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AIR UNIVERSITY

**MANAGING U.S. MILITARY TECHNOLOGY AND ARMS
RELEASE POLICY TO ISRAEL**

by

Ila L. Hahn, Major, USAF

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Advisor: Dr. Edwina S. Campbell

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Preface

Many people have asked me why I picked such a daunting topic for my research. Being a scientist in the Air Force and having focused on acquisition for most of my career, I thought that foreign military sales would be an interesting topic to delve into. There was the chance that I may also find myself working in that area for my next assignment. Israel was on my mind after my fiancé proposed to me while visiting there just prior to coming to ACSC. Israel does pose a very interesting problem for the U.S. and I hope that my proposed solution offers a viable option for a strengthened relationship between the two nations while reducing the dangers to national security and unfair competition in the global arms marketplace.

I would like to thank Mr. Stephen Brosnan from the Defense Technology Security Administration for his encouragement and for providing timely information on this research. He provided me information on the existing situation with Israel and verified that defense technology retransfer is an issue worth investigating.

I also want to thank my fiancé, Anthony Convertine, for supporting and encouraging me from afar. Without his patience and steadfast love, I would not have been able to focus and document my ideas on this topic. I am indebted to him for eternity.

Abstract

Israel has enjoyed a very special relationship with the U.S. and has been supported by vast U.S. military and economic aid since 1972. Through supporting Israel's technological military superiority over its potentially aggressive neighbors, the U.S. has perhaps been too relaxed in enforcing and maintaining oversight into Israel's defense development and export practices. There has been an ongoing concern over Israel's unauthorized retransfer of U.S. origin defense technology and arms to potentially threatening countries as well as the increasing competition Israel poses in the global arms market. A promising option for reducing this unauthorized third party transfer, and therefore maintaining U.S. military superiority in arms, is a more formal program of collaboration with the U.S.-Israeli procurement and export processes. With a diligent program in place, formalized in a defense trade cooperation treaty, all aspects of arms sales, technology transfer and potential third party transfers can be monitored and preventative measures can be put in place prior to any compromises or potentially discrediting incidents. By collaborating with the Israeli Ministry of Defense (MoD), the U.S. can ensure Israel's defensive needs are met while aiding Israel in maintaining their defense industry base. All of this can be accomplished while fostering the spirit of security cooperation and thus maintaining a good diplomatic relationship with Israel.

Introduction

Many friendly nations obtain sophisticated U.S. military technology and arms through foreign military sales (FMS) programs and various technology disclosure agreements. Some highly industrialized nations find ways to manufacture and improve upon U.S. technology and have become competitors in the defense marketplace through the unauthorized retransfer of U.S. derived technology and arms. The Arms Export Control Act (AECA), export laws, and other trade agreements were put in place to ensure that critical U.S. technology and arms are not retransferred to nations that threaten the U.S. However, these agreements and laws are not always followed and are often times difficult to enforce. The retransfer of arms and defense technology has obvious economic impacts by taking business away from the U.S. domestic defense industry, but may also bring about foreign intelligence compromises, regional instability, strained diplomatic relations, and potential threats to U.S. national security.¹

Israel has gained tremendous benefit from the U.S. defense trade relationship and its generous military support. Through U.S. military aid and economic support, Israel has transformed its “armed forces into one of the most technologically sophisticated militaries in the world,” and has built “a domestic defense industry which ranks as one of the top ten suppliers of arms worldwide.”² This cooperative security relationship has been strained at times over occasions of Israel selling or attempting to sell U.S. derived technology and arms to China and other potentially threatening nations.³ Current trade agreements and the 1952 memorandum of understanding (MOU) signed between the U.S. and Israel do not seem to be enough for Israel to understand expectations associated with the trade of sensitive military technology.

Although Israel has expressed a desire to remedy issues within its defense security trade process with the U.S. and has signed numerous bilateral agreements, no formal arms or defense

trade treaty exists between the two countries. Such a treaty could solidify the expectations of each nation with respect to arms and defense technology retransfer and could set up a cooperative working relationship between the two defense agencies (U.S. Department of Defense (DoD) and Israel Ministry of Defense (MoD)). It would also formally reaffirm to the world that Israel is one of the U.S.'s closest allies.

