sales of advanced U.S. weaponry to Middle Eastern countries.

In past decades, Congress has at times played a central role in shaping U.S. arms transfers (or applying political pressure to stop them) to the Middle East, frequently, but not exclusively, to mitigate possible risks to Israel's security. Other congressional considerations have included proliferation, end use/technology sharing, and strategic competition from foreign suppliers. Previous congressional involvement may or may not inform how lawmakers review a potential sale of F-35s and other advanced weaponry to the UAE. The Appendix to this report includes several related case studies.

Israel-UAE Normalization and the F-35

On August 13, 2020, the United States, Israel, and the United Arab Emirates issued a joint statement announcing that Israel and the UAE would fully normalize their relations. Five days later, Israeli media reported that the UAE had conditioned its agreement to full normalization with Israel on a major U.S. arms sale package that included, among other items, the F-35 Joint Strike Fighter.[1] Hours after that report surfaced, Israeli Prime Minister Benjamin Netanyahu's office issued a public statement denying that the Israel-UAE agreement included Israel's consent to a U.S.-UAE arms deal, stating that Netanyahu "has opposed the sale of F-35s and other advanced weaponry to any country in the Middle East, including Arab countries that have peace

[1] Nahum Barnea, "U.S. to Sell F-35 Jets to UAE as Part of Secret Clause in Israel Ties Agreement," *YnetNews.com*, August 18, 2020. For information on the F-35, see CRS Report RL30563, *F-35 Joint Strike Fighter (JSF) Program*, by Jeremiah Gertler. On August 20, UAE Minister of State for Foreign Affairs Anwar Gargash said that an F-35 sale was not an explicit condition of the normalization deal with Israel, but that the agreement should remove "any hurdles" to such a sale. "Gantz raps Netanyahu for sidelining him on F-35 policy as UAE deal brewed," *Times of Israel*, August 20, 2020.

agreements with the State of Israel."[2] At a press briefing on August 19, President Trump remarked that "they'd [UAE] like to buy F-35s; we'll see what happens. It's under review."[3] Some subsequent media reports claimed that despite Prime Minister Netanyahu's public denials, he had agreed not to try to block a U.S.-UAE arms deal.[4]

Israel's "Abraham Accords" with the UAE and Bahrain

On September 15, 2020, Prime Minister Netanyahu signed the agreement to fully normalize Israel's relations with the UAE at the White House. That same day, Netanyahu signed another agreement establishing that similar normalization would take place shortly between Israel and Bahrain. The agreements are known as the Abraham Accords.

Over several years, various developments led toward this outcome of the UAE and Bahrain joining Egypt and Jordan as the only Arab states with formal diplomatic relations with Israel. Israel established informal ties with a number of Arab states, including the UAE and Bahrain, in the 1990s after the Israeli-Palestinian peace process began. Discreet Israeli links with the UAE and Bahrain on issues including intelligence, security, and trade have become closer and more public in the past decade as Israel has worked with various Arab Gulf states aligned with the United States in efforts to counter Iran's regional influence and military capabilities.[5]

The Israel-UAE deal has implications for the region and U.S. policy beyond the possibility of U.S.-UAE arms sales. In connection with the deal, Israel agreed to suspend plans to annex part of the West Bank, with one source stating that the UAE received a commitment from U.S. officials that they would not approve Israeli annexation until at least January 2024.[6] The deal also seeks to boost trade and investment between Israel and the UAE.[7] Some Israeli and UAE officials have voiced expectations that their bilateral relations will be warmer on a people-to-people basis than the "cold peace" Israel maintains with its immediate neighbors Egypt and Jordan. Unlike those countries, the UAE has not participated in a war with Israel or had territorial disputes with it.

From mid-August through mid-September 2020, several high level U.S.-UAE-Israel meetings reportedly featured discussion of possible U.S. arms sales. On August 24, U.S. Secretary of State Michael Pompeo met with Prime Minister Netanyahu in Israel, where he stated that while the United States will continue to honor its commitment to preserving Israel's QME, the United States has a "20-plus year security relationship with the United Arab Emirates as well, where we have provided them with technical assistance and military assistance."[8] On September 1, White House Senior Advisor Jared Kushner and National Security Advisor Robert O'Brien visited Al Dhafra Air Base in the UAE, where O'Brien alluded that there would be a "significant security aspect" to Israel-UAE normalization.[9]

On September 15, 2020 at the White House, Prime Minister Netanyahu and UAE Foreign Minister Sheikh Abdullah bin Zayed signed the Israel-UAE agreement, which made no explicit reference to any U.S.-UAE arms deal.[10] Before the signing at a press conference, President Trump

[2] Israel Ministry of Foreign Affairs, "PMO Statement on the Peace Agreement with the UAE," August 18, 2020.

[3] White House, Remarks by President Trump in Press Briefing, August 19, 2020.

[4] Mark Mazzetti, Edward Wong and Michael LaForgia, "Netanyahu Privately Condoned U.S. Plan to Sell Arms to U.A.E., Officials Say," *New York Times*, September 3, 2020.

[5] Miriam Berger, "Israel's relations in the Middle East, explained," *Washington Post*, August 15, 2020

[6] Jacob Magid, "US assured UAE it won't back Israel annexation before 2024 at earliest, ToI told," *Times of Israel*, September 13, 2020. For information on the annexation issue, see CRS Report R46433, *Israel's Possible Annexation of West Bank Areas: Frequently Asked Questions*, by Jim Zanotti.

[7] Gilead Sher and Yoel Guzansky, "The United Arab Emirates and Israel Just Came Clean on Their Extra-Marital Affair," *War on the Rocks*, August 28, 2020.

[8] Nike Ching, "US Vows to Ensure Israel's 'Military Edge,'" *Voice of America*, August 24, 2020.

[9] Aron Heller, "With Kushner in UAE, Iran's Leader Decries Israel-UAE Ties," Associated Press, September 1, 2020.

[10] See full text of the Abraham Accords Peace Agreement: Treaty of Peace, Diplomatic Relations and Full Normalization Between the United Arab Emirates and the State Of Israel, available at: https://www.state.gov/wp-

was again asked if he would support an F-35 arms sale to the UAE. He responded, "We'll work that out. That's — that's going to be an easy thing."[11] In a television interview that same day, President Trump also said, "I would have no problem in selling them the F-35."[12] On September 25, *Bloomberg* reported that the United Arab Emirates had officially submitted a Letter of Request (LOR) to the State Department to purchase the F-35.[13] Reportedly, the UAE request also includes the sale of EA-18G Growler electronic warfare jets and MQ-9 Reaper unmanned aerial vehicles. One source has asserted that the Administration wants to complete a Letter of Offer and Acceptance (LOA) by December 2, 2020, the UAE's National Day holiday.[14]

Other Components of a Possible U.S. Arms Sale to the UAE?

Boeing EA-18G Growler – Operated by the U.S. Navy and exported only to Australia to date (Finland also has received U.S. approval), the Growler is an electronic warfare aircraft based on the F/A-18F Super Hornet. The Growler is a Navy carrier-capable EW aircraft designed to detect and jam enemy radars.

MQ-9 Reaper Unmanned Aerial Vehicle (formerly known as the Predator B) – The MQ-9 Reaper is an armed, long endurance unmanned aerial vehicle (UAV) developed and manufactured by General Atomics Aeronautical Systems Inc. The Reaper can reach a maximum altitude of 50,000 feet and can sustain a maximum endurance of 32 hours. The Reaper either can perform reconnaissance missions or be used to strike high-value, fleeting, and time-sensitive targets. The U.S. has exported the MQ-9 to a number of NATO allies.

UAE Motivation for Acquiring the F-35

UAE motivations for pursuing the F-35 appear multifaceted. Strategically, the Abraham Accords solidifies the UAE's de-facto alignment with Israel and the United States against Iran. Seen from this angle, the UAE may seek the F-35 and other advanced weaponry to make common cause in deterring or defending against threats from Iran, or discouraging Iran's projection of power within the region. The UAE and Israel have publicly supported the Trump Administration's May 2018 U.S. withdrawal from the July 2015 Iran nuclear agreement and its policy of "maximum pressure" on Iran. According to one report, UAE leader Sheikh Mohammad bin Zayed Al Nuhayyan has long considered Israel as an ally against Iran and the Muslim Brotherhood.[15]

content/uploads/2020/09/UAE_Israel-treaty-signed-FINAL-15-Sept-2020-508.pdf.

[11] White House, Remarks by President Trump and Prime Minister Netanyahu of the State of Israel Before Bilateral Meeting, September 15, 2020.

[12] Joe Gould, "Trump: 'No problem' selling F-35 jets to UAE," *Defense News*, September 15, 2020.

[13] Anthony Capaccio, "UAE Submits Request to Buy F-35s from U.S. After Israel Deal," *Bloomberg*, September 25, 2020.

[14] Mike Stone, "Exclusive: U.S. Eyes December Agreement on F-35 Jets with UAE – Sources," Reuters, September 22, 2020.

[15] David D. Kirkpatrick, "The Most Powerful Arab Ruler Isn't M.B.S. It's M.B.Z.," *New York Times*, June 2, 2019.

Figure 1. The F-35A Lightning II

Source: U.S. Air Force.

Since 2011, the UAE also has perceived regional Islamist movements, such as the Muslim Brotherhood, and their state supporters, such as Qatar and Turkey, as possible threats to regional security. This concern may highlight another possible reason for it to seek greater closeness with Israel and pursue advanced arms purchases.[16] The UAE may expect that normalization with Israel will reduce criticism—in Congress and elsewhere—of its regional actions against local Islamist-allied forces in Yemen and Libya.

In a June 2020 forum hosted by the Middle East Institute, UAE Minister of State for Foreign Affairs Anwar Gargash defended the UAE's interventions in the region, particularly Yemen and Libya, as driven by the actions of regional powers—including Iran and Turkey—who he said appear to UAE leaders to be bent on expanding both their influence and their territory.[17] Nevertheless, in mid-2019, amid U.S.-Iran tensions in the Gulf, the UAE leadership began to engage Iran, perhaps in part because UAE investment in infrastructure could be at risk in the

[16] Kamran Bokhari, "The United Arab Emirates, Israel, and the Strategic Imbalance of Power," *Center for Global Policy*, August 19, 2020.

[17] "UAE minister: Region's dangers demand 'activist' stance." *Washington Times*, June 17, 2020.

event of war with Iran.[18] In August 2019, UAE maritime security officials visited Iran for the first bilateral security talks since 2013.[19]

In light of these complicated regional issues, UAE officials may assess that boosting Emirati military capacities with the F-35 and other arms could expand the range of military and political options available to them in addressing crises. The Iran threat was among the factors the UAE cited when expressing interest in buying the F-35 as early as 2014. Without specifying Iran or any other threat, Gargash told an Atlantic Council audience on August 20, 2020: [The UAE has] legitimate requests" [for the plane]…We ought to get them. [The F-35] has always been a target [to meet the UAE's defense needs and has been requested for six years].[20]

The UAE's motivation to acquire the F-35 and other advanced weapons may also lie in the UAE's consideration of itself as the most reliable and technologically advanced U.S. security partner in the Arab world.[21] The UAE hosts about 3,500 U.S. military personnel at UAE military facilities, and the UAE's capabilities have been enhanced by the many years of defense cooperation with the United States that includes U.S. arms sales and training, strategic planning, and joint exercises and operations. Since the 2011 Arab uprisings, the UAE has become more active in the region, including through the direct use of its own military forces and its development of regional military facilities from which to project power. The UAE also participates in a maritime security operation, the International Maritime Security Construct, which began operations in November 2019 as a response to Iranian attacks on commercial shipping in the Persian Gulf.[22]

Israeli Reactions and Domestic Debate

Israeli officials and other observers have reacted in varying ways to reports of a possible U.S. sale of F-35 aircraft and other advanced weaponry to the UAE. Israel is the only Middle East country that currently possesses and operates F-35s (**see "The F-35 and Israel"**), and the United States has had a legal requirement since 2008 to preserve Israel's QME over other regional militaries (**see "Preserving Israel's Qualitative Military Edge"**). Amos Gilead, a former Israeli defense official who played a key role in Israel's QME consultations with the United States, said in August that the UAE would not receive F-35s if there is real opposition from Israel coming from "all channels available," as opposed to token opposition "on paper."[23] Israeli Energy Minister Yuval Steinitz acknowledged that despite Israeli misgivings regarding previous U.S. arms sales to Arab Gulf countries, the UAE had purchased F-16 aircraft that are more advanced than those Israel possesses, and Saudi Arabia had bought and upgraded F-15s.[24]

Factors influencing public Israeli reactions appear to include:

- **Effect on Israeli security.** Israeli officials and observers have voiced opinions about how U.S. sales to the UAE could affect Israeli security. While several have expressed concerns

[18] "The UAE's Ambitions Backfire as it Finds itself on the Front Line of US-Iran Tensions," *Washington Post*, August 11, 2019.

[19] "Rivals Iran and UAE to hold maritime security talks," Reuters, July 30, 2019.

[20] "UAE Minister Gargash Defends Country's Request for F-35 Fighters," *Bloomberg News*, August 20, 2020.

[21] "In the UAE, the United States has a Quiet, Potent Ally Nicknamed 'Little Sparta,'" *Washington Post*, November 9, 2014.

[22] Department of State, U.S. Security Cooperation with the United Arab Emirates, March 20, 2020.

[23] Neri Zilber, "Peace for Warplanes?" *Foreign Policy* (online), August 31, 2020.

[24] Dan Williams, "Israel opposes any F-35 sale to UAE despite their warming ties," Reuters, August 18, 2020.

(**see "Preserving Israel's Qualitative Military Edge"**), Energy Minister Steinitz suggested that F-35s located in the UAE would threaten Iran "far more" than Israel. Sources suggest that Israel's government has itself supplied the UAE with some defense equipment in the past decade, and has debated providing more advanced equipment.[25]

- **Lack of broad domestic consultation.** Prime Minister Netanyahu reportedly left key cabinet and security officials out of negotiations leading to the UAE agreement, perhaps to avoid leaks or sharing decision-making responsibility and credit with political rivals such as Defense Minister Benny Gantz (who is set to succeed Netanyahu as Prime Minister in October 2021 as part of a May 2020 power sharing agreement) and Foreign Minister Gabi Ashkenazi.[26] At the same time, leaving others out of the talks made Netanyahu more vulnerable to criticism—whether motivated by actual security concerns or domestic political animus—for potentially compromising Israeli security because of the speculation regarding U.S.-UAE arms sales. Netanyahu faces significant domestic political challenges and popular protests relating to his government's handling of the Coronavirus Disease 2019 (COVID-19) pandemic, the economy, and his criminal corruption trial that is scheduled to resume in January 2021.[27]
- **Anticipating U.S.-Israel QME deliberations**. Some officials or observers may partly base their public positions about a possible U.S.-UAE sale on expectations that U.S. officials will consider measures to allay Israeli concerns during bilateral deliberations on QME. Energy Minister Steinitz has said, "I'm sure that there are many other things the Americans can do to insure Israel's qualitative edge."[28]

After saying on August 18 that an F-35 sale to the UAE would not be good for Israel and that Israel must ensure that its security interests would be upheld,[29] Defense Minister Gantz recognized in mid-September that choosing who receives the F-35 is ultimately an American, not an Israeli, prerogative.[30] Later that month, Gantz visited numerous top-level U.S. officials in Washington, DC, and reportedly "discussed the importance of ensuring Israel's military edge and the avenues to maintain it" with Secretary of Defense Mark Esper.[31] In late October 2020, after U.S. Secretary of Defense Esper reassured Israel that the United States would preserve its QME, Netanyahu and Gantz issued a joint statement, stating "Since the U.S. is upgrading Israel's military capability and is maintaining Israel's qualitative military edge, Israel will not oppose the sale of these systems [F-35 and others] to the UAE."[32]

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[25] Alex Fishman, "Netanyahu and Mossad at war with Defense Ministry over UAE weapons deal," *YnetNews.com*, August 25, 2020.

