Israel's Unauthorized Arms Transfers

by Duncan Clarke

Israel confronts a spectrum of security threats. Given that harsh reality and America's firm commitment to the Jewish state as reiterated by successive presidents, Israel requires, and rightly receives, unique attention and support from the United States. Indeed, Israel's welfare, even survival, is dependent on its "special" relationship with Washington.

Thus far, U.S.–Israeli ties have weathered America's post–Cold War retrenchment in world affairs. Israel retains its customary level of foreign aid, for example, even as the overall foreign assistance budget shrinks. Yet below the surface, the relationship is threatened by Israel's repeated contraventions of American law. Evidence shows that Israel has systematically circumvented U.S. restrictions on the re-export of U.S. defense products, components, and technical data.

Other countries have been caught evading U.S. re-export controls, but Israel's case appears unique. Not only is it the beneficiary of massive U.S. support, but it is also by far the principal offender and foremost concern of U.S. officials responsible for implementing the laws on re-export of U.S. defense products. Unauthorized Israeli retransfers of U.S. defense items and technology are of particular concern for several reasons, say U.S. officials: Israel re-exports much more often than do other allies and with more sensitive technology; it sells to "pariah" states with which the United States refuses to deal; its sophisticated defense industry makes retransfers harder to track

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than those of other arms exporters; and its retransfers are generally government sanctioned and not simply the result of a wayward company, as is usually the case elsewhere.

Israel's unauthorized retransfer of U.S. defense products is part of a larger pattern of illicit behavior that includes diversions of U.S. military aid, industrial espionage, and improper end use of U.S. military equipment. Israel often retransfers U.S. defense products to states that are potentially hostile to the United States or are blatant violators of human rights. These retransfers have threatened American commercial interests, compromised intelligence, upset regional stability, strained diplomatic relations, and confirmed the U.S. national security bureaucracy's long-standing distrust of Israeli technology transfer practices.

The Arms Export Control Act (AECA) requires in part that no defense article or service shall be transferred by the U.S. government to a foreign country unless that country agrees not to transfer the article to a third country or to use it for purposes other than those for which it was furnished, without prior approval of the U.S. government. The term "defense service" includes technical assistance and data. Additionally, U.S. exports of "dual-use" items (goods and technology with both civilian and military uses) deemed detrimental to American security interests are subject to controls under the Export Administration Act (EAA).

The State Department administers the AECA and most related laws and regulations; the Commerce Department administers the EAA and thus the export of dual-use items. In government-to-government transactions, AECA controls are implemented through a contract (letters of offer and acceptance) between the U.S. government and the foreign government to which the product or technology is originally exported from the United States. All such contracts with Israel, as well as licenses for commercial transactions and memoranda of understanding between the United States and Israel, incorporate the AECA retransfer and end-use restrictions.

In commercial transactions, the State Department's Office of Defense Trade Controls (DTC) in the Bureau of Political-Military Affairs implements AECA controls through the International Traffic in Arms Regulations, which contain the U.S. Munitions List. The Munitions List designates military items, technology, and services that, if exported, could jeopardize U.S. national security interests. DTC and

Commerce also use watchlists of suspicious organizations and individuals when processing export license applications. The Customs Service has major enforcement responsibilities for export controls.

Several other agencies are involved in defense export/re-export controls and restrictions. Indeed, about 25 per cent of munitions-related license applications are referred by DTC to other executive branch units for review, including the Defense Department—especially its Defense Technology Security Administration (DTSA)—the Arms Control and Disarmament Agency (ACDA), the Energy Department, the National Aeronautics and Space Administration, and various State Department offices. The intelligence community provides information on suspected illicit retransfers of U.S.–origin defense articles or technology.

Agency and bureau positions generally reflect the well-known dictum, "Where you stand depends on where you sit." That is, there is a correlation between an organization's core mission and its stand on sensitive technology transfer/retransfer issues. Commerce, which seeks export expansion, thus urges loose export restrictions on dual-use items. Conversely, ACDA and often the Defense Department generally want tighter controls on defense and dual-use items unless the transaction involves an ally that respects U.S. law and security concerns. The prevalent culture of the Foreign Service—a tendency to compromise, to avoid abrasiveness, and to preserve cordial diplomatic ties—discourages State from confronting otherwise friendly countries that violate their agreements not to re-export U.S. defense goods and services. However, State Department units dealing with weapons proliferation, such as some Political-Military Affairs offices and the Intelligence and Research Bureau (INR), take a sharply different stance. The CIA and the intelligence community generally, especially counterintelligence and counterespionage organizations, are very critical of unauthorized technology retransfers. The Customs Service and the FBI also favor a tough approach.