This paper examines examples of Israel retransferring U.S. origin technology, the U.S.-Israel relationship, existing defense agreements between them, the U.S. defense trade controls process, and the current Israeli defense export controls, and presents a possible method for trade oversight and security collaboration. It proposes a defense trade cooperation treaty and examines implementation at the high and mid levels. Although there are many delicate aspects to the U.S.-Israel defense trade relationship, similar treaties have been worked out for both Great Britain and Australia and a formal treaty can provide benefits to both nations involved.⁴

Background

Israel is a longstanding ally of the U.S. and “is the largest cumulative recipient of U.S. foreign assistance since WWII.”⁵ Israel has a strong technical industrial base that has been heavily supported by the U.S. and is a real competitor in the world arms market. Israel has been charged on numerous occasions with misusing U.S. arms and selling sensitive U.S. origin technology to unfriendly nations, including China, Iran, South Africa, Ethiopia, and Chile.⁶ The unauthorized retransfer of arms and technology is a serious issue that has economic impacts and can bring about foreign intelligence compromises, regional instability, strained diplomatic relations, and potential threats to U.S. national security.⁷

U.S. foreign disclosure and military arms export policies are the most direct ways to address the U.S. loss of military technology supremacy and other concerns associated with arms

and technology retransfer. While numerous laws and authorities exist for keeping sensitive technologies in the right hands (such as the AECA and the Directorate of Defense Trade Controls), enforcement of the end-use aspects of those laws tends to be difficult.

There are a number of ways the U.S. can ensure compliance with existing trade regulations that cover technology and arms sales, but for Israel, increased collaboration with Israel's defense procurement and export agencies are the most direct methods. By adding additional oversight, examining Israel's U.S.-import and global export processes, the U.S. can foster greater cooperation while providing extra awareness of potential technology retransfer issues. Without a clear picture of the technology that Israel is selling on the global markets, the U.S. cannot keep its technology protected. By the U.S. collaborating with Israel's defense procurement and export mechanisms, potential sensitive technology retransfers can be avoided while options for other less sensitive technologies can be offered. Although the U.S. has had a fairly trusting relationship with Israel in the past, some of Israel's export practices have caused concern for the U.S. The U.S. must be more diligent in enforcing technology transfer and trade restrictions and tracking the end use of sensitive items.

Defense Technology and Arms Retransfer Issue

The issue of unauthorized defense technology or arms retransfer has many serious repercussions. It has the economic impact of affecting the U.S. defense industry by taking away potential foreign customers, the security impact of allowing unfriendly nations to see what capabilities the U.S. has, while adding to instability to regions of U.S. interest. It can also strain diplomatic relations with the country doing the retransfer.⁸ Along with the loss of U.S. technology and arms supremacy, there is also the risk to national security of potential adversaries gaining an advantage by exploiting vulnerabilities of the most advanced systems.

Only a few allies have access to the most sophisticated U.S. technology and arms, and those that do must protect them. Retransfer of U.S. origin technology or defense articles without clear U.S. permission must not be allowed and the penalties for doing so must be severe and enforced. Ideally, the existing trade laws and regulations would provide enough security to protect high-technology articles; however, weaknesses exist in the licensing processes and end use enforcement suffers from inadequate guidelines.⁹ Due to weaknesses in manning and lack of guidance from the DoD and DoS, and the fact that end use accountability relies on host country records in many cases, there is minimal oversight and often times no knowledge of what happens to articles after they are in the possession of the receiving nation.¹⁰

The case of Israel participating in defense technology retransfer is unique. As Israel is a major U.S. non-NATO ally and has received the largest cumulative amount of U.S. aid since WWII, there was a natural tension when Israel became an industrial defense competitor.¹¹ Since Israel's defense industry must export approximately 75% of its products to stay viable, it puts Israel in a situation in which it must compete against the U.S., especially in the most lucrative markets.¹² Unfortunately, many of those markets are nations with which the U.S. is not as closely allied, such as China. The Chinese defense market is a potential gold mine for arms sales and even the European Union desires to lift the existing embargo to gain access to it.¹³ Exports of sensitive U.S. origin technology to these markets, lucrative though they may be, must be closely controlled to prevent dangerous repercussions, including having those weapons used against the U.S. or its allies or possible effective countermeasure development.

Israel has signed defense agreements with the U.S. which limit the use of U.S. military equipment for defensive purposes only and require U.S. permission prior to the sale or retransfer of any U.S. technology to third parties. However, Israel has been charged with numerous

instances of misusing U.S. arms and selling U.S. technology to other countries.¹⁴ Though inadvertent transfer is to be expected, there have been too many cases throughout the years for Israel to maintain its innocence. Cases date back to 1982, when Israel was charged with transferring arms to Iran, through 2006, when Israel was reported to have used U.S. origin cluster bombs in Lebanon.¹⁵ In 1992, a State Department Inspector General's report claimed there had been technology retransfer by Israel without U.S. permission, and there was also an allegation in 1993, when Israel was cited for selling fighter, tank, and air to air missile technology to China.¹⁶

