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POINT PAPER

12 June 2000

SUBJECT: Permissible Actions to Encourage Foreign Military Sales (FMS)

PURPOSE: To brief the BOD on FMS marketing

FACTS:

o The primary statute on FMS marketing is found at Sec 515 (f) Foreign Assistance Act (FAA) [22 USC 2321]

oo "The President shall continue to instruct United States diplomatic and military personnel *in the United States missions abroad* that they should not encourage, promote, or influence the purchase by any foreign country of the United States-made military equipment, *unless they are specifically instructed to do so by an appropriate official of the executive branch.*" Emphasis added.

ooo This only impacts personnel in US missions abroad.

ooo The Secretary of State has repeatedly (1988, 1990, and 1993) instructed missions **to promote** US-made military equipment.

ooo The primary concerns in those letters from the Secretary of State involve warnings **not to favor one US firm over another**.

ooo *There is no specific guidance* from the Secretary of State suggesting that we may favor one US firm over another because the US is contracting with one of them, or because the US has had a bad experience with one of the US firms.

ooo Nevertheless, the potential customer country should be provided all *objective information* helpful in making a correct selection. The Secretary of State has allowed the Security Assistance Office not to support marketing where the sale is not in the US interests, or where there is a potential to damage US credibility and relations with the country.

oo Presidential Decision directive (PDD) - 34 on Conventional Arms Transfers (PDD-34) states that the US Government will provide support for US arms transfers when such transfers are approved. Support will include: "Tasking our overseas missions to support overseas marketing efforts of American companies bidding on defense contracts [as well as] actively involving senior government officials in promoting sales of particular importance to the United States. . . ."

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o FMS is a tool of US foreign policy and, consequently, these sales may only be done with full Government coordination (to include inter-departmental consultation and Congressional notification). Similarly, direct commercial sales are subject to State Department licenses for export.

oo Sales of any military equipment must be appropriate for the country. In general, both the CINC and the Ambassador are major players in this decision.

ooo Nearly every US embassy has a Security Assistance Officer (or office). That military person (or office) should be aware of both the DOD and Department of State positions on sale of military equipment to that country, and is your best single source of information.

oo Any promotion of the sale of military equipment needs to be coordinated and approved by both Departments.

o There is no express statutory authorization to spend appropriated funds directly in the promotion of American military equipment. Currently the only expressly authorized support DoD provides is at air and trade shows where defense incremental costs for such efforts are reimbursed by a defense contractor or trade associations. See section 1082, Public Law 102-484 [106 Stat. 2516-2517 (1992)].

oo There are special rules for participation in exhibitions and trade shows. Contact the legal office for more information on trade shows.

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