A History of Technology Transfers

Israeli requests for U.S. defense technology increased sharply when large-scale U.S. military aid began in the early 1970s. Since the 1973 war, Israel has received many of America's most advanced military systems. Given the sophistication of Israeli engineers, the

transfer of these systems is equivalent to the transfer of the technology itself. Israel's defense industry has sought to reduce its reliance on U.S. components by shifting to Israeli-manufactured substitutes closely patterned on the American originals. The U.S. General Accounting Office (GAO) found in 1983 that "most [Israeli technological] exports contained an import component of about 36 percent," and "almost every Israeli arms production effort includes a U.S. input." While direct import components in Israeli defense exports may have decreased slightly since 1983, Israel's continued dependence on American technological assistance and data means that few sophisticated exports are without a U.S.–origin input. The exports containing U.S. input fall within the purview of the AECA.

The United States permits Israel to develop, manufacture, or maintain U.S. defense components and technology through what are called "technical data packages." The United States and Israel signed a Master Defense Development Data Exchange Agreement in December 1970 formalizing and specifying areas of data exchange. This agreement is updated periodically and has a separate annex for each area of data exchange. There were 28 distinct data exchange annexes by 1987 covering everything from air-to-air systems and electronic warfare to software development and tank systems.

In 1971, a memorandum of understanding was concluded that permitted Israel to build U.S.–designed military equipment. More than 100 technical data packages were released to Israel through 1979, about 25 per cent of which involved state-of-the-art technology. A key 1979 memorandum of agreement, amended by another in 1984, expanded cooperation in research and development, weapons procurement, exchanges of scientists and engineers, and data exchange programs. These memoranda also allowed Israeli firms to bid on U.S. defense contracts without regard to the "Buy American" restrictions placed by law on other foreign aid recipients. In 1986, Congress pronounced Israel a major non-NATO ally for purposes of joint military research and development, and the United States and Israel signed a classified accord on Israel's participation in strategic and theater missile defense programs. In 1987, the two countries concluded another memorandum of understanding similar to earlier memoranda between the United States and NATO allies.

These agreements legitimate, sustain, and augment various U.S.–Israeli strategic interactions, including education and training

exchanges involving American and Israeli civilians (especially scientists and engineers), military officers, and defense industry officials. These exchanges, plus reliable congressional and interest group backing, afford Israel considerable leverage in its relationship with Washington. As one former U.S. official remarked in an interview, "If IDF [Israeli Defense Forces] officers get 'no' for an answer from lower-level Pentagon offices, they'll bypass everyone and go straight to the secretary or undersecretary. If there's still a problem, they go to friends on the Hill." The 1970 data exchange agreement followed Israel's military mobilization in September of that year, when Jordan repulsed a Syrian military incursion. President Richard Nixon and his national security adviser, Henry Kissinger, apparently saw the Israeli action as a factor in Syria's withdrawal from Jordan. The agreement was a reward to Israel.

By late 1970, Nixon and Kissinger saw Israel as having potential strategic utility for the United States. Subsequent events substantially undermined Nixon's initial confidence in Israeli military prowess as a source of regional stability. Most of the executive branch in 1970, as in the 1980s and today, took a different view of Israel as a strategic asset. The attitude of a former Pentagon official is typical: "Israel's strategic value to the United States was always grotesquely exaggerated. When we were drafting contingency plans for the Middle East in the 1980s, we found that the Israelis were of little value to us in 95 per cent of the cases." Indeed, "strategic cooperation" between the two countries, first formalized systematically in the Reagan years, was spearheaded by a small number of Israel supporters and a handful of senior officials (one of whom, Robert McFarlane, was later disappointed with it) over the opposition of the secretary of defense, the Joint Chiefs of Staff, and much of the State Department below the level of the secretary. Nonetheless, although the United States has always withheld some categories of advanced technology from Israel, the process initiated in 1970 and accelerated in the 1980s has acquired such momentum that only a crisis in the relationship seems likely to alter it.

Although the notion dates from the 1960s, the Reagan administration was the first to state expressly that the United States would seek to maintain Israel's "qualitative military edge over potential adversaries in the region." For that administration, the edge was based less on the transfer of military hardware than on the transfer of tech-

nology. Today, the U.S. pledge continues to be expressed through transfers of both hardware and technology.

Congress has been a reliable engine for transferring technology to Israel and for subsidizing its defense industry. The Foreign Assistance Act for fiscal year 1995, for instance, directs that grants be given to Israel for "advanced weapons systems: (1) up to $150,000,000 shall be available for research and development in the United States; and (2) not less than $475,000,000 shall be available for the procurement in Israel of defense articles, including research and development."