Israel has a very strong relationship with China as a defense article supplier and is one of "China's principal sources of modern military technology."¹⁷ Israel exports many Israeli developed and manufactured arms, some of which have been documented to contain U.S. technology. Exports include Israeli developed items that incorporated sensitive U.S. technology, but prior U.S. permission has not been sought before exporting these items. In one example, Israel aided China with cruise missile systems that were based on the Israeli developed STAR-1 system, which contained U.S. technology of a sensitive nature.¹⁸ Similar cases exist for air-to-air missile technology in which Israeli versions of U.S. systems have been sold to China without prior U.S. approval. The most recent case was in 2006 where Israel was charged with upgrading China's Harpy drones with U.S. origin technology.¹⁹ It is difficult to distinguish the line between when the U.S. transfers sensitive technology to Israel to when Israel has integrated that technology into its own inventory, considers the technology its own, and puts it up for sale on the open market. There needs to be more transparency in Israel's integration of U.S. origin technology and export of systems that utilize U.S. technology.

These instances show that the mere existence of agreements are not enough to keep Israel from misusing or retransferring military technology for financial and possible diplomatic gains.

As Israel's domestic defense industry currently ranks as one of the top ten arms suppliers worldwide, it is clear that the defense industry is bringing in a great deal of money.²⁰ Although U.S. aid is also vital to the defense and economy of Israel, Israel cannot rely on foreign aid forever, and the defense industry along with other domestic high technology industries offers the best promise for balancing its trade deficits with other nations and maintaining a stable economy.²¹

Existing U.S.-Israel Agreements

Israel has a special security cooperation status with the U.S., but there is no formal defense treaty between the two nations.²² However, Israel and the U.S. do have a number of signed agreements and memoranda of understanding (MOUs) relating to defense and mutual security that are currently in force.²³ In 1952, an exchange of notes constituting an agreement relating to mutual defense was formalized between the U.S. and Israel. This was the first of many defense agreements between the two nations. It outlined military assistance provisions which limit the use of U.S. origin military equipment for only defensive purposes, restricts aggressive acts and requires permission from the U.S. prior to the sale or transfer of any U.S. origin equipment or technology to third parties.²⁴ Many other defense agreements followed, including a memorandum of agreement (MOA) signed in 1975 which included a section of assurances from the U.S. government to Israel:

The United States is resolved to continue to maintain Israel's defensive strength through the supply of advanced types of equipment, such as the F-16 aircraft. The United States Government agrees to an early meeting to undertake a joint study of high technology and sophisticated items, including the Pershing ground-to-ground missiles with conventional warheads, with the view to giving a positive response. The U.S. Administration will submit annually for approval by the U.S. Congress a request for military and economic assistance in order to help meet Israel's economic and military needs.²⁵

This assurance from the U.S. government was a clear statement of the U.S. commitment to cooperate with Israel on defense matters and showed a willingness to provide “high technology and sophisticated items.”²⁶ In November 1981, Israel and the U.S. signed a MOU for a “framework for continued consultation and cooperation to enhance the national security of both nations.”²⁷ This MOU was initially designed to counter the Soviet threat at the time, but it also established an increased level of military cooperation, including the formation of coordination groups to address military concerns. These joint working groups were tasked to address military cooperation for joint exercises, readiness issues, research and development (R&D), and defense trade.²⁸ This MOU, and the associated working groups, was suspended by the U.S. in protest as Israel occupied the Golan Heights in December 1981.²⁹ It was reinstated in 1983, however, and was the driver behind another agreement that created the Joint Political Military Group (JPMG) and Joint Security Assistance Program (JSAP), which are very high level groups that focus on larger defense issues. In 1988, Israel and the U.S. signed another MOA which established a more comprehensive framework for cooperation for both diplomatic and defense issues. This arrangement reaffirmed the JPMG and the JSAP planning groups, outlined their meeting schedules and restated the roles of each.³⁰

The agreement which specifically addresses the issues of cooperative R&D and procurement of defense articles was a MOA with annexes and attachment signed in December 1987. This agreement followed an earlier declaration in January 1987 that designated Israel as a major non-NATO ally. The December MOA opened up smoother procurement processes as it allowed Israel to bid on U.S. defense contracts in the same manner as NATO nations, which is a much easier and faster process.³¹ Many amendments to the above mentioned agreements exist, but the spirit of security and defense cooperation has remained unchanged over the last 30 years.

Although the U.S. has comprehensive defense export laws and licensing procedures, even for its NATO allies, there are still defense equipment and technology retransfer issues with Israel that remain unresolved. As the U.S. expectations for defense equipment and technology transfer have remained the same since the first 1952 agreement, it is unlikely that there is any misunderstanding as to what has been agreed to. However, with the rapid pace of technology and the integration of technology into numerous systems, especially those that are dual-use, it is possible that without constant communication and cooperation, disconnects can develop as to what technology the U.S. deems sensitive.