[26] Amos Harel, "F-35 Sale to UAE: 'Netanyahu Knew... It's an Outrage,'" *Ha'aretz*, August 21, 2020.

[27] CRS Report R44245, *Israel: Background and U.S. Relations in Brief*, by Jim Zanotti.

[28] Gwen Ackerman, "Stealth Jet Tests Limits of Israel's Peace Push with Arab Power," *Bloomberg*, August 26, 2020.

[29] Judah Ari Gross, "Defense minister: It's not good for Israel if other countries get F-35," *Times of Israel*, August 18, 2020.

[30] "Gantz to take off for Washington to discuss F-35 sales to UAE," *Times of Israel*, September 21, 2020.

[31] "Pentagon head tells Gantz US will protect Israeli edge, as F-35 sale zooms ahead," *Times of Israel*, September 23, 2020.

[32] "Israel will not Oppose U.S. Sale of F-35 to UAE," Reuters, October 23, 2020.

U.S. Arms Sale to the UAE: The Role of Congress

The Arms Export Control Act (AECA) requires the Administration to provide a formal notification to Congress either 15 or 30 calendar days, depending on the recipient, before taking the concluding steps for certain Foreign Military Sales (FMS) transactions and before issuing a license for certain Direct Commercial Sales (DCS) exports. Notifications are only required if the value of the sale or license is above the statutory notification thresholds.[33] After the notification period lapses, the Administration can proceed unless Congress passes legislation prohibiting or modifying the proposed sale. The Administration also provides an informal notification, or "tiered review," 20-40 days prior to the formal notification in order to allow Congress an opportunity to raise questions or concerns in a confidential setting. The informal process is a practice that stems from a 1976 letter from the Department of Defense (DOD) making a non-statutory commitment to give Congress these preliminary classified notifications.[34] The early consultative involvement has allowed Congress to modify terms or request additional information on potential sales and allows both Congress and the Administration to avoid potential adverse effects to the U.S. relationship with the proposed recipient country (see Appendix). Press reports from June 2020 stated that the Trump Administration considered ending the informal notification practice; however, there have been no changes to the process to date.[35]

Formal notification of the potential sale of F-35 aircraft to the UAE would likely occur through the FMS process and thus start the 30-day congressional review period.[36] There are three stages in the FMS process, which begins once a partner formally submits a Letter of Request (LOR) in the Pre-Case Development stage. In the Case Development stage, the DOD evaluates and validates the LOR and develops a proposed Letter of Offer and Acceptance (LOA) for response, which includes amendments and modifications. Congress then is informally and formally notified and has the opportunity to prohibit or modify the proposed sale.[37] After the congressional review period, if applicable, is complete, DOD may present the LOA to the partner for acceptance and signing. The final and longest stage is Case Execution, in which the FMS case is implemented and eventually closed out.[38] The Defense Security Cooperation Agency (DSCA) manages the entire FMS case cycle in consultation with the State Department's Bureau of Political and Military Affairs.

Both the informal and formal notification periods provide Congress an opportunity to conduct oversight to ensure that U.S. arms sales, and the use of U.S. arms, are aligned with U.S. national security interests and foreign policy objectives. Congress has a number of options to modify or block a proposed sale. Members aware of or concerned about specific potential sales could formulate legislation supporting, conditioning, or prohibiting sales of specific systems to specific partners on specific terms. Members also could request information from Administration officials

[33] For more, see CRS Report RL31675, *Arms Sales: Congressional Review Process*, by Paul K. Kerr.

[34] Ibid.

[35] Michael LaForgia, Edward Wong, and Eric Schmitt, "Trump Administration May End Congressional Review of Foreign Arms Sales," *New York Times*, June 25, 2020.

[36] It is also possible that follow-on support and/or manufacturing and co-production licenses would be notified through DCS, where, depending on the threshold amount of the proposed export license, Congress may or may not receive a notification.

[37] All FMS cases go through a technology transfer review by the Defense Technology Security Administration (DTSA) in the Case Development stage. Congress could request a briefing on DTSA's determination as to whether critical and sensitive U.S. technology will be protected should an F-35 sale to the UAE proceed.

[38] For more see CRS Report R46337, *Transfer of Defense Articles: Sale and Export of U.S.-Made Arms to Foreign Entities*, by Nathan J. Lucas and Michael J. Vassalotti.

through correspondence or through hearings of relevant committees or otherwise seek to increase public awareness of issues implicated by a potential sale.

Committees of jurisdiction in receipt of informal notifications may raise specific concerns in a private setting and alert Administration officials to the broader degree of support and opposition to a sale in Congress. Committee leaders also may use the informal notification consultations to encourage Administration officials to alter, delay, or expedite sales on specific terms. Members individually or in concert may seek specific written assurances from Administration officials with regard to a given sale and the potential future use by a partner of a specific system. Such commitments may be leveraged informally or through subsequent legislation to create or bolster certification provisions.

Congress has a number of options to modify or block a proposed sale. After the formal notification of a proposed arms sale is received, opposing Members could introduce a joint resolution of disapproval to block the sale of the items in the notification.[39] The AECA sets forth various procedural measures for both chambers to help expedite congressional consideration of resolutions of disapproval during the congressional review period.[40] If the House and Senate both pass a joint resolution of disapproval, the measure then may face a presidential veto. If such a veto occurs, Congress would then face a requirement to muster a two-thirds majority to override the veto and effectively block an arms sale.[41] Although the House and Senate have introduced and passed joint resolutions of disapproval in the past, Congress has never successfully blocked an arms sales through such a measure.[42]

Congress can pass legislation modifying or prohibiting an arms sale or blocking the delivery of arms up until the point of delivery. However, Congress would still need to secure a two-thirds majority if it were to override a likely presidential veto. Despite the difficulties in obtaining the required majority, the passage of disapproval measures in Congress and clear congressional opposition to proposed arms sales has in the past led to negotiations with the executive branch that resulted in modifications and compromises. As detailed below (**see "Congressional Considerations: Regional Precedents"**), congressional action has led to specific restrictions on arms sales in the Middle East that have included various conditions, including limits on the quantity of arms sold, restrictions on the use of arms, and restrictions intended to protect sensitive U.S. technology.

There are other legal mechanisms that Congress can use to modify, limit, or end U.S. arms sales when such arms have been misused by partners or partners have engaged in specific activities such as consistent patterns of human rights violations.[43]

There is also a possibility that, in anticipation of congressional opposition, the Administration could bypass the congressional review period by declaring that an emergency exists that requires

[39] Formal notification is legally required to be submitted to the Chairman of the Senate Foreign Relations Committee and the Speaker of the House.

[40] For more, see CRS Report RL31675, *Arms Sales: Congressional Review Process*, by Paul K. Kerr.

[41] For more details on the procedures for a joint resolution of disapproval see, CRS Report RL31675, *Arms Sales: Congressional Review Process*, by Paul K. Kerr.

[42] Most recently, on June 20, 2019, the Senate passed three measures disapproving of 22 immediate arms sales notified under an emergency determination that expedited sales valued at $8 billion in FMS and DCS to Saudi Arabia and the UAE. The House passed the joint resolutions of disapproval for three of the 22 notified sales on July 17, 2020. President Trump vetoed all three joint resolutions on July 24, 2019.

[43] For more see, CRS In Focus IF11533, *Modifying or Ending Sales of U.S.-Origin Defense Articles*, by Paul K. Kerr and Liana W. Rosen.

the immediate provision of F-35 aircraft to the UAE, similar to the emergency certification made by the Administration on May 24, 2019, regarding various U.S. arms sales to Saudi Arabia and the UAE in connection with the ongoing Yemen conflict. In that instance, Secretary of State Pompeo invoked the emergency authority codified in the AECA, which effectively waives the congressional review period, citing a threat from Iranian malign activity to the stability in the Middle East and to U.S. national security.[44]

Recent Congressional Action

To date, lawmakers have largely welcomed the signing of the Israel-UAE normalization agreement while expressing congressional prerogatives to thoroughly review any potential related arms sales to the UAE, particularly as they relate to the QME. Senate Majority Leader Mitch McConnell expressed his view that:

> We in Congress have an obligation to review any U.S. arms sales package linked to the [Israel-UAE] deal. As we help our Arab partners defend against growing threats, we must continue ensuring that Israel's qualitative military edge remains unchallenged.[45]

Senate Foreign Relations Committee Chairman Senator Jim Risch has stressed his view of the need for congressional consultations on preserving Israel's QME and upholding requirements in the Arms Export Control Act.[46] On September 15, 2020, House Foreign Affairs Committee Chairman Eliot Engel sponsored a resolution (H.Res. 1110) that, among other things, reaffirms Congress' commitment to maintaining Israel's QME.[47]

Some lawmakers have raised questions as to whether the sale of the F-35 to Middle Eastern countries other than Israel would automatically erode Israel's QME. In a recent Senate Foreign Relations Committee hearing, Ranking Member Robert Menendez asked Under Secretary of State for Political Affairs David Hale how the State Department was going to adhere to the 2008 law on QME if the sale of the F-35 to the UAE goes forward. In his response, Hale remarked that:

> We have a large group of people at the Pentagon and at the State Department who evaluate based on technical criteria and assessments of security and what it is that the Israelis have and what it is that our partners need. And they will make recommendations to the Secretary of State and then we have a consultative process with Israel. It occurs every year. There's an executive session in which it's a closed session in which we talked about these things.[48]

On October 9, Senators Menendez and Reed sent a letter to Secretary of State Pompeo posing a series of questions about the possible sale that they asserted "must be fully answered before this

[44] Codified in sections 36(b)(l), 36(c)(2), 36(d)(2), and 3(d)(2) of the Arms Export Control Act (AECA), as amended (22 U.S.C. 2776). For more details on the use of the emergency declaration see CRS Insight IN11127, *U.S. Arms Sales to the Middle East: Trump Administration Uses Emergency Exception in the Arms Export Control Act*, coordinated by Jeremy M. Sharp.

[45] Congressional Record, Senate Speeches and Inserts, Page S5563, September 14, 2020.

[46] Eric Shawn, "Trump Administration's Proposed F-35 Sale to UAE Hits Snag," *Fox News*, October 7, 2020.

[47] Prior to the resolution, several House lawmakers wrote a letter to President Trump warning that they will oppose any arms sale that would threaten Israel's QME. See, Rep. Schneider Leads Dem Call Defending Israel's Qualitative Military Edge, Press Release, September 11, 2020.

[48] "U.S. Policy in a Changing Middle East," hearing before the Senate Foreign Relations Committee, September 24, 2020.

sale is sent to Congress for review, as required by statute."[49] On October 20, Senators Menendez and Feinstein introduced the Secure F-35 Exports Act of 2020.

A few Members already have expressed outright opposition to a proposed sale of the F-35 to the UAE.[50] Representative Gregory Meeks stated that he is "absolutely opposed to that sale because we don't know what's happening in the future. I've seen it happen before…. I think that it violates Israel's strategic interest and safety."[51]

Issues for Congress

Preserving Israel's Qualitative Military Edge

Background

The UAE's possible purchase of the F-35 would take place in the context of a U.S. legal requirement precluding U.S. arms sales to the Middle East from adversely affecting Israel's QME over neighboring militaries. The rationale for QME is that Israel must rely on better equipment and training to compensate for being much smaller in land area and population than its potential adversaries.[52] For decades, successive Administrations, in conjunction with Congress, have taken measures to maintain Israel's QME in a number of ways. For example:

- In practice, U.S. arms sales policy has traditionally allowed Israel **first regional access** to U.S. defense technology.[53]
- In cases in which both Israel and an Arab state operate the same U.S. platform, Israel has first received either **a more advanced version** of the platform or the ability to **customize** the U.S. system.[54]

[49] Available at: https://www.foreign.senate.gov/imo/media/doc/10-09-20%20RM%20Reed%20letter%20to%20Pompeo%20Esper%20re%20F-35%20UAE.pdf.

[50] e.g. Representative Debbie Wasserman Schultz, "Trump Puts Israel's Security in Danger with Deal to Sell Fighter Jets to United Arab Emirates, *Miami Herald*, September 5, 2020.

[51] Jacob Kornbluh, "Rep. Meeks Expresses 'Absolute' Opposition to Sale of F-35 Jets to UAE," *Jewish Insider*, September 24, 2020.

[52] The concept of QME (independent of its application to Israel) dates back to the Cold War. In assessing the balance of power in Europe, U.S. war planners would often stress to lawmakers that, because countries of the Warsaw Pact had a numerical advantage over U.S. and allied forces stationed in Europe, the United States must maintain a "qualitative edge" in defense systems. See, for example, Written Statement of General William O. Gribble, Jr., Hearings on Research, Development, Test, and Evaluation Program for Fiscal Year 1973, Before Subcommittee No. 1 of Committee on Armed Services, House of Representatives, Ninety-Second Congress, Second Session, February 2, 3, 7, 9, 22, 23, 24, March 6, 7, and 8, 1972. The concept was subsequently applied to Israel in relation to its Arab adversaries. In 1981, then-U.S. Secretary of State Alexander Haig testified before Congress, saying, "A central aspect of US policy since the October 1973 war has been to ensure that Israel maintains a qualitative military edge." Secretary of State Al Haig, Statement for the Record submitted in response to Question from Hon. Clarence Long, House Appropriations Subcommittee on Foreign Operations Appropriations, April 28, 1981.

[53] For example, Israel acquired the F-15 in 1976, six years before Saudi Arabia. It received the delivery of the F-16 fighter in 1980, three years before Egypt. In 1977, P.L. 95–92 provided that: "In accordance with the historic special relationship between the United States and Israel and previous agreements and continuing understandings, the Congress joins with the President in reaffirming that a policy of restraint in United States arms transfers, including arms sales ceilings, shall not impair Israel's deterrent strength or undermine the military balance in the Middle East."

[54] "The Double Edged Sword of the Qualitative Military Edge," *Israel Policy Forum*, April 11, 2016.

- In cases in which Israel objected to a major defense article sale to an Arab military (e.g., the 1981 sale of Airborne Early Warning and Control System aircraft or "AWACS" to Saudi Arabia), Congress has, at times, advocated for and legislated **conditions on the usage and transfer** of such weapons prior to or after a sale.[55]
- Finally, the United States has compensated Israel with "**offsetting**" weapons packages or military aid when selling other U.S. major defense articles to a Middle Eastern military rival.

Preserving QME: Offsetting Weapons Packages for Israel

The following specific instances supplement general U.S. efforts to strengthen Israel's QME, which are documented in a number of sources:[56]

- In 1992, after the United States announced a sale to Saudi Arabia of F-15 fighters, the George H.W. Bush Administration provided Israel with Apache and Blackhawk helicopters, and pre-positioned U.S. defense equipment in Israel for Israeli use with U.S. approval, as various means of preserving Israel's QME.[57]
- In 2007, after the George W. Bush Administration agreed to sell Saudi Arabia Joint Direct Attack Munitions (JDAMs), the Administration reportedly agreed to sell more advanced JDAMs to Israel as a means of preserving its QME.[58]
- In 2010, the Obama Administration agreed to sell an additional 20 F-35 aircraft to Israel as a means of preserving its QME in response to a sale to Saudi Arabia that included F-15s.[59]
- In 2013, after the Obama Administration agreed to sell the UAE advanced F-16 fighters, then-Secretary of Defense Chuck Hagel announced that the United States would provide Israel with KC-135 refueling aircraft, anti-radiation missiles, advanced radar, and the sale of six V-22 Osprey tilt-rotor aircraft.[60] At the time, the U.S. proposal marked the first time that the United States had offered to sell tilt-rotor Ospreys to another country. Israel would eventually cancel its planned purchase of the V-22 due to budgetary constraints.

Over time, Congress codified informal QME-related practices in a way that encouraged a more deliberate interagency process for each major U.S. arms sale to Middle Eastern governments other than Israel.[61] In the 110th Congress, Representative Howard Berman sponsored legislation (H.R. 5916, Section 201) to "carry out an empirical and qualitative assessment on an ongoing

[55] See Section 131, Certification Concerning AWACS sold to Saudi Arabia, P.L. 99-83, the International Security and Development Cooperation Act of 1985.