Supporters of Israel in Congress have also pressed to have "qualitative edge" defined so as to advance Israel's interests. Israel considers the American pledge a firm commitment to providing state-of-the-art technology. It wants the phrase clarified to this effect. Successive administrations have resisted clarifying the phrase, partly for fear it could limit America's diplomatic and strategic options in the Middle East. Washington has long equivocated on the question of which state Israel's edge would be maintained against, but declaratory policy statements have excluded Saudi Arabia and other friendly regional states. Clarifying the meaning of "qualitative edge" could also deprive the United States of a major lever of influence over Israel when it contravenes U.S. laws or policies.

Israel's Violations

A March 1992 report by State Department inspector general Sherman Funk, titled *Report of Audit: Department of State Defense Trade Controls*, states that alleged Israeli violations of U.S. laws and regulations "cited and supported by reliable intelligence information show a systematic and growing pattern of unauthorized transfers . . . dating back to about 1983." The office of the inspector general and virtually all policy and intelligence officials who follow technology transfer issues agreed that evidence of unauthorized Israeli re-export of U.S.–origin defense technology was "reliable." Indeed, according to several U.S. officials, intelligence reports of Israeli transgressions date back to the early 1970s.

The concern is not just that Israel re-exports American systems and components. The more serious problem is that those systems and components are subjected to reverse engineering. That is, Israelis disassemble U.S.–origin products to learn their design secrets. The de-

signs are then copied, often with alterations. The resulting defense items are sold by Israel to other countries. Outwardly, these items appear to be indigenous and outside of U.S. controls. In fact, they are unauthorized copies of American originals and should be fully subject to controls. Publicly, Israel denies any wrongdoing. Those making the charges are commonly accused of malign intent. Israeli officials argue either that their defense exports contain no U.S. technology or, more commonly, that while some U.S. technology may be utilized, it has been transformed so completely, and often improved, that the resulting product is uniquely Israeli. Most U.S. officials, however, rightly assert that if *any* portion of an Israeli defense product, or the technology from which it derives, is of U.S. origin, Israel must comply with the AECA, the International Traffic in Arms Regulations, and all contractual undertakings. Moreover, the U.S. input is almost always substantial. Some Israelis privately admit "mishandling" U.S. technology, and even a commission of American supporters of Israel organized by the Washington Institute for Near East Policy chastised the Israeli government in 1993 for its misdeeds.

In the 1980s, U.S. intelligence agencies acquired a U.S.–origin cluster bomb that Israel had retransferred to Ethiopia's Marxist government without U.S. approval. Physical evidence of unauthorized Israeli retransfers is rare, however, and when indications of impropriety are irrefutable, Israel usually refuses to cooperate with U.S. officials, those officials say. Yet confident judgments can be made without adhering to impossibly high standards of evidence. Evidentiary requirements for the conduct of diplomacy differ markedly from the due process demands of domestic American criminal proceedings.

The 1992 Funk report was the first time the U.S. government publicly released evidence that Israel was improperly re-exporting U.S.–origin weapons technology. It was quickly denounced by Israel and some of that country's American supporters. So that their work would not be classified—and thus off-limits to the public—the writers of the report referred to Israel only as a "major recipient" of U.S. technology, and misdeeds were not specified in detail. The classified version, of course, did name Israel as well as other states, and it cited instances of unauthorized retransfers, U.S. officials said in interviews.

The origins of this politically volatile report date to 1987. That year, a GAO audit faulted the predecessor of State's DTC office for mis-

management. The trade controls unit then added staff and resources, but a 1989 study by the State Department's inspector general found that many problems remained. According to current State Department officials, the Funk report itself began in 1990 after repeated complaints from defense firms that DTC was processing their license applications too slowly. Concern about unauthorized technology re-exports by recipient countries was not a factor in the report's initiation. The issue came to light through investigations necessary for preparing the report on DTC practices.

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In the past, inquiries from ACDA had resulted in several license denials for exports to Israel and other countries. Now, as the inspector general's review proceeded, ACDA revealed its thick file of memoranda objecting to various license applications to Israel—all of which had been ignored by DTC. An ACDA analyst suggested that the inspector general also investigate 12 different allegations of unauthorized Israeli re-export raised in intelligence reports. ACDA's input was a critical catalyst in prompting the inspector general's office to look into unauthorized Israeli exports.