In light of arms retransfer issues, in 2005 Defense Secretary Donald Rumsfeld and Israeli Defense Minister Shaul Mofaz signed a bilateral agreement on sensitive arms retransfers to third parties.³² This agreement was intended to create a more transparent arms and technology transfer process between the two nations. It was the catalyst that led Israel to establish a separate export authority, the Defense Export Control Directorate, within the MoD in 2006 and accelerate the legislation for a Defense Export Control Act that was passed in 2007.³³ This agreement took hold as, in 2006, Israel suspended, under U.S. pressure, a deal with Venezuela to upgrade Venezuelan F-16 fighters.³⁴ Israel also sought U.S. permission, in 2007, for a Chinese deal for a high resolution remote sensing satellite, showing that Israel is growing serious in efforts to regain U.S. trust and abide by technology and arms transfer agreements.³⁵

U.S. Defense Export Policy

Federal laws, regulations and directives, including the AECA and the International Traffic in Arms Regulations (ITAR), provide the legal authority and guidance to allow and restrict transfer of sensitive defense information to international partners.³⁶ The Arms Export and Control Act (AECA) of 1976 was created to manage and designate “control of exports and

imports of defense articles and services, guidance of policy, etc.; designation of the United States Munitions List; issuance of export licenses; condition for export; [and] negotiations information.”³⁷ Section 38 of this law addresses the issuance of export licenses and lists when export licenses can be denied:

Decisions on issuing export licenses under this section shall be made in accordance with the Director of the United States Arms Control and Disarmament Agency, taking into account the Director’s assessment as to whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangement. The Director of the Arms Control and Disarmament Agency is authorized, whenever the Director determines that the issuance of an export license is detrimental to the national security of the United States, to recommend to the President that such export license be disapproved.³⁸

The Arms Control and Disarmament Agency (ACDA) no longer exists; the Under Secretary of State for Arms Control and International Security Affairs took over the ACDA Director’s responsibilities in 1994.³⁹

The President has delegated the authority to control import and export of defense articles and services to the Secretary of State by Executive Order 11958, as amended.⁴⁰ This Executive Order also mandates that the Departments of State and Defense will work together to create and maintain the United States Munitions List (USML). This list contains all of the defense commodities and services that are determined to be controlled by the AECA. The Department of State has delegated the responsibility of the export of defense articles and services covered by the USML to the Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs.⁴¹ This organization works within the context of the ITAR which outlines the details of defense export. Although the Department of State is a key player in defense export, the DoD also plays a critical role outside of the USML.

Military technology is protected by the DoD via the International Program Security Initiative. This multilayered approach to protect sensitive military program information is vital to ensure U.S. national security and to maintain the most technologically advanced military in the world. In accordance with the laws governing defense export, the Defense Technology Security Administration (DTSA) is chartered to be the DoD's agency in administering the International Technology Security Program. DTSA's mission includes "maintaining the U.S. military technological advantage while supporting interoperable coalition forces."⁴² Potential technology exchange is evaluated during the licensing process and only when it is determined to be in the U.S. national interest to share information, is technology release authorized. Each nation is treated differently based on its relationship to the U.S. and any international and bilateral agreements that may be in place.

Within the guidelines of the export laws and directives listed above, there are two main channels for nations to obtain arms and military technology: government programs and commercial programs. Commercial programs are those that are initiated by a contractor, such as a direct commercial sale.⁴³ These programs, when used for defense articles, require licensing or export authorization through the ITAR processes. This method of export side-steps many of the other governmental controls in place to monitor arms exports and is typically used for items that are not as high-tech or sophisticated. Sales of items that are considered dual-use (items that have both a civilian and military use) also fall under the jurisdiction of the Department of Commerce under the Bureau of Industry and Security. Such items are additionally regulated to ensure that all national security controls are in place, sales are consistent with U.S. policy and items are not in short supply.⁴⁴

Government programs are those that are initiated by a government agency and typically fall under the AECA, such as cooperative agreements or FMS. These programs undergo further jurisdiction in accordance with the Security Assistance Management Manual (SAMM) which is administered and managed by the DoD.⁴⁵ Typically, FMS cases that include service specific technologies or weapon systems will have further involvement by the appropriate service agencies and acquisition program offices. Figure 1 shows the U.S. key players and their relationships.