[56] See, e.g., State Department, Remarks by Andrew J. Shapiro, Assistant Secretary, Bureau of Political-Military Affairs, November 4, 2011; "U.S.-Israel Strategic Cooperation: U.S. Provides Israel a Qualitative Military Advantage," *Jewish Virtual Library*.

[57] See, Israel Ministry of Foreign Affairs, 18 White House Statement on US Military Assistance to Israel, September 26, 1992, VOLUME 13-14: 1992-1994.

[58] Dan Williams, "Israel to get 'smarter' U.S.-made bombs than Saudis," *Reuters*, January 13, 2008.

[59] Eli Lake, "In Gates Book, Details of Israel's Hard Bargaining Over Saudi Arms," *Daily Beast*, January 10, 2014.

[60] "U.S. Near $10 Billion Arms Deal with Israel, Saudi Arabia, UAE," Reuters, April 19, 2013.

[61] According to one Senate staffer, prior to 2008, during congressional review of possible U.S. arms sales to the Middle East, QME concerns only were addressed on an ad hoc basis, usually through consultations between the military and committee staff. Some congressional staff felt that assessments for specific arms sales tended to be overly subjective. Since staff frequently raised QME concerns, the attempt to enshrine QME as a statutory requirement stemmed from a desire to rationalize the process, make it more objective, and incorporate it as a regular component of the U.S. arms sales review process to Middle Eastern governments. CRS Conversation with Senate Foreign Relations Committee staff member, September 24, 2020.

basis of the extent to which Israel possesses a qualitative military edge over military threats." After becoming Chairman of the House Foreign Affairs Committee, then-Chairman Berman was able to incorporate this language into the Naval Vessel Transfer Act of 2008 (P.L. 110-429). The relevant QME provisions of this law had three primary elements: (1) they defined QME;[62] (2) they required an assessment of Israel's QME every four years; and (3) they amended the Arms Export Control Act (22 U.S.C. §2776) to require a determination, for any export of a U.S. defense article to any country in the Middle East other than Israel, that such a sale would not adversely affect Israel's QME.

Since the passage of the QME law and its amending of the Arms Export Control Act, the interagency process to assess Israel's QME has taken place behind closed doors with little fanfare. According to the Defense Security Cooperation Agency's (DSCA) Security Assistance Manual, QME determinations can be classified.[63] After making a QME determination regarding a specific proposed sale, DSCA includes a line in the applicable congressional notification reading, "The proposed sale will not alter the basic military balance in the region."

At times, lawmakers have amended or attempted to amend aspects of the 2008 law. The U.S.-Israel Strategic Partnership Act (P.L. 113-296) amended Section 36 of the AECA to require that the Administration explain, in cases of sales or exports of major U.S. defense equipment to other Middle Eastern states, "Israel's capacity to address the improved capabilities provided by such sale or export."[64] Representative Bradley Schneider has introduced H.R. 8494, Guaranteeing Israel's QME Act of 2020, which would require the President to consult with Israeli officials before making a QME determination. A similar bill in the 115th Congress (H.R. 2833) did not see floor action.[65]

At various times in the past, the U.S. government reportedly has held consultations with Israeli officials regarding the potential impact of regional arms sales on QME.[66] Some former Obama Administration officials have responded to news of the possible sale of the F-35 to the UAE with criticism of what they perceive as a lack of time for U.S. officials and Congress to properly assess the transaction. Some have written that previous QME determinations encompassed "classified negotiations that got to the heart of Israel's defense capabilities,"[67] and that "the process of military consultations with Israel on a given weapons system typically took several years of

[62] Section 201(d)(2) defines QME as "the ability to counter and defeat any credible conventional military threat from any individual state or possible coalition of states or from non-state actors, while sustaining minimal damage and casualties, through the use of superior military means, possessed in sufficient quantity, including weapons, command, control, communication, intelligence, surveillance, and reconnaissance capabilities that in their technical characteristics are superior in capability to those of such other individual or possible coalition of states or non-state actors."

[63] See https://www.samm.dsca.mil/chapter/chapter-5.

[64] The Act also requires the Administration to: evaluate "how such sale or export alters the strategic and tactical balance in the region, including relative capabilities; and Israel's capacity to respond to the improved regional capabilities provided by such sale or export," and include "an identification of any specific new capacity, capabilities, or training that Israel may require to address the regional or country-specific capabilities provided by such sale or export; and a description of any additional United States security assurances to Israel made, or requested to be made, in connection with, or as a result of, such sale or export."

[65] See https://schneider.house.gov/media/press-releases/schneider-introduces-bipartisan-legislation-guarantee-us-commitment-israel-s.

[66] Barbara Opall-Rome, "Israeli Brass Decry U.S. Arms Sales to Arab States," *Defense News*, January 23, 2012. At the time this article was published, the U.S. side of the working group was led by the Under Secretary of Defense for Policy and Assistant Secretary of State for Political-Military Affairs, while the Israeli side was led by the Defense Ministry's policy chief and the Israel Defense Forces director of planning.

[67] Representative Elissa Slotkin, "The Importance of Preserving Israel's Qualitative Military Edge," *Medium.com*, September 14, 2020.

extensive defense shuttle diplomacy, completed before formally notifying Congress of the arms sale package."[68] In a late September 2020 meeting with Israeli Defense Minister Benny Gantz, Secretary of Defense Esper remarked that "a cornerstone of our defense relationship [with Israel] is preserving Israel's qualitative military edge in the region."[69]

The F-35 and Israel

Israel is the first declared international operator of the F-35 Joint Strike Fighter.[70] It has purchased 50 F-35s (called *Adirs*[71]) in three separate contracts using Foreign Military Financing grants. As of September 2020, Israel had received 27 of 50 jets, which they have divided into two squadrons based at Nevatim Air Base in southern Israel.[72] From there and without any aerial refueling, Israel's F-35s could strike targets in Syria, Iraq, Lebanon, Jordan, and most of Egypt, Turkey, and Saudi Arabia.[73] To date, Israel reportedly has used its F-35 aircraft to conduct aerial strikes inside Syria.[74]

The Department of Defense's F-35 program is an international cooperative program in which Israel (and Singapore) are considered "security cooperation participants" outside of the F-35 cooperative development partnership.[75] As a result, Israel is not eligible to assign staff to the F-35 Joint Program Office in Washington DC and does not receive full F-35 technical briefings.[76] The United States government and Lockheed Martin retain exclusive access to the F-35's software code, which Israel itself cannot alter.

[68] Barbara A. Leaf and Dana Stroul, "The F-35 Triangle: America, Israel, the United Arab Emirates," *War on the Rocks*, September 15, 2020. See also, Andrew Shapiro and Derek Chollet, "Selling F-35s to the Middle East Was Never Going to Be Easy," *Defense One*, September 14, 2020.

[69] U.S. Department of Defense, "U.S., Israeli Defense Relationship 'Stronger Than Ever,' Esper Says," September 22, 2020.

[70] In September 2008, the Defense Security Cooperation Agency (DSCA) notified Congress of a possible Foreign Military Sale of up to 75 F-35s to Israel in a deal with a possible total value of $15.2 billion. See, Defense Security Cooperation Agency, Transmittal No. 08-83, Israel - F-35 Joint Strike Fighter Aircraft, September 29, 2008.

[71] "After F-35 makes Aliyah, it will get new Israeli identity," *Israel Hayom*, May 2, 2016. "Makes Aliyah" refers to a relocation to Israel. "Adir" is a Hebrew word for "mighty" or "powerful."

[72] Yaakov Lappin, "Israeli Air Force Favouring Additional F-35s," *Jane's Defence Weekly*, September 10, 2020.

[73] Gareth Jennings, "Israel Declares F-35 to Be Operational," *Jane's Defence Weekly*, December 6, 2017.

[74] "F-35 Stealth Fighter Sees First Combat, in Israeli Operation," *BBC News*, May 22, 2018 and "Israel - Air Force," *Jane's World Air Forces*, July 5, 2019.

[75] See, CRS Report RL30563, *F-35 Joint Strike Fighter (JSF) Program*, by Jeremiah Gertler.

[76] "Israel," *Jane's World Air Forces*, September 1, 2020.

Israel's involvement in the F-35 program is still extensive, however, with Israeli companies making F-35 wing sets (IAI) and helmets (Elbit Systems). Israel also received significant development access to the F-35 and the ability to customize its planes with Israeli-made C4 (command, control, communications, computers) systems, under the condition that the software coding be done by the United States. In 2018, the Navy awarded Lockheed Martin a $148 million contract for "the procurement of Israel-unique weapons certification, modification kits, and electronic warfare analysis."[77] Software upgrades (called Block 3F+) added to the main computer of Israel's F-35s would reportedly facilitate the "use of Israeli-designed electronic equipment and weaponry" thereby permitting Israel to "employ its own external jamming pod and also allow internal carriage of indigenous air-to-air missiles and guided munitions."[78]

Figure 2. F-35 Helmet Mounted Display

Made by Israeli Manufacturer Elbit Systems

Source: Elbit Systems Ltd.

Note: The F-35 Helmet Mounted Display is a joint venture between Elbit Systems and Rockwell Collins.

Israel's QME Concerns over an F-35 Sale to the UAE

In September 2020, Israeli Prime Minister Netanyahu and Defense Minister Benny Gantz each traveled to Washington DC, where they held meetings related to preserving Israel's QME, inter alia. While the substance of those meetings has remained private, the potential sale of the F-35 to the UAE most likely has raised longtime Israeli concerns over preserving its QME. Israel has long held aerial superiority in the Middle East due to both the skill of its pilots and the American-built planes in its fleet. Israel is the sole Middle Eastern country that operates the F-35, and this possession of a fifth generation aircraft, along with its older, but still formidable, squadrons of F-15Is and F-16Cs, provides it with a significant advantage over neighboring Arab states. No other Middle Eastern air force currently possesses a stealth fighter akin to the F-35. While other regional air forces possess advanced 4th generation fighters—such as Saudi Arabia (Boeing F-15SA), Qatar (Boeing F-15QA), the UAE (Lockheed Martin F-16 Block 60 E/F Desert Falcon)[79] and Egypt (Dassault Rafale)— the F-35's advanced sensors and its ability to share information with legacy aircraft give Israel's older fighters a situational awareness of the battlefield that no other regional state possesses.

[77] U.S. Department of Defense, U.S. Navy, Contracts For February 2, 2018.

[78] Gareth Jennings, "Israel Stands-Up Second F-35 Unit," *Jane's Defence Weekly*, January 17, 2020.

[79] The UAE's Block 60 E/F Desert Falcon is considered a 4.5 generation fighter and the most advanced F-16 variant in the world. See, Tyler Rogoway, "Here's What the Ball on the Nose of UAE's Block 60 F-16E/F Desert Falcon Does," *The War Zone* (online), September 19, 2019.

While the UAE's federation of monarchies appears stable and its disposition toward Israel remains friendly, Israeli officials have long feared the potential for political upheaval affecting the strategic orientation of neighboring states that have procured advanced U.S. weaponry. While no regional state has used its U.S.-supplied weapons against Israel (and, arguably, an F-35 sale to the UAE under current circumstances could enhance Israeli deterrence vis-à-vis Iran), rapid shifts in power structures within Middle Eastern governments have at times raised Israel's concerns.

Figure 3. UAE F-16E Desert Falcon

Source: U.S. Air Force, VIRIN: 090811-F-0000H-158.JPG

- **Iran.** In 1979, the Iranian revolution overthrew the monarchy just three years after the late Mohammad Reza Shah ordered 160 F-16s from the United States. The revolution occurred before a single F-16 was delivered (and Israel would eventually take delivery of 55 F-16s originally purchased by Iran).
- **Egypt.** In 2012, Egyptians elected the late Mohamed Morsi, who was a leading figure in the Muslim Brotherhood, as president in what was considered to be a dramatic change in Egypt's political trajectory. Many Israelis feared that Morsi would either abrogate the 1979 peace treaty with Israel or hold a popular referendum on it.[80] Ultimately, Morsi maintained peaceful relations with Israel during his tenure, and Egypt's military retained control over U.S.-supplied tanks (M1A1) and planes (F-16s).[81]
- **Turkey.** While NATO member Turkey maintains diplomatic relations and significant trade with Israel, Turkey's tensions with Israel and the United States on various foreign policy matters have significantly increased under Recep Tayyip Erdoğan, as prime minister and now president. The United States removed Turkey from the F-35 program in 2019 after Turkey received S-400 air defense systems from Russia.[82]

Possible U.S. Steps to Address Israel's QME Concerns

Proponents of selling the F-35 to the UAE have argued that any Israeli QME concerns can be assuaged in a number of ways.

[80] Yossi Beilin, "Was Morsi's brief presidency an opportunity lost for Israel?" *Al Monitor*, June 24, 2019.

[81] Morsi was then deposed in 2013 by Abdel Fattah al Sisi, Egypt's current president.

[82] CRS Report R44000, *Turkey: Background and U.S. Relations In Brief*, by Jim Zanotti and Clayton Thomas.

Timing and Quantity

From a timing perspective, even if a purchase agreement were to be signed in December 2020, actual delivery of the aircraft could take several years to transpire, giving Israel, which first received delivery of the F-35 in 2016, perhaps a decade or more of exclusive regional operation. According to U.S. Ambassador to Israel David Friedman, "The Emirates have been trying to get F-35s for six or seven years…. And the [F-35] delivery time is probably another six or seven years from now."[83] While Israel's first access in the region to the F-35 is assumed, it would appear to give Israel a significant advantage in terms of pilot proficiency and understanding by the Israel Air Force of how to employ the F-35, since significant training time helps pilots better understand the advantages and limitations of stealth. Beyond giving Israel a timing advantage, the Administration also may propose selling the UAE fewer F-35 aircraft than Israel. According to one report, in 2017 the UAE had expressed interest in buying 24 F-35s; as of October 2020, Israel has purchased 50, and taken delivery of 27.[84]

Modifying the F-35?

Some experts have speculated as to whether the United States would sell the UAE a less advanced variant of the F-35 than Israel's F-35I. Though it is likely that Emirati officials would demand technological parity with Israel, one aviation analyst has written that the United States could sell the UAE "an export variant of the jet with less-capable sensors and weapons" or "could limit the UAE's purchase of follow-on capabilities," such as external fuel tanks.[85] Without stealthy conforming fuel tanks, the range and stealth capability of an Emirati F-35 would be limited, possibly preventing it from reaching Israeli territory if it took off from Emirati territory.[86] In past instances of arms sales to the region, the United States has limited or delayed the sale of certain equipment that would provide Arab states capabilities of concern to Israel, such as with regard to the original sale of F-15s to Saudi Arabia and related fuel tanks and bomb racks (**see "Congressional Considerations: Regional Precedents", below**).

One possible structural advantage for Israel is that Lockheed Martin has already customized the F-35I software code (as previously mentioned) to make it work independently of the F-35's cloud-based support infrastructure, known as the Autonomic Logistics Information System (ALIS). According to Lockheed Martin, the ALIS (and its successor system ODIN, or Operational

[83] Tovah Lazaroff and Celia Jean, "Friedman to 'Post': If UAE gets F-35s, it will be in Six or Seven Years," *Jerusalem Post*, September 23, 2020.

[84] Aaron Mehta, "Amidst F-35 to UAE rumors, Esper pledges to support Israeli edge," *Defense News*, September 22, 2020.

[85] Christine McVann, "How to Balance Competing Priorities with an F-35 Sale to the UAE," *PolicyWatch* 3381, Washington Institute for Near East Policy, September 23, 2020.