The inspector general also reviewed a September 1990 report by the intelligence community titled *Israel: Marketing U.S. Strategic Technology*. This report named countries to which Israel sold weaponry containing U.S. technology. CIA officials briefed Funk during his investigation, and a 1990 letter from then CIA director William Webster confirmed that intelligence on unauthorized Israeli re-export of U.S.-origin defense technology was highly credible. In 1990, Funk's office noted an improvement in DTC's review of license applications to all countries *except* Israel. Despite thousands of commercial sales to Israel, DTC had performed only three or four end-user checks for exports to that country, none of which

involved major weapons systems.[1]

The Funk report chastised State's Bureau of Political-Military Affairs for ignoring scores of intelligence reports of apparent violations of AECA and International Traffic in Arms Regulations retransfer restrictions and for not reporting them to senior officials and Congress, as required by law. It also recommended that then assistant secretary of state for political-military affairs Richard Clarke be disciplined. In June 1991, Funk briefed Secretary of State James Baker and his deputy, Lawrence Eagleburger, on the findings. Eagleburger then ordered an upgrading of State's practices for investigating and reporting unauthorized re-exports of U.S. technology; instructed the Bureau of Political-Military Affairs to ensure coordination with other agencies, including ACDA; and briefed congressional leaders. The Pentagon, CIA, ACDA, and some offices at State welcomed this development. Israel denounced the report, especially as its release followed allegations of improper transfer by Israel of Patriot missile technology to China. According to one current U.S. official, however, a secret study by an investigative unit of the Israeli government later that year confirmed the report's essential findings.

According to several government officials, a new U.S.–Israeli forum for addressing technology transfer problems was created in 1992, and during 1991 State delayed some export license applications for Israel, including those for U.S. components for Israel's Python-3 air-to-air missile. However, subsequent developments suggest little substantive change:

- The Bureau of Political-Military Affairs never consulted with ACDA about the informal U.S. discussions with Israel concerning Israel's unauthorized diversions of U.S. defense technology, according to U.S. officials.
- Clarke received a mild reprimand, remained on the bureau's roster, and was detailed to the Clinton administration's National Security Council staff.
- Reports of unauthorized Israeli retransfers of U.S.–origin technology to China and elsewhere continue to surface. State's oversight improved somewhat, according to U.S. officials, but by 1994 INR was urging State's inspector general to revisit the matter.

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[1]*See Edward T. Pound, "U.S. Sees New Signs Israel Resells its Arms to China, South Africa,"* Wall Street Journal, *March 13, 1992, p. 1.*

- Funk received threatening phone calls at home after his report appeared. He was summoned to closed-door hearings before the House Foreign Affairs Subcommittee on Europe and the Middle East. Representative Tom Lantos (D-California) accused Funk of harming Israel; others joined in a calumnious verbal assault. Funk, who is Jewish and a past president of the Bethesda (Maryland) Jewish Congregation, retired from government in 1994.
- A staff member of the House Permanent Select Committee on Intelligence, Alex Glicksman, conducted his own review of the Funk report's findings in 1993. According to two officials familiar with the investigation, Glicksman vindicated Funk and severely criticized Clarke.
- Technology transfers to Israel have risen sharply during the Clinton administration, particularly after the September 1993 accord between Israel and the Palestine Liberation Organization (PLO). U.S. officials say that two governmental groups were created to facilitate technology flow.

Protecting Israel?

Defense is Israel's primary industrial sector. Israel Aircraft Industries, the country's largest defense company, depends on exports for 80 per cent of its revenues. This economic imperative combines with a desire to gain influence in and intelligence about recipient states, especially those that export military equipment to countries hostile to Israel. Powerful incentives to export thus clash with contractual obligations to respect U.S. law.

Nonetheless, the United States gives Israel preferential treatment in virtually all areas of defense exports and cooperation. For example, many more contentious munitions export control cases involve Israel than any other country, yet its license approval rate is *higher* than for any other country, including NATO allies. Likewise, Israeli purchases of U.S. military equipment are more loosely supervised by State and Defense than those of other countries. Concerning retransfers of U.S. technology, Israel is in a category by itself. Most American officials say that U.S. challenges of questionable Israeli retransfers are highly selective, usually at the margin, and with little follow-up. Challenges are more likely when the re-export involves sensitive technology and the recipient is a country like China, rather

than, say, a NATO ally. Even then, out of either personal inclination, or, more commonly, fear of Israel's clout in Congress, executive branch officials may not react. A more regularized dialogue with Israel, and within the bureaucracy itself, was instituted after the Funk report and allegations of Israeli retransfer of Patriot technology to China. Nonetheless, the U.S. posture remains relatively relaxed.

Lax Oversight

The U.S. government's oversight of technology transfers and military assistance to Israel, and of Israel's employment of that technology and assistance, is analogous to periodic reports about the reappearance of the extinct southern Appalachian panther. There are suggestive tracks and occasional reported sightings, but convincing evidence of its existence is elusive.