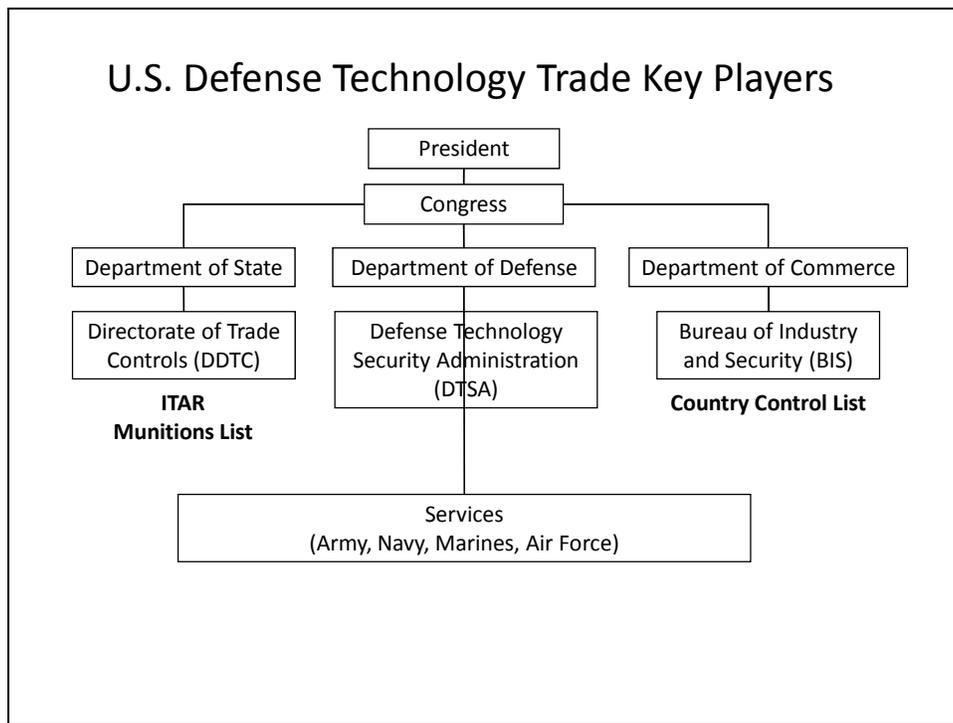


Figure 1. U.S. Defense Technology Trade Key Players

Most of the U.S. laws, regulations and directives address defense technology and arms transfer prior to the transfer. There are provisions that require nations receiving sensitive technology to protect it and require U.S. authorization prior to retransferring it; however, there is little oversight into what happens after the export is complete. End-use and end-user monitoring

is not nearly as robust as the licensing process. The DDTC relies on U.S. diplomatic posts and foreign governments to provide it with information.⁴⁶ When violations do occur, the AECA requires that foreign military sales (FMS) and military assistance to the violating nation be halted. However, enforcement of this provision does not always take place.

Although the law has teeth, it is rarely fully enforced as it would disturb the delicate diplomatic relationship that we have with our closest allied nations. There have been times where punitive actions were enacted, such as sanctions or restriction from development programs; however, these actions have not been to the level stated in law and may or may not dissuade the offending nation from retransfer of technology in the future. In some high visibility cases, such as Israel's planned sale of an Airborne Early Warning System containing sensitive U.S. technology to China, Congress restricted participation in some high technology defense developments, (the Joint Strike Fighter in this case) but did not restrict all FMS and withdraw all aid, as the AECA calls for.⁴⁷ Without realistic consequences for unauthorized transfer of U.S. technology, there is little deterrent, especially when there is the potential of large financial gains and diplomatic advantages with other nations.

Current Israeli Defense Export Controls

Israeli defense exports are handled by SIBAT (the Foreign Defense Assistance and Defense Export Department), while export controls are handled by the Defense Export Control Directorate, which both fall under the Director General of the MoD.⁴⁸ There are numerous factors that shape Israeli defense export control: the need to maintain a military advantage over its neighbors, the advanced nature of the Israeli defense industry, the relationship between the defense industry and the Israeli Defense Force's (IDF) development programs, and the requirement of Israel's defense industry to export over 70% of its products to stay profitable are

key characteristics that impact defense exports.⁴⁹ Defense export control is “recognized at all levels of Government” as necessary to support bi-lateral and international defense goals and relationships.⁵⁰ To better understand Israel’s defense procurement process, see appendix A.

Due to U.S. retransfer concerns of the past two decades, Israel has recently, within the last 3 years, taken steps to tighten defense export controls. In July 2006, the MoD established the Defense Export Control Directorate (DECD), which acts as a separate licensing authority.⁵¹ In April 2007, Israel established the Defense Export Control Working Group (DECWG) with the U.S. to increase transparency and to formalize more frequent exchanges between the two nations. In December 2007, a new Defense Export Control Law went into effect, which provided “for administrative penalties (including revocations, civil fines, and other sanctions)” while adding internal licensing requirements for retransfers and end use changes, and new reporting requirements.⁵²

By taking these steps, Israel is developing internal measures to foster defense export control compliance.⁵³ These steps will hopefully mitigate the retransfer issue but there needs to be swift and severe U.S. ramifications that are clearly understood and agreed to by both nations when unauthorized retransfer does occur. A formal treaty could be the answer.