[86] Ehud Eilam, "The Calculated Risks of Selling the F35 to the UAE," *Jerusalem Post*, September 24, 2020. The approximate range of the F-35 is 1,367 miles, which means its combat radius is effectively less than half of that (somewhere around 590 nautical miles). A commercial flight from Israel to the UAE is approximately 1,150 nautical miles, making an F-35A that departed from the UAE unable to reach Israeli territory without a refueling option. In May 2019, the UAE submitted a Letter of Request to the Defense Department to purchase the Boeing KC-46A Pegasus tanker, which can be used to refuel the F-35. Currently, the UAE refuels its F-16s using the Airbus A330 Multi Role Tanker Transport (MRTT). According to Airbus, "To refuel receptacle-equipped aircraft such as the F-16 Fighting Falcon, F-35A Lightning II, or another A330 MRTT (when fitted with a Universal Aerial Refuelling Receptacle Slipway Installation, UARRSI), the A330 MRTT is provided with the advanced Airbus Defence and Space Aerial Refuelling Boom System (ARBS)."

Data Integrated Network) connects "maintenance, supply chain and sustainment information into a single management tool to support all F-35 operations."[87]According to one report:

> Loss of access to ALIS could be severely limiting, if not totally debilitating to an F-35 operator in short order. It's worth noting that this is why Israel already fought to secure the rights to operate its F-35Is, also known as Adirs, independently of ALIS and add Israeli-specific software to the jets. This makes them unlike any other Joint Strike Fighters in the world, even those that the U.S. Air Force, Marines, and Navy fly.[88]

Aside from the United States and Israel, all other international operators of the F-35 fly identical, unmodified F-35As. If the United States were to sell the UAE a standard F-35A fighter, the uniqueness of Israel's F-35I could be construed as one way in which Israel may retain some semblance of a military edge over an unmodified UAE jet. Another means of helping Israel preserve an edge could involve boosting Israeli defensive capabilities (such as advanced radar) specifically focused on the F-35 variants acquired by the UAE.

U.S. Control over Sustainment

Another consideration in maintaining Israel's QME is the need for long-term U.S. control over the sustainment of the F-35, thereby limiting the independent action of its operator. Due to the technical complexity of the F-35's stealth components and electronic systems, the UAE would very likely rely on U.S. military personnel and defense contractors to service any F-35s it purchases for years to come.[89]According to one report, "Just maintaining the jet's low observable coatings would be very difficult without the appropriate infrastructure and support, even for a short period of time. The jets are also notably more maintenance intensive, just in general, and require spare parts that need to be sourced through a worldwide integrated logistics chain."[90] If the Emiratis receive a standard F-35A, they would be connected to and rely upon ODIN. As mentioned above, without access to this system and the resourcing it provides, sustainment and maintenance of a fleet of F-35s would become untenable, diminishing and potentially eliminating their combat capabilities.

The UAE is already flying some of the most advanced F-16 variants ever made, and therefore the Emirati Air Force has had extensive exchanges with U.S. Air Force counterparts and defense contractors from Lockheed Martin. If, however, concerns about Israel's QME warranted a more restrictive relationship regarding an Emirati F-35, one proposition for avoiding its misuse would be to apply practices from the U.S. monitoring of Pakistan's use of its Block 52 F-16s. In Pakistan's case, the U.S. conditioned its F-16 sale on Pakistan accepting a technical security team of U.S. Air Force personnel and U.S. defense contractors to monitor the planes and ensure that Pakistan does not improperly modify the F-16 or share its technology with unauthorized third parties.[91] The UAE may argue against such a constraint, claiming that they have already served as a trusted U.S. partner in operating their own F-16s along with other U.S.-supplied equipment.

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[87] Lockheed Martin, Focus on Sustainment, available online at https://www.F35.com.

[88] Joseph Trevithick, "Here's How the U.S. Could Allay Israeli Concerns over Selling F-35s to UAE," *The Drive*, August 27, 2020.

[89] McVann, "How to Balance Competing Priorities."

[90] Trevithick, "Here's How the U.S. Could Allay Israeli Concerns."

[91] Aaron Stein and Robert Hamilton, "How America's Experience with Pakistan Can Help It Deal with Turkey," *War on the Rocks*, August 25, 2020.

Offsetting U.S. Arms Sales to Israel and Additional Foreign Aid

One common U.S. tactic for maintaining Israel's QME is to accompany a major U.S. arms sale to others in the region with a significant package of "offsetting" U.S. military equipment and military aid to Israel, as noted above. In the case of the F-35 sale to the UAE, there have been a number of reported Israeli requests, some of which may be reflected in a possible U.S. proposal in the weeks and months ahead. The requests reportedly include:

- Accelerating the timetable for delivering the remaining $26.4 billion in **Foreign Military Financing (FMF) grants** to Israel (out of a total of $33 billion) pledged in the 2016 U.S.-Israel Memorandum of Understanding (MOU), covering the period from FY2021 to FY2028.[92] This would require Congress to appropriate additional funds.
- Completing a purchase agreement for an additional **25 F-35Is** to Israel. In 2008, the United States approved the sale of up to 75 F-35s to Israel, of which Israel has purchased 50 to date, as mentioned above, using FMF grants.[93]
- Selling the **V-22 Osprey** tilt-rotor military aircraft to Israel. Reportedly, before the Israel-UAE normalization agreement, Israel had expressed a desire to buy 12 to 14 V-22s for "high-speed, long-range raids and for emergency evacuation of Israeli's gas pumping platforms in the Mediterranean."[94]
- Early delivery of at least two **Boeing KC-46A "Pegasus" aircraft**. In March 2020, the Defense Security Cooperation Agency (DSCA) notified Congress of a planned sale to Israel of eight KC-46As for an estimated $2.4 billion. The Israel Air Force's current fleet of tankers was procured in the 1970s, and it is anticipated that Israel will be able to use the KC-46A to refuel its F-35 fighters.

Israel also may be seeking other "offsetting sales" from the United States to include more precision guided munitions, jet fuel, and upgrades to, or replacements of, its older models of AH-64 Apache attack helicopters. One report suggests that Israel may ask to purchase the F-15EX, which "though not stealthy… can fly faster, further and with a heavier bombload than the F-35."[95]

Possible Questions for U.S. Officials

In implementing QME policy and its associated legal requirements, Congress may pose the following questions to U.S. officials:

- How direct and prominent a role should Israeli concerns play in any specific regional sale if U.S. officials are making efforts generally to ensure that Israel maintains key military advantages? Under a worst-case scenario, what threat would the F-35 in the hands of a hostile force pose to Israel?
- How effectively can U.S. efforts regarding QME regulate other regional actors' capabilities when arms available from other countries—including Russia and China—could affect the military balance?

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[92] James Stavridis, "Selling Fighter Jets to the UAE Is All About Israel," *Bloomberg*, September 23, 2020.

[93] Arie Egozi, "Israel Seeks $8B Arms Deal At White House: F-35s, V-22s, KC-46s," *Breaking Defense*, September 15, 2020.

[94] Arie Egozi, "Israeli Defense Minister Presses for Israeli V-22s," *Breaking Defense*, August 3, 2020.

[95] Sebastien Roblin, "Israel's Wish List: Here's the $8 Billion in U.S. Weapons It Wants to Buy," *Forbes*, September 18, 2020.

- In what ways might Israel benefit from the sale of the F-35 to the UAE? Would both countries be willing to conduct joint training under U.S. auspices? Would Israeli companies receive contracts to help build parts for the Emirati F-35 program?
- If the UAE receives approval to purchase the F-35, how long should the U.S. government wait before allowing another Middle Eastern government to procure it? Would the U.S. approval of an F-35 sale to the UAE make it more or less likely that the United States would approve a reported Qatari request to buy the jet? How might the sale of the F-35 to other Arab states affect the military balance in the region?

U.S. Concerns Related to the UAE

Aside from the many considerations related to preserving Israel's QME, Congress might consider some factors specific to the UAE and U.S. relations with that country in assessing the arms sale. Some of these potential issues are discussed below.

Potential for Technology Leakage

The UAE's proximity to Iran, along with its defense relationships with China and Russia as they increase their involvement in the Middle East, has raised some concern that a major U.S. arms sale to the UAE could give U.S. adversaries the opportunity to acquire, observe, or exploit sensitive U.S. technologies. This consideration is balanced against the possibility that UAE officials may seek advanced weaponry directly from China or Russia if they do not believe the United States will provide it to them.[96] Technology leakage to Russia is considered a threat, in particular, because of Russia's 2018 strategic partnership agreement with the UAE, and the UAE's purchase of Russian missile defense and anti-tank weaponry that the UAE has utilized in its interventions in Libya and Yemen.[97] There also have been reports that some U.S.-supplied military equipment to the UAE was transferred to militias possibly linked to Al Qaeda, raising questions about the UAE's potential to retransfer technology to groups considered a threat to U.S. interests.[98] Emirati officials have denied the allegations.[99]

The UAE participates in several U.S. programs to improve UAE export control enforcement, indicating that the country wants to avoid past problems with laxity. In 2006, the United States sanctioned the UAE-based Mayrow General Trading Company for transshipping devices used to make improvised explosive devices (IEDs) in Iraq and Afghanistan.[100] In February 2007, the George W. Bush Administration threatened to restrict U.S. exports of certain technologies to the UAE for the illicit exports. UAE authorities used a September 2007 UAE law to shut down 40 foreign and UAE firms allegedly involved in dual use exports to Iran and other countries, and no U.S. sanctions were imposed on the country. Since then, the Obama and Trump Administrations have sanctioned numerous UAE-based firms for involvement in financing and exportation on

[96] Joe Gould, "Will Trump sell F-35s to the UAE? Congress Wants Him to Show His Work," *Defense News*, October 10, 2020.

[97] Sam Rahmani. "Why the United States Shouldn't Sell Jets to the UAE." *Foreign Policy*, September 30, 2020.

[98] "Cars, guns and TV interviews: The militiaman on the UAE payroll." *Al Jazeera*, November 5, 2018.

[99] Nima Elbagir, Salma Abdelaziz, Mohamed Abo El Gheit, Florence Davey-Attlee and Ed Upright, "Under Shroud of Secrecy US Weapons Arrive in Yemen Despite Congressional Outrage," CNN.com, November 7, 2019.

[100] Milhollin, Gary and Kelly Motz. "Nukes 'R' US." *New York Times*, op. ed. March 4, 2004; BIS, "General Order Concerning Mayrow General Trading and Related Enterprises," 71 *Federal Register* 107, June 5, 2006.

behalf of Iranian and Iran-related entities sanctioned by the United States for supporting terrorism and proliferation, including the Iranian airline Mahan Air.[101] The UAE government receives some assistance, in the form of training, from the State Department's Export Control and Related Border Security Program (EXBS), which aims to build "national strategic trade control systems in countries that possess, produce, or supply strategic items, as well as in countries through which such items are most likely to transit."[102] The UAE also works with the U.S. Customs and Border Protection (CBP)-run Container Security Initiative, in which CBP personnel help foreign governments screen U.S.-bound containers posing a "potential risk for terrorism."[103]

UAE Regional Interventions or Tensions

Congress also might consider the potential for the UAE to use sophisticated U.S. weapons in regional conflicts, potentially in ways and situations that do not necessarily further U.S. interests. UAE leaders have defended their role in several regional interventions as a necessary part of an "activist" foreign policy that takes advantage of the military equipment and training UAE forces have received, including from the United States. According to Minister of State Gargash: "The UAE is not activist because it chooses to be an activist state…It is an activist state because the world is changing around us, because the fundamentals that the international system depended on 30 years ago, 20 years ago, are no longer as stable as they were."[104]

Examples of UAE regional interventions or tensions, some of which have caused or could cause disagreements between the United States and the UAE, include:

- **Yemen**. The UAE, in close partnership with Saudi Arabia, has intervened militarily in Yemen since March 2015 against the Iran-backed Zaydi Shia "Houthi" faction that had ousted the government in Sanaa, asserting that the intervention was required to roll back the regional influence of Iran. International criticism that the Saudi-led effort was causing civilian casualties and humanitarian problems might have contributed to a UAE decision in July 2019 to withdraw most of its ground forces from Yemen.[105] The war effort has produced congressional opposition to U.S. provision of logistical support provided to the Saudi-led coalition and to some munitions sales to Saudi Arabia and the UAE (**see "U.S. Arms Sale to the UAE: The Role of Congress."**)[106]
- **Libya**. The UAE, aligned with Egypt and Russia, has provided arms to and conducted air operations in support of Field Marshal Khalifa Haftar's Libyan National Army (LNA) movement.[107] In so doing, the UAE might be violating U.N. Security Council resolutions that ban arms transfers to Libya. Haftar's

[101] "U.S. imposes sanctions on two UAE-based companies for aiding Iran's biggest airline." August 19, 2020.

[102] "Export Control and Related Border Security Program," Bureau of International Security and Nonproliferation, available at: https://www.state.gov/export-control-and-related-border-security-program/.

[103] "CSI: Container Security Initiative," U.S. Customs and Border Protection, available at: https://www.cbp.gov/border-security/ports-entry/cargo-security/csi/csi-brief.

[104] "UAE minister: Region's dangers demand 'activist' stance." *Washington Times*, June 17, 2020.

[105] Simon Henderson. "MbS and MbZ: Could Yemen Crisis End the Saudi-UAE Partnership?" *The Hill*, August 13, 2019.

[106] For information on congressional action on U.S. support for the Arab coalition, see CRS Report R45046, *Congress and the War in Yemen: Oversight and Legislation 2015-2020*, by Jeremy M. Sharp, Christopher M. Blanchard, and Sarah R. Collins.

[107] "UAE Ran Covert Arms Flights to Aid Libya's Haftar, UN Finds," *Bloomberg News*, May 15, 2020.

LNA, a coalition of military personnel and militias, has fought the U.N.-recognized Government of National Accord (GNA) as well as some Islamist groups in the country.

- **Bahrain**. In 2011, the UAE contributed 500 police officers to a Saudi-led GCC military intervention in Bahrain to support the Sunni minority Al Khalifa regime against a Shia-led uprising. At least some of the UAE force has remained since. Bahrain and its Gulf allies, including the UAE, have been widely accused by human rights groups of suppressing Shia demands for a greater role in government decision-making.
- **Afghanistan**. The UAE has assisted the U.S.-led mission to stabilize Afghanistan by allowing the use of its military facilities for U.S. operations there and by deploying a 250-person contingent since 2003, in Afghanistan's restive south. During 2012-2014, the UAE deployed six F-16s for missions there.[108]
- **Operations against the Islamic State and Al Qaeda**. During 2014-2015, as a member of the U.S.-led coalition combatting the Islamic State organization, the UAE sent pilots to conduct and even command some coalition air strikes against Islamic State positions in Syria. The UAE also hosted other forces participating in the anti-Islamic State effort, including French jets stationed at Al Dhafra Air Base and several hundred forces from Australia.[109] UAE special forces work closely with those of the United States to counter the Yemen-based affiliate of Al Qaeda—Al Qaeda in the Arabian Peninsula (AQAP).[110]
- **Qatar**. The UAE has not intervened militarily in Qatar, but experts assess that the UAE is resisting compromise in efforts to settle a dispute in which Saudi Arabia, the UAE, and Bahrain have blocked Qatari access to their land, territorial waters, and airspace since June 2017. Early in the crisis, Qatari officials reportedly feared that Saudi and UAE forces might invade Qatar to force it to capitulate to a broad set of demands, including severing relations with Iran and Turkey and closing its global media network Al Jazeera.[111] Like the UAE, Qatar is a close U.S. ally and the United States would strongly oppose armed conflict among the Arab Gulf states.

Human Rights Record

Congress might consider the UAE human rights record when evaluating a U.S. sale of the jet to the UAE. Reports by the State Department and groups such as Human Rights Watch assert that there are a variety of human rights problems in the UAE, including unverified reports of torture, government restrictions of freedoms of speech and assembly, and lack of judicial independence.[112] Emirati authorities have jailed several activists for violating a 2015 Anti-Discrimination Law that criminalizes the publication of "provocative" political or religious material.

[108] "A Quiet, Potent Ally to U.S.," *Washington Post*, November 9, 2014.

[109] "Islamic State Crisis: Australia to Send 600 Troops to UAE," *BBC News*, September 14, 2014.