There never has been a full, systematic executive branch audit of Israel's Foreign Military Financing account, although it is by far the largest U.S. military aid program. Similarly, the Funk report found pervasive misfeasance in DTC's oversight of Israeli retransfers of U.S. defense technology. The report also concluded that Israel's many contractual agreements to comply with U.S. law "are not an effective mechanism" in ensuring such compliance. In 1993, the GAO concluded that there was "inadequate control" of technology and funds supplied for Israel's largest defense program, the U.S.–funded Arrow anti-tactical ballistic missile. Moreover, said the GAO, no agency has "monitored or verified" Israel's obligation not to retransfer the sensitive U.S. technology at the heart of the Arrow program. A June 1994 GAO report found weaknesses in DTC's oversight. From October 1989 through August 1993, State excluded 27 per cent of the names that, according to internal State Department procedural requirements, should have been on its watchlist of suspicious organizations and individuals. Consequently, DTC issued 220 licenses to parties whose names should have been on the watchlist, but were not. For example, although it was learned in January 1992 that an Israeli firm was improperly selling F-16 fighter parts, State granted it an export license in May 1993 because that firm was omitted from the watchlist. Of 220 license applications, 165 were for exports to Israel.

According to a current Pentagon official, the Defense Security Assistance Agency (DSAA) assigns only one officer to review thou-

sands of Foreign Military Financing commercial expenditures by Israel. Moreover, DSAA relies on information supplied by Israel to determine compliance with U.S. law. It was not surprising, therefore, that DSAA did not detect the illegal, multiyear diversion of tens of millions of dollars in Foreign Military Financing by Israeli Air Force general Rami Dotan, other Israeli military and civilian officials, and at least two private American citizens. Dotan was convicted by an Israeli court in 1991 and several others were subsequently convicted or indicted in the United States. After the Dotan Affair, DSAA sought to require Israel and other countries to make their purchases of U.S. goods with Foreign Military Financing exclusively through government-to-government, rather than commercial, channels in order to enhance U.S. controls. Israel then protested and the U.S. Senate thwarted DSAA's action.

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The Pentagon naturally opposes the transfer or retransfer of advanced American technology to countries that violate U.S. laws. Unlike many Pentagon units, however, DTSA has been routinely supportive of exports to "nonsuspect" companies in friendly countries. During the Reagan administration, the first head of DTSA was Stephen Bryen, who before moving to the Pentagon was the executive director of the Jewish Institute for National Security Affairs (JINSA), an organization committed to strong security ties between the United States and Israel. Bryen's superior at Defense was Richard Perle, who now serves with Bryen on JINSA's advisory board. In the mid-1980s, Bryen allegedly called Customs Service commissioner William von Raab to complain about an investigation of alleged re-export violations by Israel. In 1988, Assistant Secretary of Defense Richard Armitage admonished Bryen for trying to force through an export license for Israel over the strong objections of senior military

officers. After leaving government and returning to JINSA, Bryen, who denies the von Raab incident, was a paid Pentagon consultant (with security clearance) on sensitive technology exports.

A majority (880 of 1,508) of the export licenses issued by Commerce from 1988–92 for sensitive, nuclear-related, dual-use equipment were for Israel. Most licenses were to IDF end-users. Although the exports were usually conditional on Israeli pledges not to use the items for weapons purposes or to re-export them without prior U.S. government authorization, there was virtually no effort to monitor compliance. U.S. embassy officials and the GAO, therefore, questioned the value of the Israeli pledges. That the Commerce Department's review of license applications for dual-use exports is relaxed is well documented by the GAO.

Congress

The AECA requires the president (who has delegated this responsibility to the State Department) to report promptly to Congress upon receipt of information that a retransfer violation "may have occurred." If the country concerned is found to be in "substantial violation" of its assurances regarding retransfer of U.S.–origin defense equipment or technology, foreign military sales and military assistance to that country must be terminated. The president, or Congress acting through a joint resolution, may also declare violators ineligible for security assistance.

When the requirement to report to Congress is not literally followed, it is usually for good reason: Information is false or unverified, infractions are minor, reasonable differences of opinion exist over the interpretation of agreements or restrictions, or the retransfer appears to be a U.S.–authorized clandestine intelligence operation. Without such considerations, however, the executive may still choose not to issue a report, even when evidence of unauthorized retransfer is strong, because of a ubiquitous fear of congressional retribution. A Pentagon official said in an interview that "an amber light is always flashing" because Congress will not "go after Israel"; it prefers "politically safe targets" like North Korea and Iraq. A Senate staff member added, "It is very difficult politically to even ask questions on this topic because of fear of firing up the pro-Israel lobby."

Executive branch officials also doubt the utility of sending Con-

gress reports on Israeli misdeeds because they invariably disappear into "a black hole," as one put it. From 1975 through 1993, 17 reports went to Congress on unauthorized retransfer or end use of U.S.–origin defense articles or technology, seven of which concerned Israel, according to current U.S. government officials. Two additional notifications of unauthorized commercial retransfers by Israel went to Congress in January 1995. While reports on some countries had an effect, Congress has never moved to cut off military aid or defense transfers to Israel. Indeed, in those few instances where the president has withheld deliveries of military equipment to Israel for AECA infractions, as in 1981 and 1982, deliveries were usually resumed quickly, partly because of congressional pressure.