Methodology for Trade Cooperation and Oversight

A series of MOAs and MOUs are the only existing arrangements between the U.S. and Israel for arms and defense technology trade. Cooperation on defense issues is managed by high level working groups, such as the JPMG and the JSAP, that meet infrequently. A mid-level working level relationship on defense trade exists at the system program level of technology programs and at the level of the services that own technology or arms that Israel seeks to procure. Since there have been numerous occasions where Israel has participated in, or

attempted to embark on, defense exports of sensitive U.S. technology, this level of cooperation has proven not to be enough. Though some progress has been made in the last three years, a treaty between Israel and the U.S. is needed to formalize dialog on defense technology needs, increase the level of cooperation and transparency, guard sensitive U.S. technology, protect the defense industries of both Israel and the U.S., and ensure the national security of both nations.

Defense trade cooperation treaties exist between the U.S. and Australia and the U.S. and the United Kingdom as described more fully in appendix B. These treaties were created in an effort to increase U.S. defense and security cooperation with its closest allies as well as to simplify the defense trade process.⁵⁴ Although the thrust of these treaties is geared toward expedition of the export licensing process, there are also provisions to ensure that “both the U.K. and Australia will protect U.S.-origin items as classified and require prior U.S. approval for the re-export of these items.”⁵⁵ Such a formalized treaty could be a model to be implemented with Israel to reaffirm U.S. technology and defense article protection and to add an additional level of cooperation between the defense departments of each country. This increased cooperation needs to be at both the high level, where defense procurement and budgetary decisions are made, and at the mid levels, where the actual system development takes place. The bi-annual Defense Export Control Working Group (DECWG) established in 2007 between the U.S. and Israel could be formalized within the treaty, along with the JPMG and the JSAP planning groups which are currently only formalized in agreements.

A U.S.-Israel defense trade cooperation treaty would not only solidify expectations with respect to technology re-transfer and arms use, it would open the door for mutual understanding of each nation’s defense industrial base needs. Considering the amount of military aid that the U.S. provides Israel and the numerous special provisions that Israel has with that aid, a trade

cooperation treaty could clearly define the terms of that aid and provide a mechanism for U.S. oversight into the use of that aid. Provisions must require working level collaborative efforts by both the DoD and MoD. Such issues clearly fall in the lanes of the JPMG at the highest working levels, but due to the infrequent meeting of the JPMG, lower level working groups must convene more frequently to keep pace with the rapidly evolving technology sector. Perhaps an expansion of the DECWG could be a start.

To ensure no future technology or arms re-transfer issues, there must be more visibility into the Israeli defense export process. There are specific agencies within each military establishment that lend themselves to the necessary collaboration. For the U.S., the DoD's DTSA would be the appropriate working level agency along with service representatives from the desired technology or program areas. For Israel, the newly established DECD would be the right place for this type of collaboration. This DTSA and DECD cooperation has started with the DECWG but must be expanded to ensure cooperation. With a good working level arrangement and open discussions of how U.S. technology and arms can meet the defense needs of the IDF and MoD, the relationship must support not only the defense of Israel, but also give the Israeli industrial base a place to work from that is consistent with U.S. national security concerns.

As technology is rapidly evolving and is often dual-use, some restrictions on technology become obsolete by its availability on the world market. The existing U.S. defense export laws are not versatile enough to keep up with the high pace of technology development today. In the case of dual-use technology, which is becoming more and more prevalent in the defense sector, the U.S. has failed "to adopt policies that take into account and respond effectively to fundamental changes in the interaction between technological progress globally, the relationship between civilian and military technological developments and the post-Cold War geo-political

situation.”⁵⁶ Through a close collaboration with Israel, which is one of the top four arms dealers in the world market, the U.S. can gain some much needed insight into the trends of world defense technology sales.

Since an overhaul of the existing defense trade laws, needed though it may be, is not likely to occur in the near term, clear agreements and collaboration with our closest allies are needed. The U.S. has already worked out defense trade cooperation treaties with the United Kingdom and Australia to meet defense technology licensing and retransfer concerns. These treaties clearly outline a working relationship and put limits on particularly sensitive U.S. technologies, ensuring that the streamlined processes will not allow unauthorized retransfer.⁵⁷ Such a treaty, though with a different focus, with Israel will reinforce mutual expectations and can be a mechanism to create working groups at various levels to ensure that Israel has access to the technology it needs to defend itself while the U.S. has the oversight it needs to ensure that there is no added risk to U.S. national security.

