Background Paper
On
Adherence to the Arms Export Control Act

- For over 20 years the administrations in power have allowed the Department of Defense to supply defense articles to foreign governments without going through the arms sale approval process. The unauthorized sale of certain technology could cause the unnecessary loss of U.S. service men and women's lives if unexpectedly faced in combat with our own lethal technology and places innocent U.S. citizens at increased risk of retaliatory terrorist attacks. Enabling factors for the unauthorized defense article sales are:

    - In violation of the Espionage Act (18 U.S.C. 793, 794) and the Subversive Activities Control Act of 1950, as amended (50 U.S.C. 783), the administrations have allowed, and continue to allow, DoD to establish unwritten policies prohibiting the transfer of information of intelligence value on arms sales and arms purchase requests to U.S. Intelligence Agencies.

        - The stated rational is that doing so would violate the customer-client relationship.

        - DoD does not request nor receive appropriated funds for the cost of operating its foreign military sales organization, but relies solely on fees charged on the sale of defense articles to foreign governments and thus Congress avoids its oversight and audit responsibilities.

            - Such an arrangement inherently creates a conflict of interest since without arms sales, there would be no funds to pay the 800 – 1200 employees who administer the programs.

    - The sale of arms without going through the arms sale approval process **is a violation of the U.S. Constitution** since the authority to approve arms sales is delegated to the U.S. Congress, therefore anyone unknowningly participating would have been subject to punishment by law if the sales became known.

    - The DoD has instituted the practice of placing money (CLSSA Foreign Military Sales Orders 1 (FMSO 1)) received for deposit from foreign governments for the legal purchase of arms into interest bearing accounts.

        - The deposits are held as "security" for DoD's procurement of defense articles for future sales to these foreign governments.

- There are as yet unsubstantiated reports that personnel have diverted a portion of the interest revenue for personal use and/or that the funds are being used to influence decisions on arms sales.

- When the CLSSA program was established approximately 35 years ago, no provisions were made for placing funds as security into interest bearing accounts and **Congress has failed to issue legislation making it illegal to divert revenue from these accounts.**

- The administrations in power successfully deferred establishment of procedures for approving and creating interest bearing accounts (IBAs) and procedures for governing the disposition of interest revenue generating by the accounts. The procedures were put forth in December 1999 as a result of a 6 August 1999 Study of the Cooperative Logistics Supply Support Arrangements (CLSSA) authored by Gail (Parker) Crook.

- Normally such accounts would be available for public review, yet these IBAs have been classified so that only three people know the disposition of interest revenue: the agent of the foreign government that signs the agreement, the DoD representative that countersigns the agreement and the bank.

- Procedures put forth in December 1999 for establishing and approving IBAs would return interest revenue to the foreign government's trust fund account to be available for additional purchases of defense articles and would forbid diverting interest revenue for other use.

- DoD's accounting systems are not auditable. The system that tracks the flow of foreign military sales and funds received on deposit are archaic and the administrations in power have thwarted efforts to improve the accounting systems.

- Supporting documentation was provided to appropriate law enforcement agencies in 1999 and again in 2001.

- Mrs. Parker seeks to correct this serious issue through the political process.