The limitations of congressional oversight are well known; legislators rarely pursue vigorous oversight without some political or personal incentive. The principal reason members of Congress shun oversight of Israel is a belief that it could harm them politically. A number of key congressional staffers are former lobbyists for the American Israel Public Affairs Committee (AIPAC), and most of AIPAC's lobbyists are former congressional staff members. The political intelligence network is superb. Douglas Bloomfield, AIPAC's former legislative director, wrote in a 1983 essay that AIPAC lobbyists "are treated as colleagues by our former colleagues, as tutors by the younger staffers and as equals by members of Congress themselves. . . . One aide frequently would tip off AIPAC of unfriendly plans hatched by his boss."

Israel's Beneficiaries

South Africa and China have been the two principal recipients of unauthorized Israeli re-exports of U.S.–origin defense technology. During the apartheid era, the relationship between the South African and Israeli militaries was very close. The two countries apparently worked together on nuclear weapons research and development. Israel's collaboration with South Africa in that country's development and possible test of a medium-range ballistic missile caused Pentagon official Henry Sokolski to remark in 1989 that Israeli–South African military ties were a "serious concern at the highest level" of the Defense Department. Israel's exports of ballistic missile components to South Africa triggered a sharp reaction from both Bush ad-

ministration officials and the Congressional Black Caucus. Under U.S. pressure, Israel agreed to adhere to the Missile Technology Control Regime, though it remains a nonparty to the accord.

Among the U.S.–origin parts or technology re-exported by Israel to South Africa were aircraft engines, anti-tank missiles, armored personnel carriers, and recoilless rifles. Some Israelis and some journalists suggest that the United States, especially during the Reagan years, gave Israel tacit approval to re-export U.S. equipment to South Africa. There is little credible evidence to support this notion, however. Assistant Secretary of Defense Henry Rowen investigated this allegation in 1990 and found it to be false. Former secretary of defense Caspar Weinberger and Rowen's predecessor, Richard Armitage, forcefully denied that there was any tacit approval for retransfers to South Africa or any other country. (By contrast, the Iran-*contra* affair involved explicit approvals by U.S. officials for Israeli retransfers to Iran.) Moreover, Section 3(a) of the AECA enjoins the president from concurring in retransfers unless the United States itself would transfer the defense articles concerned to the same recipient. This precondition clearly was not met for Israeli retransfers to Iran and South Africa in the 1980s and early 1990s, nor is it met today for some Israeli retransfers to China.

In October 1993, the CIA released previously classified congressional testimony by then director of central intelligence James Woolsey that Israel had supplied China with advanced military technology throughout the 1980s. By 1989, Israel was China's principal source of such technology. Among other things, Israel assisted China in developing its next generation of fighter aircraft, its air-to-air missiles, and its tank programs. The two countries established diplomatic relations in 1992 and signed an agreement in 1993 on scientific and technical cooperation. Israeli defense firms have offices in Beijing and other Chinese cities. Woolsey stated flatly that "the Chinese seek from Israel advanced military technologies that US and Western firms are unwilling to provide." Israeli prime minister Yitzhak Rabin quickly denied that sales to China violated U.S. laws.

On March 12, 1992, just days before the release of the Funk report, a Bush administration official disclosed that intelligence indicated Israel may have transferred U.S. Patriot missile technology to China. This would have enabled China to modify its M-9 and M-11 ballistic missiles to prevent U.S. systems from intercepting them. Is-

rael denied the charge and agreed to permit a joint State–Defense Department team to visit Israel to examine the Patriots in its inventory. The team found no evidence of unauthorized transfer. On April 2, the State Department, but not the Pentagon, cleared Israel of the charges. Advocates for Israel seized upon this to blur and discredit the findings of the Funk report (which did not address the Patriot) and to assert, in effect, that Israel should be absolved of the larger charge of wrongfully re-exporting American technology.

Shortly before leaving office in January 1993, CIA director Robert Gates stated that China had obtained Patriot technology, but that U.S. officials differed over whether Israel was the source. Senior State Department officials would not point a finger at Israel, but after an intelligence briefing, then defense secretary Richard Cheney concluded that Israel was culpable, according to U.S. government officials. China reportedly gave Israel information on its M-9 and M-ll missiles in exchange for Patriot technology. Moreover, China announced in May 1993 that it would no longer export these systems to Syria and Iran. Many U.S. officials discount the findings of the team that visited Israel. They assert that Israel gave "technical documents" on the Patriot to China; the physical on-site inspection in Israel could not have revealed the transmittal of this information.