[110] "U.S. Forces to Stay Longer in Yemen to Fight al Qaeda," *Washington Post*, June 18, 2016.

[111] Doug Bandow, "The Assault on Qatar Was Another Big Saudi Failure," Cato Institute, December 19, 2019.

[112] U.S. Department of State, 2019 Country Reports on Human Rights Practices: United Arab Emirates.

UAE officials have been criticized for supporting Saudi Crown Prince Mohammad bin Salman Al Saud against widespread allegations of his personal involvement in ordering the killing by Saudi officials of dissident journalist Jamal Kashoggi at the Saudi consulate in Istanbul in October 2018.[113] Some in Congress might consider the political and personal relationship between the Saudi Crown Prince and UAE de-facto leader Mohammad bin Zayed Al Nuhayyan in evaluating the possible F-35 sale to the UAE.

The Risk of a Regional Arms Race

Should the United States approve the sale of the F-35 and other technologies to the UAE, the sale conceivably could trigger other Middle Eastern governments to increase their expenditures on advanced weaponry, either from the United States or other foreign suppliers, such as France, Russia, and China.[114] Some previous U.S. sales of advanced equipment have led U.S. partners to seek parity with other regional militaries.[115] Acquiring the F-35 would represent a significant increase in the military capability of an Arab state. Some argue that, as a result, other Arab states may request to purchase the F-35 in order to keep their close defense relationship with the United States on equal footing with the U.S.-UAE partnership. According to one Israeli diplomat, "It's not just about the UAE….Netanyahu has created a precedent and now other Arab countries will demand F-35s as well."[116] At the 2017 Dubai Air Show, Saudi Arabian officials reportedly expressed interest in buying the F-35.[117]

Qatar's recent formal Letter of Request for the F-35 may be instructive. Some observers have interpreted it as either an attempt to maintain parity with the UAE, or to even undermine the UAE's own efforts, since UAE-Qatari relations are strained, and Qatar has not reached the same kind of diplomatic agreement with Israel.[118] On October 11, Israel's intelligence minister said that his government would oppose the U.S. sale of the F-35 to Qatar.[119]

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[113] "MBS and MBZ Partying in UAE Amid Khashoggi's Fallout," *Morocco World News*, November 25, 2018.

[114] Congressional concerns about the advisability of large-scale U.S. arms sales to the Middle East, and concerns that such sales contribute to a regional arms race that increases the probability of armed conflict, go back decades. For example, 22 U.S.C. §2778(a)(2) directs the President to consider, when evaluating arms transfers, whether, among other possibilities, their export "would contribute to an arms race." The Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (P.L. 102-138), found that, in addition to regional instability and other factors, "the continued proliferation of weapons and related equipment and services contribute further to a regional arms race in the Middle East." Section 404 of the law directed the President to negotiate and then implement a "multilateral arms transfer and control regime" for the region and further required a number of reports, including annual reports documenting all transfers to Middle Eastern states and their impact on regional military balance. Those reports were declared obsolete and discontinued in the FY2017 State Department Authorities Act (P.L. 114-323), which repealed Section 404 of P.L. 102-138.

[115] In the 1970s, for example, Saudi Arabia's leaders repeatedly expressed concern that the United States was delaying or unduly denying them access to advanced U.S. military technology. In 1975, then-Crown Prince Fahd bin Abd al Aziz Al Saud in a meeting with U.S. Ambassador Akins "reiterated his feeling that for reasons of domestic and inter-Arab politics Saudi Arabia could not indefinitely continue to have an army that was the object of humor among its neighbors." See U.S. Embassy Jeddah to Department of State, Telegram, Ambassador's Parting Call on Prince Sultan and Prince Fahd: A Sense of Urgency about Military Supply and Development, June 16, 1975, 1975JIDDA04337l, Central Foreign Policy Files, 1973-79/Electronic Telegrams, RG 59: General Records of the Department of State, U.S. National Archives.

[116] "How an Overpriced Warplane Complicates Diplomacy in the Middle East," *Economist*, September 12, 2020 Edition.

[117] Agnes Al Helou and Chirine Mouchantaf, "UAE wants to buy 24 F-35s," *Defense News*, November 12, 2017.

[118] Bilal Y. Saab, "The Coming F-35 Fiasco," *Defense One*, October 8, 2020.

[119] "Israel Would Oppose any U.S. F-35 Sale to Qatar, Israeli Minister Says," Reuters, October 11, 2020.

If other regional states cannot receive the F-35, they may turn elsewhere. For decades, officials in successive Administrations have argued that if U.S. partners are denied access to U.S. defense material and systems, they will turn to other global suppliers, limiting U.S. influence and perhaps increasing that of its strategic competitors. Speaking of the importance that U.S. arms sales play in solidifying U.S. relationships with Middle East partners, CENTCOM Commander General Kenneth McKenzie said in June 2020 that, "We don't want [U.S. partners in the Middle East] turning to China, we don't want them turning to Russia to buy those systems."[120]

Even before the potential UAE deal surfaced, Egypt had been attempting to keep pace with Israel and its F-35 acquisition, via its potential pursuit of the less capable but still-formidable Russian Su-35, despite the threat of U.S. sanctions. According to one former Egyptian defense official, "Why doesn't the US supply Egypt with the F-35 fighters that it supplied Israel with, since it is objecting to the Russian Su-35 fighter(s) deal?"[121] This complex interplay between potential sales of advanced U.S. technology and partners who have access to multiple suppliers connects to the longstanding tensions in U.S. arms sales policy articulated above.

From the perspective of "strategic denial," U.S. arms sales may have limited the extent to which regional purchasers of U.S. equipment and training have turned to strategic competitors of the United States, such as Russia or China, for comparable support. According to recent arms sales data, the U.S. has supplied nearly 45% of the arms imported by Middle Eastern states between 2000 and 2019, while Russia accounted for 19% and China about 2.5%.

The pipeline of U.S. ammunition, spare parts, and maintenance arguably makes U.S. partner militaries dependent on the United States for sustained military operations, but possible interruptions of U.S. support may carry diplomatic and strategic costs. A partner whom the United States decides to "cut off" could turn to others over time, even with significant sunk costs.

Congressional Considerations: Regional Precedents

In past decades, Congress has at times played a central role in shaping the contours of U.S. arms agreements in the Middle East, frequently, but not exclusively, in order to mitigate the risk to Israel's security (Congress also has pressured the Administration to cancel sales altogether – see **Appendix**). Previous congressional involvement may or may not inform how lawmakers review a potential sale of F-35s and other advanced weaponry to the UAE.

Congress has shaped past arms sales in a number of ways: informally expressing its views via public statements or private consultations with the executive branch; considering and sometimes passing resolutions of disapproval as provided by the Arms Exports Control Act (AECA); and considering and sometimes passing separate legislative measures conditioning U.S. arms sales to certain countries or under certain circumstances. For selected case studies of how Congress shaped certain Middle East arms agreements, see **Appendix**.

Conditions on arms sales imposed (either formally or informally) as a result of congressional action include:

- **Geographic conditions.** Concerns about Israeli security led congressional majorities to oppose a proposed sale of Hawk anti-aircraft missiles to Jordan in 1975. This opposition compelled the Ford Administration to seek a number of assurances from the Jordanian government, including that the systems would be

[120] "CENTCOM and the Shifting Sands of the Middle East: A Conversation with CENTCOM Commander Gen. Kenneth F. McKenzie Jr.," Middle East Institute virtual panel, June 10, 2020.
[121] Hagar Hosny, "Egypt Acquires Russian Fighter Jets Despite US Warning," *Al Monitor*, August 3, 2020.

installed at bases south and east of Amman (i.e., relatively farther from the Israeli border) and non-mobile. Jordan initially rejected the conditions as "affecting its national dignity," but later accepted them. Additionally, as part of negotiations with Congress over the sale of F-15 aircraft to Saudi Arabia (**see below**), the Carter Administration relayed a promise to Congress from Saudi Arabia that the kingdom would not base the jets at Tabuk, the Saudi air base closest to Israel.

- **Technological and security-related conditions.** In July 1977, Senator Hubert Humphrey urged President Carter to withdraw a proposed sale of AWACS aircraft to Iran because of concerns about the security of the advanced system. Senator Humphrey also asked the President that if he chose to resubmit it, to do so with six conditions. With large congressional majorities poised to disapprove of the sale, the Administration withdrew it and began negotiations with the Iranian government, which agreed to the terms. The congressionally-mandated conditions included the removal of certain sensitive technological components from the aircraft and enhanced security precautions for the aircraft once transferred to Iran (which, due to the 1979 Iranian revolution, never occurred).

  In another case from the late 1970s, the Carter Administration, anticipating congressional opposition to a sale of F-15 aircraft to Saudi Arabia, decided to link the sale with less controversial sales of aircraft to Israel and Egypt. Still, the Administration felt compelled to make certain assurances to Congress. In a May 1978 letter, Secretary of Defense Harold Brown laid out certain technical limitations on the jets the Saudis would receive (e.g., lack of conformal fuel tanks and multiple ejector racks) and wrote that Saudi Arabia "has not requested nor do we intend to sell any other systems or armaments that would increase the range or enhance the ground attack capability of the F-15."[122] When Saudi Defense Minister Prince Sultan bin Abd al Aziz sought in July 1978 to amend the LOA for the F-15s to include a U.S. commitment to upgrade the platform to carry additional bombs, U.S. officials declined.[123]

- **Conditions on use.** Citing increased threats to Saudi Arabia since 1978, the Reagan Administration proposed a package of new sales in spring 1981, the most controversial element of which was AWACS aircraft. Given greater opposition in the House (where H.Con.Res. 194 passed 301 to 11 on October 14, 1981, becoming the first disapproval resolution passed by a chamber of Congress since the authority was enacted in 1974), the Administration focused its efforts on trying to prevent the Senate from passing its own disapproval resolution. President Reagan submitted, on October 28, 1981, a list of conditions agreed to by the Saudis that went "well beyond" standard AECA-mandated restrictions. They included Saudi commitments to share with the United States all intelligence gathered by the AWACS; to not share any information about or gathered by the AWACS to any third party; and to only operate AWACS for defensive purposes and within Saudi borders (except in the case of prior agreement with the United States). The Senate voted the same day 52-48 against adopting H.Con.Res. 194.

  In 1985, in advance of the anticipated delivery of AWACS the next year and in

[122] Congressional Record – Senate, 13627, May 15, 1978.

[123] U.S. Embassy Jeddah to Department of State, Telegram, Presentation of Loa for F-15 Sale, July 12, 1978, 1978JIDDA05145, Central Foreign Policy Files, 1973-79/Electronic Telegrams, RG 59: General Records of the Department of State, U.S. National Archives.

response to reports that enhancements had been made to the version sold in 1981, Members added a provision to foreign assistance authorization legislation codifying the commitments in President Reagan's October 1981 letter (Sec. 131 of the International Security and Development Cooperation Act of 1985, P.L. 99-83) and requiring presidential certification that the conditions had been met prior to delivery. President Reagan submitted that certification on June 18, 1986.

- **Quantitative conditions.** Congressional opposition was instrumental in Administration decisions to reduce or alter the number of arms sold to Middle Eastern countries in a number of instances, including sales to Saudi Arabia of Maverick missiles in 1976 (sales to Saudi Arabia of Stinger missiles in 1986 and additional Mavericks in 1987 were both withdrawn in the face of congressional opposition). Notably, Congress enacted a legal limit on the number of F-15s Saudi Arabia was allowed to obtain, codifying a 1987 agreement between the Reagan Administration and some Members that the force level of Saudi F-15s would be capped at 60 (the number originally sold in 1978). The House and Senate both passed legislation codifying the restriction and it was separately enacted in the FY1989 National Defense Authorization Act (Section 1306 of P.L. 100-456), along with new language authorizing the president to waive the restrictions if he could certify to Congress that doing so was "in the national interest." President Bush used that waiver authority in August 1990 to sell 24 F-15s to Saudi Arabia on an emergency basis (under section 36(b)(1) of the AECA) in the context of the Iraqi invasion of Kuwait.
- **Policy-based conditions.** In October 1985, veto-proof majorities in both chambers publicly opposed a prospective sale of F-20 aircraft and anti-air missiles to Jordan, with opposition coalescing around measures that would have prohibited any U.S. arms sales to Jordan before "the commencement of direct bilateral negotiations between Jordan and Israel" (S.J.Res. 223 and H.J.Res. 428, with 77 and 268 cosponsors, respectively). Faced with near-certain defeat of any formally proposed arms sale, Reagan Administration officials worked with Senators to reach a compromise, S.J.Res. 228, which would prohibit the issuance of a letter of offer to Jordan for any arms sales before March 1, 1986, "unless direct and meaningful peace negotiations between Israel and Jordan are underway." Amid some debate about how this policy-based condition could be assessed, Congress and the President enacted the measure. The sales to Jordan did not materialize.

Outlook

In reviewing a possible F-35 sale to the UAE, Members may weigh longstanding arms sale concerns (e.g., QME, technology transfer, arms race) against the benefits of supporting closer Israel-UAE ties and reinforcing the robust U.S.-Emirati defense relationship. For a sale of an advanced system like the F-35 to a Middle Eastern state, there are tradeoffs. While Emirati possession of the F-35 would likely deepen its partnership with the United States, it also would possibly trigger purchase requests from other regional players.

While successive Administrations and Congress have, on occasion, initially conditioned the capabilities of advanced U.S. aircraft sold to Middle Eastern operators, in many cases, those operators eventually have received upgrades to those capabilities. Over time, as recipients of advanced U.S. defense equipment grow more capable and independent, one challenge for Congress may be to sustain oversight post sale. Congressional attention could help ensure that

end-use monitoring is carried out in accordance with U.S. law and recipient nations are adhering to the terms and conditions of a purchase agreement.

Appendix. Selected Cases of Congressional Action on U.S. Arms Sales to the Middle East

Congress has sometimes played an important role in overseeing and shaping the contours of U.S. arms sales to Middle Eastern states (or pressuring the Administration to cancel a sale). Many of these interactions took place in the 1970s and 1980s amid questions about regional developments including Arab Gulf states' security after the Iranian revolution, tensions related to the Iran-Iraq War, and possible conflict between Israel and its Arab neighbors. The importance of many of these countries as U.S. defense partners has arguably increased in the intervening years.

As part of a broader congressional effort to assert institutional powers and prerogatives vis-à-vis the executive branch in the context of Watergate and the Vietnam War, Congress in 1974 first enacted legislative review and disapproval procedures for arms sales, which were further refined in the 1976 Arms Export Control Act (AECA). In 1983, the Supreme Court ruled the so-called legislative veto unconstitutional in *INS v. Chadha*, removing the ability of Congress to block arms sales through a concurrent resolution (i.e., a measure passed with a majority vote in each chamber but not submitted to the president for approval) and effectively increasing the threshold for congressional disapproval (from a simple majority to a two-thirds majority to override a presumptive presidential veto).[124] While no proposed arms sale has ever been formally blocked by a vote in Congress, a number have been withdrawn, altered, or otherwise influenced by congressional action.

Jordan: Hawk Air Defense Missile System, 1975

Jordan expressed an interest in an air defense system as early as 1970 and began technical talks with U.S. officials in 1973; at a 1974 summit, Arab leaders (particularly the Saudis) pledged funds for Jordanian arms purchases, removing a main obstacle to the transaction. U.S. leaders cited the importance of Jordanian stability, as well as offers from the Soviet Union and others, in advancing the sale, which was approved by President Ford in April 1975 and publicly confirmed by the State Department shortly thereafter.

As debate around the potential sale grew, Representative Benjamin Rosenthal introduced H.Res. 552, which would have requested the President to provide within ten days answers to twenty specific questions about the agreement. Chairman of the House Committee on International Relations Thomas Morgan wrote to President Ford the next day requesting the Administration's "comments" on the resolution within seven days. The Administration provided responses to the questions on June 25, and formally notified Congress of its intent to issue letters of offer to Jordan for 14 Hawk missile batteries and 100 Vulcan missiles on July 10.