Conclusion

Israel is a long-time U.S. ally and will continue to be one for the foreseeable future. The U.S. will continue to support Israel through military and economic aid and will collaborate on future defense technology and arms. There have been issues with unauthorized technology retransfer by Israel in the past and the existing agreements and processes are not enough to protect U.S. technology. By examining the U.S.-Israeli relationship and history of Israeli defense technology misuse, U.S defense export policy, and Israeli defense export controls, a possible solution emerges. Security cooperation and defense trade policy between Israel and the U.S. may be solidified via increased oversight and cooperation through a Defense Trade Cooperation Treaty.

Such a treaty must consist of provisions for export licensing, agreement on the use and re-transfer of defense articles and technology, as well as procurement collaboration at the high and mid levels of the MoD and DoD. Oversight can be gained while collaborating with Israel to meet its defense needs and reinforce its defense industrial base. By working with Israel early and up front in its export process, it is possible to reduce if not eliminate the unauthorized retransfer of sensitive U.S. defense technology and arms. In so doing, the U.S. can avoid negative security, intelligence, diplomatic, and U.S. defense industry impacts and foster positive military and defense cooperation between the two nations for many years to come.

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Appendix A

Israeli Defense Procurement Process

Israel's defense procurement is dominated by three major players: the Israel Defense Force (IDF), the Ministry of Defense (MoD), and the Israeli defense industry.¹ For routine procurement decisions, the decision making body consists of the heads of each military service, the General Staff of the IDF, the MoD, the Ministry of Finance and the Prime Minister, and for domestic production, the relevant defense firms. Defense exports are handled by SIBAT (the Foreign Defense Assistance and Defense Export Department) which is under the MoD.²

The MoD is the most powerful ministry in the Israeli government and is the strongest voice when it comes to defense issues.³ “The major goals of the MoD are to develop and prepare infrastructure and resources for implementing IDF objectives, to design and implement procurement, manufacture, development, construction, and service arrangements in order to give the IDF the means it needs to do their job;...to develop and administer the defense export system, to administer, plan and control the defense budget,” making it the overall civilian control of the Israeli military establishment.⁴ The MoD is responsible for all aspects of procurement and finance for the IDF.⁵ There are two main agencies within the MoD that support the defense procurement process: the Procurement and Production Directorate (PPD) and the Directorate of Defense R&D. The PPD handles procurement and manufacture of defense systems and is responsible for overseas procurements, including those made using funds provided from U.S. military aid. The Directorate of Defense R&D deals with all aspects of defense R&D, including sponsoring and enhancing scientific and technological infrastructure, “facilitating the development and enhancement of high-impact war materiel and auxiliary combat equipment,” as

well as working with international R&D institutions.⁶ Overall, the MoD has a long-term vision with respect to defense procurement, looking to arm Israel for any future threats.

The IDF is Israel's military organization and the General Staff "is responsible for procurement, training and force structure" for the military.⁷ The IDF Planning Division provides planning and assessment of the IDF's needs and priorities and incorporates them into budget requests to the MoD. Although the MoD controls the IDF, the IDF has the preponderance of planning resources, and therefore the MoD usually accepts IDF recommendations for procurement decisions. The trend for IDF procurement priority has been to counter short-term threats and has emphasized off the shelf weapon procurements and ready access to arms. It has given less priority to longer term projects requiring R&D.⁸

The Israeli defense industry is a mix of private industry and state-owned firms. The state owned sector produces and develops the bulk of Israeli weapons and defense technology. There are three key organizations that make up the state owned defense industry that are controlled by the MoD: Israel Aircraft Industries (IAI), Ta'as, and Rafael Arms Development Authority. These three companies cover the full spectrum of Israel's defense needs. IAI develops and manufactures satellite, missile and aircraft technology. Ta'as, formerly known as the Israel Military Industry (IMI), develops and manufactures assault weapons, aircraft and rocket systems, armored vehicles, and integrated security systems. Rafael manufactures "smart" missiles, passive armor, naval decoys, acoustic torpedo countermeasures, air-breathing propulsion systems, and missiles.⁹ In addition to the three main government-run firms, there are approximately 150 other privately owned defense firms in Israel.¹⁰ These companies produce a narrower set of defense articles than the big government owned firms, but they represent a part of the Israeli "commitment to high levels of research and development" in defense.¹¹ They also

contribute to Israel's ability to maintain a strong defense export capability. Figure 2 shows the linkages between Israel defense technology trade key players.

Israel's security planning and procurement decisions are based on the perceptions of the military threat posed by its Arab neighbors in the region. The overarching strategic approach to procurement is based on the development of a powerful multifaceted defense capability to defend against a variety of threats. The Israeli strategy focuses on three main components: "a large and powerful standing air force and an advanced intelligence capability, limited standing ground forces, and large armour and infantry reserve forces."¹² To determine what systems to procure, Israel uses long-term planning to assess trends and calculate requirements for funding.