Evidence of improper Israeli re-export of U.S.–origin defense technology encompasses a broad spectrum of other items and recipients, including cluster bomb exports to Ethiopia and Chile; an automatic data measurement system sale to an unauthorized third party; arrest of an Israeli arms dealer in 1993 for attempting a transfer of U.S. M-113 armored vehicle spares from Israel to Iran through Portugal; and unauthorized sales of the Mapatz anti-tank missile to South Africa, Venezuela, and China. The Mapatz is a close copy of the Hughes Aircraft Company's TOW-2 missile. Other unauthorized re-exports named in intelligence reports include advanced electronic equipment, aircraft, and airborne electronic countermeasure systems.

Some cases of Israeli re-export of U.S.–origin defense technology evoke particular concern:

Python-3

One of the oldest technology transfer disputes involves Israel's Python-3 air-to-air missile. The Python, adapted from the U.S.

AIM-9L Sidewinder missile, has a high degree of U.S. technology. Indeed, the Israeli predecessor to the Python-3, the Shafrir-2, drew heavily from earlier versions of the Sidewinder. Israel initially maintained that the Python and Shafrir were so distinct from the Sidewinder as to be essentially Israeli systems. Israel now claims to have an export variant of the Python that, unlike the Python used by the IDF, lacks American components. U.S. officials reject both Israeli positions. The Shafrir was sold to South Africa and Chile without U.S. authorization. The Python has been sold to Thailand and China. Ironically for Israel, China apparently has sold its version of Python-3, called the PL-8, to Iraq. Since 1992, the State Department has withheld export licenses to Israel for Python-3 components until the matter is resolved, U.S. officials say.

Aerial Refueling

Israel Aircraft Industries purchases old commercial Boeing 707s and converts them for military use by installing new equipment, including aerial refueling systems. The aircraft are then sold without U.S. government approval to South American countries. The AECA is applicable since key components of the refueling system are of U.S. origin. Washington has raised this issue with Israel, but has not pressed it, according to one U.S. official.

Popeye

The contents of a classified memorandum from Pentagon official Sokolski to Assistant Secretary of Defense James Lilley were revealed in April 1992. The memorandum, disclosed in a column by Rowland Evans and Robert Novak, stated that the Martin-Marietta Company maintained that Israel's Popeye—an air-to-ground missile—is "99 percent" U.S. technology and is virtually identical to Martin-Marietta's HAVE-NAP missile. Israel was also said to be "marketing" Popeye to Singapore, South Korea, Taiwan, and other countries. Israel says it has two separate production lines for Popeye, one for export that excludes U.S.–origin technology and one for the exclusive use of the Israeli Air Force. U.S. officials denounce this assertion. They point out that they see many export license requests for U.S. components of

Popeye from Israel's purchasing mission in New York. The U.S. Air Force even bought some Popeyes in the past, when Israel assured it that it "was really buying American since 95 per cent of Popeye is U.S. technology." Moreover, there is no Israeli control plan known to U.S. officials for ensuring that U.S.–origin defense components and technology are not commingled with Israeli components and technology. Of Israel's assertion that there are two versions of Popeye, one former official remarked: "There are no different plants, no different assembly lines or areas, no inventory control; there's absolutely nothing to show that there's an 'export' Popeye."

STAR Cruise Missile

The Sokolski memorandum also stated that the CIA believed Israel was marketing its STAR cruise missile in China. The STAR incorporates sensitive U.S. technology. The State Department has "expressed concern" about this issue to Israel.

Arrow

Israel's U.S.–funded Arrow missile, currently under development, is feasible only because of Israel Aircraft Industries's dependence on U.S. defense technology. One of several U.S. concerns about the Arrow—which is unofficially opposed by the U.S. Army, many at Defense, the intelligence community, ACDA, and some offices in State—relates to re-export. The GAO raised serious questions about the likelihood of Israeli re-export of Arrow technology, and Woolsey stated that "Israel probably hopes to export the finished Arrow system or its associated technologies." Some American officials fear Arrow technology may already have been transferred to at least one country. The 1993 conviction of the Arrow's Israeli program director for accepting bribes from a Canadian parts supplier did nothing to reassure U.S. officials.

Tank Sights

Former American officials report that both Israel and the Dutch company Delft made unauthorized sales of U.S. thermal imaging tank sights to, among others, China. The sights were installed on

China's 69 MOD-2 tanks, some of which were sold to Iraq. The United States acquired physical evidence of this transfer after these tanks were used against U.S. Marines in the 1991 Gulf War.