In hearings over the following week, Administration officials defended the sale by citing the need to support Jordan's stability; to ensure Jordan did not seek out equivalent systems from other international suppliers; and by arguing that the systems did "not constitute the injection into the Middle East of new and advanced technology or of vast quantities of highly sophisticated weapons."[125] Members skeptical of the sale expressed doubts about those claims, including

[124] Some Members questioned at the time whether the ruling effectively killed congressional oversight of arms sales as constructed in the AECA. See Joseph R. Biden, Jr., "Who Needs the Legislative Veto?" *Syracuse Law Review* Vol. 35:685, 1984. Others proposed an affirmative model whereby the President would be prohibited from selling arms over a certain value unless Congress voted to approve them within a certain time frame. See 98 S. 1050 and 98 H.R. 5759.

[125] Hearings before the Subcommittee on International Political and Military Affairs, House Committee on

whether canceling the sale would really harm U.S.-Jordanian relations, but more Members raised concerns about the possibility that the weapons could be used against Israel in a future conflict. Administration officials conceded in closed session that Israel had expressed "unhappiness" with the deal, but promised that the deal would not alter the regional military balance and that Israel, which had had an older Hawk variation for over a decade, "will get improved Hawks at or before the first deliveries to Jordan."[126]

Resolutions of disapproval were introduced in both chambers.[127] The House International Relations Committee favorably reported one of several concurrent resolutions disapproving of the sale (H.Con.Res. 337) on July 25, and with evidence growing that majorities in both chambers would vote to bar the sale, the Administration withdrew the notification on July 29. Opponents of the sale reportedly countered by offering to approve six Hawk batteries, but Jordan's King Hussein insisted upon the full original offer of 14, and threatened to seek an air defense system elsewhere if it was not approved.[128]

The Administration notified Congress of its intent to sell the same arms package to Jordan on September 3, and again some Members introduced resolutions of disapproval. After two weeks of consultations between Senator Clifford Case, other Members, and Administration officials, President Ford wrote on September 17 to inform Congress of Jordan's acceptance of certain conditions on the batteries, namely that they would be installed at certain bases south and east of Amman as non-mobile, defensive weapons and that transfers to third parties would be prohibited. President Ford further relayed that while deliveries would take place between 1976 and 1979, the United States would closely monitor their use, consult with Congress on action to be taken if Jordan deviated from the conditions above, and maintain the right to cancel the transaction at any time.[129]

On the same day, Representative Jonathan Bingham, co-sponsor of one of the resolutions of disapproval, announced that while he was still "very unhappy" about the deal, the Jordanians' determination to acquire an air defense system from a non-U.S. source if necessary and the conditions laid out in the President's letter compelled him to not bring his resolution for a vote. Still, he argued, the episode demonstrated congressional power:

> The Departments of State and Defense are now on notice that the Congress intends to play a role in foreign military sales. No longer can the President or his representatives commit the United States to supply large quantities of sophisticated weapons to nations abroad. Instead, they must make clear that such sales must first be submitted to the Congress and that congressional objections may require modifications or withdrawal of the sale. The watchword of our arms salesmen must now become "We'll see if we can sell it to Congress."[130]

International Relations, "Proposed Sales to Jordan of the Hawk and Vulcan Air Defense Systems," July 16 and 17, 1975.

[126] Israel first requested Hawk missiles in 1960, secured an agreement to purchase them in 1962, and received delivery in 1965; the transaction was seen as a "really serious breakthrough [in] the U.S. embargo wall" and foundational for future U.S. arms supplies to Israel. David Tal, "Symbol not Substance? Israel's Campaign to Acquire Hawk Missiles, 1960-1962," *International History Review*, Vol. 22, No. 2 (June 2000), pp. 304-317.

[127] Bernard Gwertzman, "Bid to Sell Arms to Jordan Put Off by White House," *New York Times*, July 29, 1975.

[128] Ibid.

[129] Communication from the President of the United States Transmitting Information Concerning the Sale of Hawk Anti-Aircraft Missiles to Jordan, September 17, 1975.

[130] Congressional Record – House, 28952, September 17, 1975.

Senator Alan Cranston hailed the importance of the 1974 legislative review and disapproval procedures (aka the Nelson Amendment) in giving Congress a voice in the process, but also spoke about their drawbacks, saying, "it is simply inadequate to bring Congress into the policy picture at the very last stage of the game, with no choice but to accept or reject in to any proposed sale."[131]

Jordan initially rejected the conditions as "affecting its national dignity," but later accepted them and signed the contract in December 1975.[132] Jordanian requests to enhance the package increased the price beyond that which the Saudis were willing to pay, leading to further complications in late 1975. King Hussein's June 1976 visit to Moscow seemed to confirm fears of Jordan's turn away from the United States, but the Saudis agreed to increase their financing and Jordan reportedly rejected Soviet offers.[133] The Government Accountability Office reported in October 1976 that the sale was proceeding according to the terms agreed to in December 1975.[134]

Iran: AWACS, 1977

In June 1977, the Carter Administration submitted informal notification to Congress of its intent to propose selling seven E-3A airborne warning and control system (AWACS) aircraft to Iran. Though the Shah's government was a close U.S. partner and friend of Israel, the sale raised concerns among some Members, who introduced several resolutions to disapprove of the sale once it was formally notified on July 7. In hearings later that month, opponents of the sale raised several arguments against it, including the lack of trained Iranian personnel to operate the system; the security risk posed by allowing a less capable partner with a 1,200-mile border with the Soviet Union to operate what one senator called "our most advanced technology;" and that the sale was motivated largely by commercial concerns, as it would lower the cost of AWACS for the U.S. Air Force.[135] Many others expressed general skepticism of additional arms sales to Iran, already the largest purchaser of U.S. equipment. Finally, some also warned that the Iranian government's "superficial stability" masked the risk of sudden government collapse, with one arguing, "If the Government changes overnight, we cannot be sure that a successor would be friendly to the United States."[136]

Carter Administration officials emphasized the importance to the United States of strong relations with Iran, citing its geostrategic location and threats posed by the Soviet Union and USSR-supplied Iraq, and sought to minimize technological security concerns by arguing that Iran would receive a less advanced configuration of the aircraft. These arguments were unsuccessful in preventing congressional action: the Senate Foreign Relations Subcommittee on Foreign Assistance voted on July 27 to report a resolution of disapproval (S.Con.Res. 36) to the full committee, and the House International Relations Committee voted the next day to approve a similar resolution (H.Con.Res. 275) by a vote of 19-17. The same day his Senate subcommittee

[131] Congressional Record – Senate, 29036, September 17, 1975.

[132] "Jordan Rejects Hawk Missile Deal," September 18, 1975. Available at https://www.cia.gov/library/readingroom/docs/LOC-HAK-170-6-19-6.pdf.

[133] Bernard Gwertzman, "U.S. Says Jordan Bars Soviet Arms for Air Defenses," *New York Times*, August 1, 1976.

[134] Government Accountability Office (GAO), Sale of Hawk Ground-to-Air Missile System to Jordan, October 18, 1976.

[135] Boeing officials were quoted as describing a reduction in the U.S. order for AWACS from six to three as "not an economic rate" of production. Robert Kaiser, "Battle Expected on Radar Sale to Iran," *Washington Post*, June 23, 1977.

[136] Sale of AWACS to Iran, Hearings before the Subcommittee on Foreign Assistance and the Committee on Foreign Relations, U.S. Senate, July 18, 22, 25, 27 and September 19, 1977.

voted, Chairman Hubert Humphrey wrote to President Carter asking him to withdraw the sale, and asking that any proposal resubmitted include six assurances. Those assurances included removing certain sensitive technological components from the aircraft, enhanced security precautions, and training of Iranian crews in the United States only.[137]

In light of the House committee vote, the Carter Administration faced near-certain defeat in both chambers and accordingly withdrew the sale, while beginning work on securing Iranian agreement to conditions sought by Congress.[138] On August 29, 1977, Secretary of Defense Harold Brown reported to President Carter in a memorandum (later inserted into the hearing record in the Senate) that Iran had agreed to all of the congressional conditions.[139] President Carter again laid out the assurances agreed to by Iran and the Administration in a September 6 letter to Senate Foreign Relations Committee Chairman John Sparkman resubmitting the proposal for congressional approval. On September 19, Senators Humphrey and Clifford Case sent a "Dear Colleague" letter to all Senators that concluded, "[T]he President has been responsive to our concerns and the issues raised…as a result of our hearings. Alternative systems have been evaluated, and the assurances we requested have been agreed to. Therefore, we believe that the sale accompanied by the assurances should be approved."[140] Given the Senate's acquiescence, the House took no further action and the Administration was free to proceed with the sale. Although delivery was anticipated in 1981, Iran had not taken delivery of any AWACS when the Shah fled the country in early 1979, and the first post-Shah government canceled the order.

Saudi Arabia: F-15s, 1978

Saudi Arabia first expressed an interest in U.S. fighter aircraft in 1973 as it began to seek alternatives to replace its aging British-origin fleet. U.S. officials agreed in principle in 1974 to pursue a sale of advanced fighters, and provided briefings to Saudi counterparts about various U.S. aircraft the next year.[141] In 1975, the United States sold Saudi Arabia 60 F-5 jets, which were in the process of being absorbed into Saudi inventories as Saudi leaders sought more advanced fighters. During a May 1977 visit to Washington DC by then-Crown Prince Fahd, the Saudis identified the F-15 as their preferred platform and submitted a formal request for 60 aircraft. The Pentagon recommended the sale proceed in August 1977, which was publicly reported at the time, but not officially confirmed by the Carter Administration.[142]

In February 1978, as the Saudis pressed the Administration for action, Secretary of State Cyrus Vance announced the Administration's intent to notify Congress of a $4.8 billion package of three potential sales: 15 F-15s and 75 F-16s to Israel, 50 F-5Es to Egypt, and 60 F-15s to Saudi Arabia. Egyptian leader Anwar Sadat had severed his country's military relationship with the Soviet Union and was openly pursuing a settlement with Israel; for those reasons, as well as the relatively limited capabilities of the low-range F-5E fighter, the Egyptian sale did not attract much controversy. However, the Saudi sale F-15 became the subject of intense congressional pressure.

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[137] "AWACS Sale to Iran," *CQ Almanac 1977*, 1978.

[138] Sale of AWACS to Iran, Hearings.

[139] Ibid.

[140] Ibid.

[141] GAO, Statement of Jacob Stolarow before the United States Senate Committee on Foreign Relations, "The Sale of 60 F-15s to Saudi Arabia," May 4, 1978.

[142] Bernard Weintraub, "Pentagon Asks Sale of F-15s to Saudis," *New York Times*, August 31, 1977.

Anticipating congressional opposition to the Saudi sale, the Carter Administration decided to link the three sales: if Congress rejected one, the Administration would withdraw all of them.[143] Opposition did materialize, with multiple Members introducing resolutions of disapproval in the House and Senate.[144] Morris Amitay, executive director of the American Israel Public Affairs Committee (AIPAC), testified in a House International Relations Committee hearing that F-15s would not address potential threats posed to Saudi Arabia by Iraq and South Yemen, and constituted a "political payoff" to Saudi Arabia because of its importance in global energy markets. In the same hearing, Secretaries Brown and Vance submitted, among other arguments, that the Saudis would purchase French fighter aircraft if denied the F-15, and that the French would not impose any kind of restrictions on their use or transfer to other parties.[145]

After the initial February announcement, and before the sales were formally notified on April 28, 1978, the Administration sought to assuage congressional concerns by securing Saudi agreement to a number of conditions on the sale. In an April memorandum to Representative Gerry Studds, the State Department reportedly relayed Saudi Arabia's intention not to base the jets at Tabuk (the Saudi facility closest to Israel) and noted that the Saudis would not be able to operate the planes without intensive and years-long training efforts.[146] On May 9, Secretary Brown sent letters to Chairman Sparkman and House International Relations Committee Chairman Clement Zablocki expanding on that promise and laying out certain technical limitations on the jets the Saudis would receive (e.g., lack of conformal fuel tanks and multiple ejections racks), concluding, "Saudi Arabia has not requested nor do we intend to sell any other systems or armaments that would increase the range or enhance the ground attack capability of the F-15."[147] When Saudi Defense Minister Prince Sultan bin Abd al Aziz sought in July 1978 to amend the LOA for the F-15s to include a U.S. commitment to upgrade the platform to carry additional bombs, U.S. officials declined.[148]

The May letters, combined with a direct appeal from President Carter, appeared to blunt momentum against the sale, and the Senate Foreign Relations Committee, in a tie vote, declined to disapprove of the Saudi sale. However, it reported a new concurrent resolution of disapproval that would have blocked all the sales together. That measure failed 54-44 on May 15, after which the House tabled its efforts in light of the Senate's evident intent to not oppose the sales and the Administration was free to go through with the sale. The episode had important consequences for future congressional consideration of proposed arms sales to Saudi Arabia.

Saudi Arabia: AWACS and F-15 enhancements, 1981-1986

Regional developments after 1978, particularly the Iranian revolution, the Soviet invasion of Afghanistan, and the Iran-Iraq War, increased concerns about Saudi security and led to another

[143] "Carter's Firm Stand on the Arms Package," *Washington Post*, March 15, 1978.

[144] Daniel Strief, "Arms Wrestle: Capitol Hill Fighter over Carter's 1978 Middle East 'Package' Arms Sale," *Diplomatic History*, Volume 40, Issue 3, June 2016, pp. 475-499.

[145] "Proposed Aircraft Sales to Israel, Egypt, and Saudi Arabia," Hearing before the Committee on International Relations, House of Representatives, May 8, 9, 10, and 16, 1978.

[146] Drew Middleton, "U.S. Says Saudis Would Not Base Their F-15s Near Israeli Border," *New York Times*, April 10, 1978.

[147] Congressional Record – Senate, 13627, May 15, 1978.

[148] U.S. Embassy Jeddah to Department of State, Telegram, Presentation of LOA for F-15 Sale, July 12, 1978, 1978JIDDA05145, Central Foreign Policy Files, 1973-79/Electronic Telegrams, RG 59: General Records of the Department of State, U.S. National Archives.

proposed U.S. arms sale to the kingdom that built upon the 1978 sale and led to another round of congressional involvement with far-reaching consequences.

In March 1981, Reagan Administration officials publicly confirmed their plans to sell Saudi Arabia both AWACS and upgrades to the Saudi F-15 fleet, including items specifically left out in 1978, sparking opposition from some Members of Congress and Israel.[149] This intense and growing opposition, which included requests from key Senators that the sale be postponed and majoritie S.Con.Res. 37s in both chambers expressing disapproval, led the Administration to delay notification for several months.[150] The sales were then informally notified in August, with formal notice coming on October 1, 1981. The package included five AWACS, over 100 conformal fuel tanks for Saudi F-15s, hundreds of Sidewinder missiles, and eight refueling aircraft, with an aggregate value over $8 billion.

In the August informal notification, the Administration stated that it had "carefully considered [congressional] suggestions in developing the sales proposals." Over the month of September, the Administration sought congressional support, but was unable to stem the tide of growing opposition: on the day the formal notification was submitted, Members introduced resolutions of disapproval of the entire package of sales in the House and Senate with 194 and 50 co-sponsors, respectively (H.Con.Res. 194 and). Given greater opposition in the House (where H.Con.Res. 194 passed 301 to 11 on October 14, becoming the first disapproval resolution passed by a chamber of Congress since the authority was enacted in 1974), the Administration focused its efforts on trying to prevent the Senate from passing its own disapproval resolution.

In advance of the Senate floor vote, President Reagan submitted on October 28, 1981, a list of conditions agreed to by the Saudis that had been worked out through weeks of negotiations between the Administration and certain Senators. The President wrote that these conditions "go well beyond" standard AECA-mandated restrictions. They included Saudi commitments to share with the United States all intelligence gathered by the AWACS, to not share any information about or gathered by the AWACS to any third party, and to only operate AWACS for defensive purposes and within Saudi borders (except in the case of prior agreement with the United States). President Reagan, who reportedly chafed at Israeli opposition to the sale, also stated that the AWACS would pose "no realistic threat to Israel" and that he would remain committed to preserving Israel's "ability to defend against any combination of potentially hostile forces in the region."[151] The Senate voted that same day 52-48 against adopting H.Con.Res. 194, and the Administration was free to proceed with the sale.