Israel has a very structured approach to its defense import and export with the MoD taking the lead role. The Knesset, Israel's governing body, only controls the purse strings by approving the defense budget. In comparison to the U.S. export structure, which involves numerous departments (State, Defense, and Commerce) as well as congressional approval, the Israeli process is relatively straightforward. Defense procurement is based on the perceived threat to the nation and is somewhat influenced by the U.S., due to the large amount of U.S. military aid that must be used for U.S. goods. There are a number of places within the existing defense procurement system in which the U.S. can work collaboratively to ensure that Israel is protecting sensitive U.S. technology.

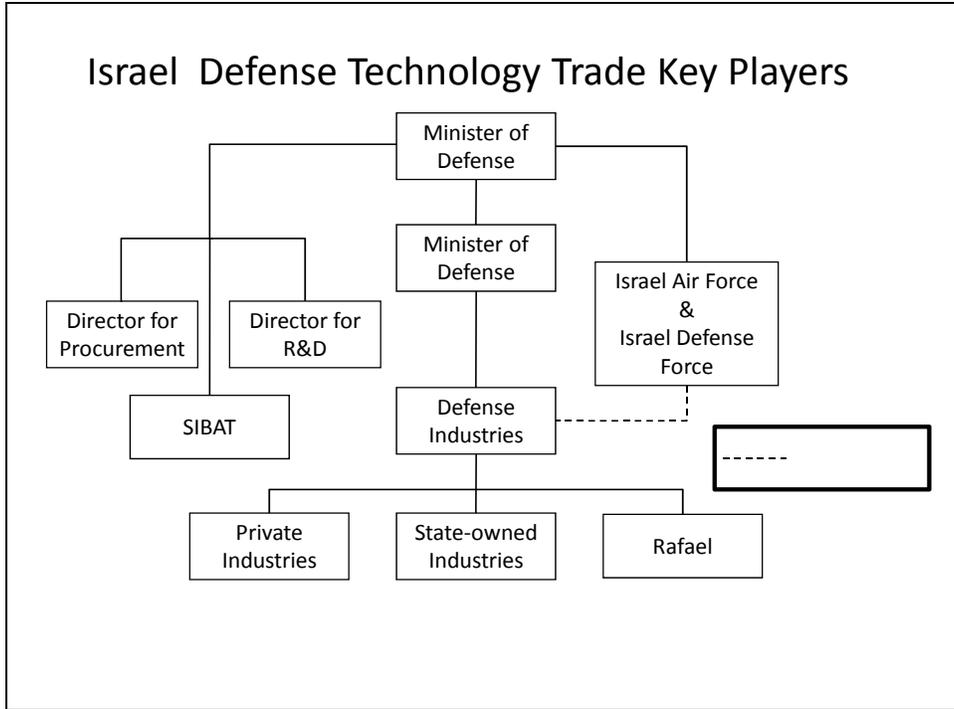


Figure 2. Israel Defense Technology Trade Key Players

Notes

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Appendix B

Defense Trade Cooperation Treaties with the U.K. and Australia

The U.S. has negotiated Defense Trade Cooperation Treaties with its closest allies, the U.K. and Australia. These treaties were mainly put in place to allow the U.S. to participate in defense trade with the U.K and Australia without the need for export licenses or other authorization for most defense articles.¹ The existing ITAR regulations were seen as “Unnecessarily Burdensome”² for these countries and since very few defense licenses have been declined for these close allies, the process was deemed a hindrance. The ITAR is in place to protect the most sensitive U.S. technology and such items will continue to be handled through the appropriate licensing regulations, even with these treaties in force.

These treaties spell out other aspects of defense trade cooperation that are of great importance to protecting the most advanced U.S. technology and national security. Article 9 of each respective treaty addresses the issue of “Re-transfers and Re-exports”³ The language in both treaties is identical, requiring U.S. authorization for all retransfers and re-exports. Article 12 of both treaties addresses the maintenance of “detailed records” for receipt of defense articles or for retransfer and or re-export of such articles and that such records be “made available upon request.”⁴ Article 13 of both treaties details the topic of enforcement and the issue of end-use and end-user monitoring is also addressed. Since the U.S. often relies on the host country for records of retransfer and end-use, this article specifically calls out for cooperation in any investigation and for full information sharing.⁵

These treaties were established since there was a clear need to expedite the often slow licensing process for the U.S.’s closest allies. Both the U.K. and Australia strongly support these treaties and are fully committed to them. The U.S. signed the treaties, on June 21, 2007 for the

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U.K and September 5, 2007 for Australia, but has yet to have them ratified by congress.⁶

Though they are not fully accepted by congress, the U.S. is holding to these treaties as formal agreements until they are made law.

Notes

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