Space-launch Vehicles

Another case, while not involving re-exports, raises serious technology transfer issues. For cost-reduction reasons, some American defense firms sought to transfer technical specifications for various components of U.S. space-launch vehicles to Israeli companies so these components could be manufactured in Israel. Export licenses were required, according to current government officials, and the bureaucracy and President Bill Clinton's senior advisers clashed among themselves over the issuance of the licenses. The components were not state-of-the-art items that were "off limits" to Israel, but the possibility of their transfer raised concerns related to the Missile Technology Control Regime. A more contentious issue was whether the American government, which heavily subsidizes U.S. aerospace firms, should sanction a practice that puts Americans out of work. A negative answer was given in the past when a similar issue arose regarding India. However, after the September 1993 accord between Israel and the PLO, Rabin asked Clinton to approve the export licenses. Clinton did so in late 1993.

New Generation Fighter

For years, intelligence reports indicated unauthorized Israeli retransfers of U.S. defense technology to China (and South Africa) for a new generation fighter aircraft. The Chinese fighter in development, called the F-10, is based partially on Israel's U.S.–funded ($1.5 billion) Lavi fighter program, which was terminated in 1987. In 1983, when U.S. support for the Lavi commenced, the program was opposed vigorously by the Defense Department, partly because of re-export concerns. An initial supporter of the Lavi, Secretary of State George Shultz later labeled his advocacy of the program a "costly mistake." Only in early 1995 did the U.S. government make public its concerns about Israel's Lavi-related technology re-exports to China. David Ivri,

director general of Israel's Ministry of Defense, acknowledged in an Associated Press interview that "some technology on aircraft" had been sold to China and that some Israeli companies may not have "clean hands." However, he did not admit Israeli culpability.

Changing Israeli Behavior

Unauthorized Israeli re-exports of U.S.–origin defense products and technology jeopardize American interests, regional stability, and sometimes even Israel's own security. Some recipients of Israel's re-exports are potential threats to the United States, its allies, and its friends. Chinese fighter aircraft, offensive missiles, and theater missile defenses could be used against U.S. forces or Taiwan, just as Israeli-provided tank sights on Chinese-manufactured tanks were used by Saddam Hussein against the U.S. Marines in 1991.

Unauthorized diversion of U.S. technology may so strengthen China and some others in select defense sectors as to either foreclose certain military options otherwise available to the United States or compel the Pentagon to increase research and development expenditures. Highly classified information on advanced U.S. weapons technology is compromised irreparably, and improper behavior by Israel may encourage other allies to emulate its example.

To make matters worse, Israel competes unfairly with American defense firms in the international arms market. For example, according to one Pentagon official, Israel re-engineers Martin-Marietta's HAVE-NAP missile (thereby avoiding millions of dollars in development costs) and tries to sell the resulting clone (Popeye) to third parties. It is also important to remember that Israel's defense industry and the IDF receive a subsidy of at least $1.8 billion annually in military aid from the American taxpayer.

Finally, regional stability may be upset when China or other countries sell military-related items, some containing Israeli retransfers of U.S. technology, to countries like Iraq, Syria, and Iran. Israel is threatened when the sensitive U.S. technology it re-exports to China is sold to hostile states. Moreover, the U.S. national security bureaucracy's past irritation with Israeli behavior is now often manifested as outright anger. This cannot advance Israel's interests; indeed, it stokes the mood found in a recent poll showing that a majority of the public now favor reducing aid to Israel.

Israel engages in unauthorized defense re-exports largely to nourish its economy's large defense sector and because it is confident, for good reason, that Washington will not or cannot enforce the law. Indeed, the Clinton administration relaxed curbs on the transfer of sensitive technology to Israel despite Israel's dismal record of unauthorized retransfers. There has been a persistent pattern of misconduct, of which the unauthorized re-export of U.S. defense technology is an important part. There are other elements, including illegal diversions of U.S. military aid, via various kickback and money laundering schemes, at the express direction of Israeli Air Force officers and Ministry of Defense officials; the conduct of espionage, especially industrial espionage, in the United States since 1948; and disregard for contractual obligations and U.S. law concerning the end use of U.S. military equipment.

Israeli scholar Ehud Sprinzak holds that his society is afflicted with an "elite illegalism" that is central to the country's domestic political culture and international behavior. Sustained partly by a pervasive security consciousness and born of genuine fears and the absence of a written constitution, elite illegalism deprecates the idea of the rule of law and assumes "that democracy can work without a strict adherence to . . . law," as Sprinzak writes. He asserts that past leaders like Moshe Dayan (a "sovereign personality" above the law) were role models for a generation of IDF officers. This aspect of national political culture may help explain Israel's recurrent contraventions of American laws, policies, and interests. The greater concern, however, is not Israel's behavior. Rather, it is with those U.S. officials and legislators who abide such behavior. America has a commitment to the security of Israel. Indeed, there are few commitments so widely supported in American politics. Nevertheless, even so solid a commitment can be endangered if there is not respect for agreements and a sense of fair play on both sides. Whatever short-run advantages Israel's current practices may bring, they could undermine the long-run relationship that is the ultimate guarantee of Israel's security.