In 1985, in advance of the anticipated delivery of AWACS the next year and in response to reports that enhancements had been made to the version sold in 1981, Members added a provision to foreign assistance authorization legislation codifying the commitments and conditions from President Reagan's October 1981 letter.[152] Sec. 131 of the International Security and

[149] Bernard Gwertzman, "U.S. Decides to Sell Equipment to Saudis to Bolster F-15 Jets," *New York Times*, March 7, 1981.

[150] In the Senate, 54 senators signed a letter to President Reagan expressing opposition; in the House, 224 Members co-sponsored a resolution of disapproval (H.Con.Res. 118). Richard Halloran, "Majority in Congress Urge Reagan Not To Sell AWACS to Saudi Arabia," *New York Times*, June 25, 1981.

[151] Text of the letter available at Congressional Record – Senate, 25783, October 28, 1981.

[152] Senator John Glenn wrote to Secretary of Defense Caspar Weinberger in January 1985 to inquire about reported enhancements to Saudi AWACS. The next month, the Defense Security Assistance Agency responded with information on five "noteworthy configuration changes." Congressional Record – Senate, 12112, May 15, 1985. The provision was proposed in the Senate bill by Senator Cranston and in the House bill by Representative Michael Barnes, and approved unanimously by the respective committees.

Development Cooperation Act of 1985 (P.L. 99-83) required the President to submit a written certification that conditions in the 1981 letter had been met before delivering the AWACS aircraft to Saudi Arabia and further directed the President to notify Congress of any changes to the original conditions of the sale.

President Reagan submitted that certification on June 18, 1986, stating that all conditions had been met, including Saudi Arabia's provision of "substantial assistance" in trying to resolve regional disputes, including the Iran-Iraq war and the Arab-Israeli conflict.[153] The first AWACS were delivered on July 2, 1986. The House Foreign Affairs Subcommittee on Europe and the Middle East held a hearing on July 15, 1986, to examine the certification and whether it met the conditions set out in 1981. In response to concern from a number of Representatives about the lack of formal U.S. recourse in the event of Saudi non-compliance with conditions in the 1986 certification, Assistant Secretary of Defense for International Security Affairs Richard Armitage explained that in such a case, the United States would halt follow-on support, maintenance, and training, which would "bring the AWACS program rapidly to a halt." Most Members' concerns focused on Saudi regional activities, namely the kingdom's reported support for Syria, the Palestine Liberation Organization (PLO), and Libya, its continued refusal to recognize or engage with Israel, and its ostracizing of Egypt for establishing ties with Israel. Representative Edward Feighan criticized the Administration's characterization of Saudi activities and sought to point out the dubiousness of the certifications, stating,

> [O]ne has to go through some incredible amount of almost impossible mental gymnastics to come to the conclusion that the condition of substantial, significant progress and substantial assistance of Saudi Arabia toward the peace process has been met. But that seems to be the hallmark of Presidential certifications in recent years,that they are sufficiently vague and ambiguous to allow for either interpretation.[154]

Jordan: Prospective Sale, 1985-1986

In mid-1985, the Reagan Administration reportedly decided to submit to Congress a proposed sale to Jordan of F-20 aircraft and anti-air missiles.[155] Despite large congressional majorities opposed to the sale, the Reagan Administration informally notified the sale on September 27, 1985. The proposed sale package included 40 F-20 or F-16 aircraft, as well as Hawk, Sidewinder, and Stinger missiles. By the time formal notification was delivered on October 21, veto-proof majorities in both chambers were publicly opposed to the sale, with opposition coalescing around measures that would have prohibited any U.S. arms sales to Jordan before "the commencement of direct bilateral negotiations between Jordan and Israel" (S.J.Res. 223 and H.J.Res. 428, with 77 and 268 cosponsors, respectively).

Faced with near-certain defeat, Administration officials worked with Senators to reach a compromise by which the Administration would not withdraw the sales but would allow for a delay.[156] That compromise took form as S.J.Res. 228, introduced on October 24, which sought to prohibit the issuance of a letter of offer to Jordan for any arms sales before March 1, 1986, "unless direct and meaningful peace negotiations between Israel and Jordan are underway." The

[153] Communication from the President of the United States, Certification of Transfer of AWACS Aircraft to Saudi Arabia, House Document 99-235, June 18, 1986.

[154] Presidential Certification on the Delivery of AWACS to Saudi Arabia, Hearing before the House Foreign Affairs Subcommittee on Europe and the Middle East, July 15, 1986.

[155] Bernard Gwertzman, "U.S. Move to Seek Jordan Arms Sale Is Reported Near," *New York Times*, June 6, 1985.

[156] Steven Roberts, "Reagan Postpones Jordan Arms Deal," *New York Times*, October 24, 1985.

measure passed the Senate the same day by a vote of 97 to 1. In an October 30 House hearing on the resolution, some Members questioned what "direct and meaningful" negotiations would constitute and who would judge that they had begun, but the committee recommended the measure to the House and it passed by voice vote on November 12.[157] President Reagan signed S.J.Res. 228 on November 25 (P.L. 99-162). With the deadline approaching in early 1986, Secretary of State George Schultz wrote to Congress to pledge that the Administration would notify Congress 30 days in advance of issuing a letter of offer and acceptance to Jordan for arms sales, effectively delaying the prospective sale indefinitely.[158]

Saudi Arabia: Stinger Missiles, 1986

On March 11, 1986, the Reagan Administration informally proposed to sell Saudi Arabia over $350 million in Sidewinder air-to-air missiles, Harpoon air-to-sea missiles, and Stinger anti-aircraft missiles. While Saudi Arabia had previously received Sidewinder and Harpoon missiles with congressional acquiescence, Congress had not had the opportunity to formally consider the sale of Stinger missiles to Saudi Arabia: the Reagan Administration had proposed such a sale in February 1984, withdrew it in March after considerable congressional opposition, and then invoked the AECA's emergency sales authority in May to immediately sell the missiles without congressional review.

Congressional opposition was swift and considerable. After the Administration formally notified the sale on April 8, 1986, over half of the Members in each chamber signed on to co-sponsor H.J.Res. 589 and S.J.Res. 316, both of which expressed opposition to the entire package of missiles sales. Opposition to the missile package in this case did not focus on questions about Israeli security. The Israeli government and AIPAC reportedly opposed the sale in principle, but decided not to actively fight it, seeing the potential threat posed by the missiles as "marginal" and "not proportional' to the cost of a fight against the sale."[159] Instead, in hearings on the two resolutions of disapproval, Members generally focused on what they perceived as Saudi Arabia's insufficient support for U.S. regional priorities (especially with regard to the Arab-Israeli peace process and reported Saudi support for terrorist threats) and the evident failure of past arms sales to align Saudi policies with U.S. interests.[160] Saudi criticism of recent U.S. airstrikes on Libya also featured prominently in the hearings. Administration officials argued that the sales were necessary to support a key ally with legitimate defense needs and portrayed Saudi Arabia's regional stances more sympathetically.

In the first instance of both chambers voting to disapprove of a sale, the Senate voted 73-22 to do so and the House voted 356-62. President Reagan vetoed the measure on May 21. On the same day, the President wrote to Senate Majority Leader Bob Dole that Saudi Arabia, "recognizing the particular sensitivity of Stingers being transferred to any country and the importance of the sale to the security of the Persian Gulf area, has decided to withdraw its request."[161]

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[157] Proposed Arms Sale to Jordan, Hearing before the House Foreign Affairs Subcommittee on Europe and the Middle East, October 30, 1985.

[158] Congressional Record – Senate, 1506, February 4, 1986.

[159] "AIPAC Will Not Actively Lobby Against Sale of Missiles to Saudi Arabia," *Jewish Telegraphic Agency*, March 26, 1986.

[160] "Proposed Arms Sales to Saudi Arabia," Hearing and Markup before the House Foreign Affairs Subcommittee on Europe and the Middle East, April 22 and 23, 1986; "Arms Relationship with Saudi Arabia," Hearing before the Senate Committee on Foreign Relations, April 17, 1986.

[161] Letter to Senate Majority Leader Robert Dole on the United States Arms Sale to Saudi Arabia, May 21, 1986.

Even with the most contentious part of the proposed sale package removed, the Senate vote on the president's veto was close and vigorously contested. In the end, the Senate came up one vote short of the two-thirds majority needed to overturn. Several of the eight senators who changed their minds on the sale cited arguments about the importance of the president's ability to conduct foreign policy and the possible damage to U.S. national prestige that blocking the sale would have had.[162]

Saudi Arabia: F-15s and Maverick Missiles, 1987

In May 1987, media outlets reported that the Reagan Administration planned to informally notify Congress of its intent to sell 12 to 15 F-15C and F-15D jets, worth about $500 million, to Saudi Arabia on an attrition basis to replace jets lost in accidents.[163] Shortly thereafter, on May 19, 1987, Saudi F-15s allegedly failed to intercept an Iraqi jet that mistakenly struck the *U.S.S. Stark* in the Persian Gulf, killing 37 U.S. personnel. Seizing on these reports and other points of contention in the U.S.-Saudi relationship, four Senators introduced a resolution (S.J.Res. 133) that would have preemptively disapproved the sale of twelve F-15s to Saudi Arabia, despite the lack of formal notification of the proposed sale from the State Department.[164]

Separately, on May 29, 1987, the Reagan Administration notified Congress of its intent to sell 1,600 Maverick air-to-surface missiles, worth $360 million, to Saudi Arabia. Congressional opposition grew quickly, and by June 10, a resolution of disapproval in the Senate (S.J.Res. 153) had at least 64 cosponsors. In a hearing that day, S.J.Res. 153 cosponsors Senator Cranston and Senator Robert Packwood argued that the missiles would not address the threat that Iranian aircraft posed to Saudi Arabia, but rather could target Israeli tanks and other armor. They also asserted that arms sales had not made Saudi Arabia more supportive of U.S. interests in the region, especially with regard to Israel.

Administration officials defended Saudi conduct during the Stark incident, argued that the sale of Mavericks to Saudi Arabia (which the United States first sold in 1976, after a failed attempt by some Members to disapprove of the sale)[165] would not alter regional security dynamics, and

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[162] Steven Roberts, "Senate Upholds Arms for Saudis, Backing Reagan," *New York Times*, June 6, 1986; "Senate Clears Way for Saudi Arms Sales; Reagan Vote Sustained," *Jewish Telegraphic Agency*, June 6, 1986.

[163] Barry Schweid, "U.S. Plans Arms Sales to Saudis," *Washington Post*, May 16, 1987.

[164] Congressional Record – Senate, 13254, May 20, 1987. S.J.Res. 133 states: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the proposed sale to Saudi Arabia of 12 F-15 aircraft, with related defense articles and defense services, pursuant to section 36(b)(1) of the Arms Export Control Act, described in the numbered certification transmitted to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate on -- , 1987 (Transmittal No. 87-), is prohibited."

[165] The Ford Administration notified Congress of its intent to sell 1,500 Maverick missiles to Saudi Arabia (among other major potential sales) in August 1976. Though the number was reduced to 650 after congressional consultation, the Senate Foreign Relations Committee favorably reported S.Con.Res. 161 on September 24, which would have disapproved of the sale. Senate Foreign Relations Committee Chairman John Sparkman then obtained unanimous consent on the Senate floor to refer the resolution back to the committee, and the committee reversed itself days later following testimony from Secretary of State Henry Kissinger, who warned of potential negative consequences of rejecting the sale. "Congressional Action Against Proposed Missile Sale to Saudi Arabia Encounters Series of Delays," *Jewish Telegraphic Agency*, September 28, 1976; John Finney, "Effort Collapses in Congress to Block Sale of Missiles to Saudi Arabia," *New York Times*, September 29, 1976.

cautioned that not selling arms would limit U.S. influence in the region.[166] In conveying the Administration's strong opposition to the resolution, Assistant Secretary of State Richard Murphy expressed "dismay" at congressional intervention at a time of sensitive negotiations between the Administration and Saudi leadership and characterized the resolution as a "slap in the face" to the United States' Gulf partners.[167]

Recognizing the extent of congressional opposition, President Reagan announced on June 11 that the missile sale would be temporarily withdrawn, saying in a statement that, "Saudi Arabia is our staunchest ally in the Gulf in resisting the Soviet efforts to establish a presence in the Middle East…This action precipitated by Congress sends exactly the wrong signal."[168] President Reagan vowed to consult with Congress and re-submit the notification. After months of negotiations between Administration and congressional officials, congressional opposition showed no signs of abating.[169] In late September, 64 Senators and 217 Representatives sent separate letters to President Reagan urging him to abandon the sale, saying that Saudi Arabia's policies did not merit receiving sophisticated U.S. arms and that moving ahead with the sale would spark an "unnecessary and unproductive confrontation between the Congress and the White House."[170]

On October 9, 1987, Senate Foreign Relations Committee Chairman Claiborne Pell announced that the Administration had informally notified his committee of the proposed sale of 12 F-15s and other materiel to Saudi Arabia, but that the sale of 1,600 Mavericks had been dropped, leading him to support the proposal. In its justification, the Administration relayed that

> These 12 attrition/replacement aircraft are required to sustain the Saudi Arabian F15 program at the force level validated by Congress in 1978 (60 aircraft). The required quantity is based on standard U.S. Air Force computational models using actual Saudi Arabian losses to date. All 12 attrition/replacement aircraft are being procured now, rather than incrementally, because the F15C/D production line is scheduled to close in early 1988. Aircraft in excess of the 60 aircraft force level will be retained in the U.S. at Saudi Arabia's expense. As the number of operational aircraft will not exceed validated program levels, the proposed sale will not materially increase Saudi Arabia's military capability.[171]

About a month later, National Security Advisor Frank Carlucci wrote to Senator Pell to confirm those conditions, including an in-Kingdom limit of 60 F-15s.[172]

In late 1987, Members in both chambers agreed to codify the restriction on Saudi F-15s. The House debated on November 18, 1987, an en bloc amendment offered by House Foreign Affairs Committee Chairman Dante Fascell to the International Security and Development Cooperation Act of 1987 (H.R. 3100), including language to limit F-15s sold to Saudi Arabia to the A, B, C, and D models; prohibit the transfer of F-15Es "or other advanced aircraft with a ground attack capability" to Saudi Arabia; and mandate that "Saudi Arabia shall not possess more than 60 F-15 aircraft at any one time." Chairman Fascell described the language as "essentially [codifying] the

[166] Robert Novak, "The Sinking of a Saudi Arms Sale," *Washington Post*, June 17, 1987.

[167] "Prohibiting the Transfer of Maverick Missiles to Saudi Arabia," Senate Committee on Foreign Relations, June 10, 1987. Accessed via ProQuest Congressional.

[168] Statement on the Proposed United States Arms Sale to Saudi Arabia, Ronald Reagan Presidential Library and Museum, June 11, 1987.

[169] Dennis Wamstead, "AIPAC Blocks Saudi Arms Sale," *Washington Report on Middle Eastern Affairs*, Vol. 6, Issue 3, July 1987.

[170] Elaine Sciolino, "64 Senators Urge Reagan to Drop $1 Billion Sale of Arms to Saudis," *New York Times*, September 29, 1987.

[171] Congressional Record – Senate, 27265, October 9, 1987.

[172] Congressional Record – Extensions of Remarks, 33192, November 20, 1987.

existing agreement between the executive branch and the Congress on the sale of F-15s to Saudi Arabia." While one Member questioned the need for such codification, the amendments were agreed to 322-93.[173] The House later passed the bill 286-122 on December 10. Although the Senate took no action on that bill, Senator Howard Metzenbaum proposed the same language as an amendment to unrelated legislation (H.R. 3283), which was approved by the Senate in December 1987.

