

## NATIONAL SECURITY COUNCIL

INFORMATION

June 11, 1981

MEMORANDUM FOR RICHARD V. ALLEN

FROM: ROBERT M. KIMMITT *Bob*

SUBJECT: Israeli Strike -- Legal Aspects

The Arms Export Control Act requires cutting off military sales, credits, and deliveries if a country substantially violates any term of the agreement under which U.S. weapons are transferred to it. The President is required to report to Congress promptly if such a violation may have occurred (this reporting requirement has been delegated by Executive Order to the Secretary of State). If the President determines that a substantial violation has occurred and reports this fact to the Congress, or if the Congress so determines via joint resolution, no arms transfers can be made until the violation ceases and the country involved gives assurances that the violation will not recur. For cash sales and deliveries from prior sales, however, the President may waive the cut-off if he determines such action would have a significant adverse effect on the national security.

In this case, a determination has been made that there may have been a substantial violation of the agreement relating to Israeli use of U.S. arms for legitimate self-defense. The Secretary of State has reported this fact to the Congress on the President's behalf. We have also stated (1) that our review of this matter is continuing, (2) that we will inform Congress of the results of our discussions and deliberations, and (3) that we are suspending for the time being immediate shipment of four additional F-16 aircraft.

We must now decide whether a substantial violation has occurred. If it has, the sanctions above would take effect after notification to Congress. If it has not, no sanctions or reports to Congress are legally required, although we have apparently obligated ourselves to a second report to Congress under any circumstances. Also, although unlikely, the Congress itself could invoke sanctions unilaterally, as it did in the case of Turkey in 1976.

The toughest question concerns the suspension of F-16 delivery. Such action is legally required only if it is determined that a substantial violation has occurred. Since that determination has not been reached, the decision was based on policy considerations. This raises the question whether other deliveries will be similarly suspended. I assume the answer is no, and that the F-16 suspension was based on the special circumstance that it was one of the aircraft used in the raid. Note, however, that an additional delivery of 6 F-16s is scheduled for mid-July, so our review should be wrapped up by then.

cc: Kemp, Tanter, Feith, Schweitzer