The next year, as the Senate began work on the National Defense Authorization Act for FY1989, Senator Metzenbaum rose on the floor to introduce an amendment to that measure. The language was nearly the same as passed by the House and Senate in 1987, but slightly narrower in scope given what Senator Metzenbaum called "concerns…in the House regarding the breadth of the original language."[174] The amendment was agreed to and the Senate passed the bill. In conference, the House added language authorizing the President to waive the restrictions if he could certify to Congress that doing so was "in the national interest," and the language was enacted as Section 1306 of P.L. 100-456.

On August 8, 1990, days after the Iraqi invasion of Kuwait, President George H.W. Bush submitted a certification to Congress waiving the Section 1306 restriction on further F-15 transfers to Saudi Arabia. Weeks later, on August 26, President Bush invoked the emergency authority in section 36(b)(1) of the Arms Export Control Act to immediately sell to Saudi Arabia 24 F-15C/D aircraft, among other materiel. No Member of Congress appears to have publicly opposed or tried to block the sale. After the waiver was invoked, a spokeswoman for Senator Metzenbaum reportedly justified the language by arguing that at the time of passage, Saudi Arabia "had no professed enemy in the region."[175]

Kuwait: F/A18s, 1988

On June 10, 1988, the Reagan Administration informally notified Congress of its intent to sell to Kuwait 40 F/A-18C/D aircraft, along with Maverick, Harpoon, and other missiles, worth a total of $1.9 billion. In a Senate Appropriations Subcommittee hearing several days after the notice, Secretary of State George Schultz characterized the proposed sale as a "political breakthrough" that would solidify U.S.-Kuwaiti ties for decades and would yield benefits for the United States by reducing the cost of the plane for the U.S. Navy's own procurement purposes. He also argued that the jet would not pose a threat to Israel, though he conceded that "trying to tie these arms sales directly into particular statements" by Kuwait (namely, recognizing Israel's right to exist, as suggested by one senator) "would be a pretty difficult thing to do." Still, some Senators expressed concern with the potential sale, given what they characterized as Kuwait's support for the PLO and other stances contrary to U.S. interests. Senator Dennis DeConcini suggested removing Maverick missiles from the proposal, and Secretary Schultz promised to "take this back into our consultations."[176]

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[173] Representative Jerry Solomon: "I do not know what the purpose of including it is other than perhaps to embarrass the administration and say that we do not trust you, we have to have this in writing." Congressional Record – House, 32642, November 18, 1987.

[174] Congressional Record – Senate, 10935, May 13, 1988. The 1988 language removed the prior proposed restriction on "other advanced aircraft with a ground attack capability," thus limiting the prohibition to F-15Es.

[175] Dan Balz and Molly Moore, "Bush Asks Nation to Back 'Defensive' Mission as U.S. Forces Begin Arriving in Saudi Arabia," *Washington Post*, August 9, 1990.

[176] Foreign Assistance and Related Programs Appropriations for Fiscal Year 1989, Hearing before Senate Committee on Appropriations on H.R. 4637, June 16, 1988.

On July 7, the Administration formally notified the proposed sale package without any modifications. Within hours, Senator DeConcini (with 9 cosponsors, including SFRC Chairman Claiborne Pell) introduced legislation to prohibit the sale of any Maverick D or G missiles to any Persian Gulf country, as an amendment to the FY1989 foreign operations appropriations bill (H.R. 4637, Sec. 592).[177] After some opposition from other senators, Senator DeConcini modified his amendment to refer only to the proposed sale of Maverick missiles to Kuwait, and the amendment was agreed to by voice vote and the bill passed by the Senate the same day. In the House, Representative Larry Smith introduced H.J.Res. 609 to disapprove of the entire sale package, attracting 104 co-sponsors.

In pushing for the sale over the next month, the Reagan Administration emphasized the economic and strategic risks of congressional disapproval. In hearings, Administration officials asserted the "perhaps awkward but…inescapable fact" that Kuwait would seek arms from other countries if unable to obtain U.S. systems, claiming that this could have wide-ranging implications. Assistant Secretary Murphy argued in a House subcommittee hearing that "with each loss of a sale, we do lose influence, and it is not influence just over the military establishments and the use of weaponry. It is part of the fabric of our relationship with those countries."[178] The White House also highlighted Saudi Arabia's July 1988 decision to purchase Tornado combat aircraft from the United Kingdom, which it described as a loss for American companies.[179] In a House joint subcommittee hearing, opponents of the sale charged that arms sales had not made U.S. partners more supportive of U.S. regional priorities (especially with regard to Israel) and had fueled a "spiraling arms race" that increased the probability and seriousness of potential conflict in a tense region.[180]

By late July, a compromise emerged by which Kuwait would still receive 300 Maverick missiles, but would receive only the model G variety (intended for ships and other larger targets) and none of the model D variety (an air to ground missile), compared to the original proposal to sell Kuwait 200 model Ds and 100 model Gs.[181] Additionally, the Administration would secure certain assurances to assuage congressional concerns about Israeli security. On August 3, 1988, both parties announced the compromise, and Secretary Schultz wrote to the House Foreign Affairs Committee to relay certain Kuwaiti assurances, including that Kuwait would not seek refueling capabilities, and describe how Kuwait would not be able to transfer the G model to third countries. Although Representative Smith withdrew his resolution, Senator DeConcini rejected the compromise and continued to push for his amendment with some support. However, faced with House opposition and a veto threat from the Administration, the Senate Appropriations Committee voted to remove the amendment from the conference bill.[182]

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[177] Congressional Record – Senate, 17209, July 7, 1988. "No sale of any Maverick AGM-650D/G missiles may be made after July 6, 1988, and no delivery of any such missiles may be made under a sale made after that date, to any country bordering the Persian Gulf."

[178] Developments in the Middle East, July 1988, Hearing before the House Foreign Affairs Subcommittee on Europe and the Middle East, July 27, 1988.

[179] "Reagan Administration Pushing Proposed Arms Sale to Kuwait," *Jewish Telegraphic Agency*, July 12, 1988.

[180] Proposed Arms Sale to Kuwait, Hearing before the House Foreign Affairs Subcommittees on Arms Control, International Security, and Science, and on Europe and the Middle East, July 7, 1988.

[181] Robert Pear, "Deal is Outlined for U.S. to Sell Arms to Kuwait," *New York Times*, July 31, 1989.

[182] "Middle East, Gulf Arms Sales, 1988" CQ Almanac 1988, 44th ed., 505-10. Washington, DC: Congressional Quarterly, 1989.

Saudi Arabia: F-15Es, 1992

In September 1992, President Bush announced the potential sale of 72 F-15s to Saudi Arabia in a campaign stop at the St. Louis, Missouri, headquarters of the McDonnell Douglas Corporation, the producer of the F-15. President Bush emphasized the economic component of the sale, saying "In these times of economic transition, I want to do everything I can to keep Americans at work."[183] Formally notified on September 14, 1992, the package included 72 F-15XPs, which reportedly had some ground attack capability but not equivalent to that of the F-15E, which Saudi Arabia had been formally barred from receiving in P.L. 100-456.

Given support for the sale from presidential candidate Governor Bill Clinton and other key Democrats, it appeared unlikely that opponents of the sale would be able to marshal two-thirds majorities to block it. The Bush Administration also announced offsets for Israel, including Apache and Blackhawk helicopters as well as pre-positioning U.S. defense equipment in Israel for Israeli use with U.S. approval.[184] Still, several Members introduced resolutions of disapproval, including then-Representative Charles Schumer, whose H.J.Res. 549 would have prohibited the F-15 sale unless the President certified that Saudi Arabia was not complying with and had publicly renounced the Arab boycott on Israel.

In a House joint subcommittee hearing on September 23, 1992, opponents focused on Israeli security, U.S.-Saudi commercial disputes, and particularly the issue of arms sales as leverage. Representative Gary Ackerman asked Under Secretary of State for International Security Affairs Frank Wisner, "I have a problem understanding why we are not extracting some kind of pound or even an ounce of flesh by virtue of this deal from the Saudis. Why do we not insist that they do some of the things that we would like to see them do[?]"

Under Secretary Wisner and other Administration officials defended the sales as necessary for Saudi security and proportionate to threats posed to Saudi Arabia. Under Secretary Wisner also argued against using the F-15s as leverage to secure policy concessions from Saudi Arabia, saying "the sale stands on its own merits, on national security merits based on the defense, the environment in the Gulf, the threat that Saudi Arabia faces, and our interests in protecting that country."[185] No resolution of disapproval was taken up in either chamber, and the sale proceeded.

Saudi Arabia: JDAMs, 2007-2008

In early 2007, press reports quoted unnamed U.S. officials as indicating that the George W. Bush Administration planned to notify Congress of a proposed sale of Joint Direct Attack Munition (JDAM) technology to Saudi Arabia and that some Israeli officials had expressed tentative opposition to such a sale. In response, some Members of Congress sent letters to President Bush expressing concern about the potential sale of JDAM technology to Saudi Arabia, based on interests in protecting U.S. and allied forces in the Gulf region and preserving Israel's QME.

- In one August 2007 letter, 114 Members of Congress expressed "deep opposition to the proposed sale of high technology armaments to the Kingdom of Saudi Arabia" and

[183] Jackson Diehl and David von Drehle, "Bush Approves Sale of F-15s to Saudi," *Washington Post*, September 12, 1992.

[184] Martin Tolchin, "U.S. to Sell Helicopters to Israelis to Balance Jet Deal with Saudis," *New York Times*, September 27, 1992.

[185] Proposed Sale of F-15 Aircraft to Saudi Arabia and U.S.-Saudi Commercial Disputes, Joint Hearing before the House Foreign Affairs Subcommittees on Arms Control, International Security and Science, and on Europe and the Middle East, September 23, 1992.

vowed to vote against unspecified proposed sales in the event that resolutions of disapproval were submitted.[186]

- In a letter dated November 15, 2007, Representative Mark Kirk, Representative Chris Carney, and 186 other Members of Congress signed a letter to President Bush stating that unless the Administration provided assurances that the sale of JDAM kits to Saudi Arabia would not "harm U.S. forces in the region or undercut Israel's qualitative military advantage," they would be prepared to oppose any proposed JDAM sale. The letter also called for "regular reporting, tight Congressional oversight, and intense consultations" with Israel.[187]
- In another letter dated November 15, 2007, Representative Anthony Weiner and 116 other Members of Congress signed a letter to President Bush requesting that formal notification regarding any proposals to sell "high technology armaments to the Kingdom of Saudi Arabia" be postponed until January 15, 2008.[188]

In a January 12, 2008, letter responding to Representative Kirk, the Administration stated that it had "made arrangements to ensure the security and proper employment" of precision guided munitions proposed for sale to Saudi Arabia.[189] The response letter indicated that the details of those arrangements were classified and committed to keeping Congress informed about the sale and potential changes via "proper channels." The response letter also stated that the Administration could assure Congress that the sale would not affect Israel's QME and warned that Saudi Arabia could seek precision guidance munition capabilities from other sources, to the possible detriment of "the best interests of the United States, and of the entire region." A January 13 media report cited senior Israeli security sources who said that the Administration had agreed in principle that future JDAM sales to the Israel would include "advanced technologies not on offer to Saudi Arabia."[190]

On January 14, 2008, the Administration formally notified Congress of a proposal to sell 900 JDAM kits to Saudi Arabia.[191] On January 15, Representative Anthony Weiner introduced a joint resolution of disapproval (H.J.Res. 76) to prohibit the sale. The bill was cosponsored by 104 Members of Congress, but was not considered by the House Foreign Affairs Committee within the 30-calendar day review period provided by the AECA, clearing the Administration to proceed with negotiation of a potential sale of JDAM technology to Saudi Arabia.

The Defense Security Cooperation Agency indicated that a Letter of Offer and Acceptance (LOA) was presented to the Saudi government in May 2008. The agency expected the Saudis to sign the LOA.[192] On May 13, 2008, Senator Charles Schumer introduced S.J.Res. 32 to prohibit the issuance of a letter of offer for four proposed arms sales to Saudi Arabia (including the one with the JDAMs) unless Saudi Arabia increased its oil production by one million barrels per day over

[186] Office of Representative Anthony Weiner, "Broad Bipartisan Coalition of 114 Congressional Members Release Letter to President Bush Opposing Arms Sale to Saudi Arabia, Say Will Vote to Stop Sale," August 2, 2007.

[187] Office of Representative Mark Kirk, "Kirk, Carney Circulate Bipartisan Letter to President Requiring Assurances on Smart Weapons Sales to Saudi Arabia," October 4, 2007.

[188] Office of U.S. Representative Anthony Weiner (NY-9), "State Department Agrees to Request from Weiner and 116 Members of Congress to Delay Notification of Saudi Arms Deal until January," December 4, 2007.

[189] Letter from Assistant Secretary of Defense for International Security Affairs Mary Beth Long and Acting Assistant Secretary of State for Political-Military Affairs Ambassador Stephen Mull to Representative Mark Kirk, January 12, 2008.

[190] Dan Williams, "Israel to get 'smarter' U.S.-made bombs than Saudis," *Reuters*, January 13, 2020.

[191] Defense Security Cooperation Agency Transmittal 08-18.

[192] DSCA response to CRS inquiry, May 9, 2008.

its reported level of production on January 1, 2008. On May 21, 2008, Representative Weiner introduced similar legislation in the House (H.J.Res. 87).

Based on open source reporting from the Stockholm International Peace Research Institute, the United States delivered 900 JDAM kits to Saudi Arabia between 2010 and 2011.

Saudi Arabia: F-15SAs, 2010

On October 20, 2010, the Obama Administration notified Congress of several proposed sales of military equipment and related services to Saudi Arabia, including the proposed sale of F-15SA fighter aircraft, attack and utility helicopters, upgrades of existing Saudi fighter aircraft, and related weaponry and services.

In a November 10, 2010, letter to Secretary of State Hillary Rodham Clinton and Secretary of Defense Robert Gates, 198 Representatives (led by House Foreign Affairs Committee Chairman Howard Berman and Ranking Member Ileana Ros-Lehtinen) questioned "the rationale for a sale of such magnitude" to Saudi Arabia, citing concerns about the sale's impact on regional stability and its challenge to Israel's QME.[193]

Secretaries Clinton and Gates responded to the congressional questions in a letter dated November 16.[194] They justified the sale by writing, "Saudi Arabia faces an Iranian threat, including destabilizing actions in the region, and in the past year has faced Houthi attacks along its border with Yemen." Their response letter also defended Saudi counterproliferation efforts and concluded that the "sale will not negatively impact Israel's security interests or its QME."

On November 18, Representative Anthony Weiner introduced a joint resolution (H.J.Res. 99) in an attempt block the sale. Congress did not act on the resolution, which had two co-sponsors, Representatives Shelley Berkley and Christopher Carney. The sale ultimately proceeded.

In 2014, former Secretary Gates wrote that the Administration agreed to sell an additional 20 F-35 aircraft to Israel as a means of preserving its QME in connection with the F-15SA sale to Saudi Arabia.[195] Less than two weeks before the Administration's October 2010 formal notification of the F-15SA sale, Israel signed an agreement with the United States to purchase its first squadron of F-35s.[196]

[193] Matt Sugrue, "Saudi Arms Deal Moves Forward," *Arms Control Today*, December 2010.

[194] Ibid.

[195] Eli Lake, "In Gates Book, Details of Israel's Hard Bargaining Over Saudi Arms," *Daily Beast*, January 10, 2014.

[196] Israel Defense Forces, "Final Agreement Signed for the Purchase of F-35 Fighters," *States News Service*, October 8, 2010.

Author Information

Jeremy M. Sharp, Coordinator
Specialist in Middle Eastern Affairs

Jim Zanotti, Coordinator
Specialist in Middle Eastern Affairs

Kenneth Katzman
Specialist in Middle Eastern Affairs

Christina L. Arabia
Analyst in Security Assistance, Security Cooperation and the Global Arms Trade

Clayton Thomas
Analyst in Middle Eastern Affairs

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