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DISPOSAL OF NAVAL VESSELS

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HEARING

BEFORE THE

SUBCOMMITTEE ON GENERAL LEGISLATION

OF THE

COMMITTEE ON ARMED SERVICES

UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

MARCH 23, 1973

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DISPOSAL OF NAVAL VESSELS

FRIDAY, MARCH 23, 1973

U.S. SENATE,
SUBCOMMITTEE ON GENERAL LEGISLATION,
OF THE COMMITTEE ON ARMED SERVICES,
Washington, D.C.

The subcommittee met at 11:05 a.m., in room 212, Richard B. Russell Senate Office Building, Senator Harry F. Byrd, Jr., of Virginia (chairman).

Present: Senators Byrd (presiding) and Nunn.

Also present: Labre R. Garcia, counsel.

Senator BYRD. The committee will come to order.

The committee is pleased to have with us this morning the Honorable Frank Sanders, Under Secretary of the Navy; Rear Adm. H. E. Gerhard, Director, Security Assistance Division, Office of Chief of Naval Operations; Mr. Benjamin Forman, Assistant General Counsel, International Affairs, Department of Defense; Mr. Lawrence S. Eagleburger, Acting Assistant Secretary of Defense, International Security Affairs; and Mr. Thomas R. Pickering, Deputy Director, Bureau of Politico-Military Affairs, Department of State.

As you know, the Subcommittee on General Legislation held hearings last year on H.R. 9526, dealing with naval vessel loans. The Senate passed the bill with two Senate amendments and several House amendments. The Senate amendments changed the loan term from 4 to 5 years, and also added a new section which provided that loans made under the act shall not be construed as a commitment to the defense of the recipient country.

The House amendments are particularly pertinent to this inquiry. They changed the then existing law, and it now requires that each loaned ship be returned to the U.S. Navy at a location to be designated by the Secretary of Defense.

Second, the law now makes it mandatory, instead of permissive, that the loans be terminated if the President determines that they no longer constitute the defense needs of the United States.

Finally, the option to extend the loan for an additional 5 years was removed, and now requires that congressional authority be granted before the loan of any ship is extended.

In my letter to Secretary Warner dated February 23, 1973, I expressed my concern regarding the disposal of major combatant ships which were loaned to friendly nations. I shall ask unanimous consent that this letter be made a part of the record, and also that the Secretary's reply be made a part of the record.

[The documents referred to follow:]

U.S. SENATE,
Washington, D.C., February 23, 1973.

HON. JOHN WARNER,
Secretary of the Navy,
Washington, D.C.

MY DEAR MR. SECRETARY: The Armed Services Committee is in receipt of notifications announcing sales of major combatant ships which have been on loan under the provisions of Section 7307, Title 10, U.S.C. As you know, the Naval Vessel Loan bill (H.R. 9526) which became law in 1972 made it mandatory that loaned ships be returned to the U.S. Navy at the end of the loan term. In view of these recent sales of ships on loan, it is reasonable to conclude that all major combatant ships on loan are to be stricken from the Naval Register and that the mandatory provisions of P.L. 92-270 became redundant and meaningless.

I am particularly concerned about the loss of U.S. control over these combatant ships which can engage in sea operations and acts of warfare against nations which are parties to mutual defense treaties ratified by the United States. Existing law makes it mandatory that loans be terminated if such actions should occur. Such control, as I understand it, would be relinquished when a loaned ship is sold.

Further, the law requires termination of ship loans when the President determines they no longer contribute to the defense requirements of the United States. Here again we are relinquishing our right to the recall of U.S. combatant ships when their utilization by the recipient nation is not compatible with our national security interests.

The sale notices indicate that six major combatant ships on loan to Spain have been sold to that country under authority contained in Section 7307, Title 10 U.S.C. I am interested in learning if such sales were under the advertised procedures required under Section 7305, Title 10, U.S.C. for sale of stricken vessels.

A number of new combatant ships and weapon systems have been developed since Section 7307, Title 10, U.S.C. was enacted, and have or will soon become a part of our Navy inventory. Examples of these are destroyer escorts, patrol frigates, LHA's and ASW carriers, Harpoon missile, etc. I would like your views on whether these ships and smaller ships (patrol) capable of firing surface-to-surface and surface-to-air missiles should not be considered for inclusion in that Section of the law.

In addition to your comments on the foregoing, I will be most appreciative if you will provide the Subcommittee with the following:

1. The identity and description of each ship loaned under the authority of P.L. 92-270.
2. The Certificates of the Chief of Naval Operations attesting to the non-essentiality of ships sold since July 1, 1972 (Section 7307(a) Title 10, U.S.C.) and those contemplated for sale in Calendar Year 1973.
3. Copies of the Board reports to the Secretary of Navy with respect to all ships found to be unfit for service and thereafter stricken from the U.S. Naval Register since July 1, 1972 (Section 7304, Title 10, U.S.C.).
4. Copies of the agreements contracted with foreign countries for the sale of ships stricken from the Register since July 1, 1972.
5. Copy of Naval Vessel Register.
6. Up-to-date list of major combatant vessels on loan and/or lease.
7. Does the sales action comply with Section 21, P.L. 90-629 (Foreign Military Sales Act of 1968)?

With best wishes, I am

Sincerely,

HARRY F. BYRD, JR.,
Chairman, Subcommittee on General Legislation.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D.C., March 22, 1973.

HON. HARRY F. BYRD, JR.,
Chairman, Subcommittee on General Legislation, Committee on Armed Services,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to reply to your letter of 23 February regarding sales and loans of U.S. Navy ships to foreign governments.

In regard to your concern about the mandatory return provisions of P.L. 92-270, this law of course applies to only those ships (10 destroyers, 6 sub-

marines) loaned under it. It provides that the return to the U.S. Navy shall be at a location designated by the Secretary of Defense. This location may be in the foreign country where the ship is located. This facilitates the further disposal of the ship by offering it for sale under commercial bidding procedures or for sale and retention by the foreign navy under the Foreign Military Sales Act whichever is in the best interests of the U.S. While loaned ships were an essential part of our reserve fleet when they were loaned they do not, in most cases, serve any useful purpose in our reserve fleet today. They are not the type of weapons systems the U.S. Navy would want to rely upon in any future engagement.

You expressed particular concern about the loss of U.S. control over these combatant ships which can engage in sea operations and acts of warfare against nations which are parties to mutual defense treaties ratified by the U.S. You are correct that control would be relinquished when a loaned ship is sold. However, the stated objectives of the loan program would remain unimpaired by the sales of ships. As you may recall, during the hearings last year on the ship loan bill, you asked Admiral Zumwalt "would it not be more advantageous to sell these surplus ships for scrap to the countries that we plan to loan them to". Admiral Zumwalt replied, "Yes, in the case of those ships which we feel we would not want to recall under any kind of a wartime contingency, we do think it is better to strike them from the register and sell them for scrap. A significant number of ships have been sold to our allies on this basis".

In a quarter of a century we have transferred about 3,900 ships and craft to friendly and allied nations and not one loaned or leased vessel has been recalled for any purpose. Today, about 2,600 remain in the hands of 49 countries. As the aggregate of these transfers are viewed in the context of the network of our mutual defense treaties and of the assistance given over the years to other friends and developing nations, it is apparent, I believe, that we have used our ship transfer authority well, and the assets we have provided have been used well.

In respect to the authority of selling warships to foreign countries, your attention is invited to the fact that such authority is set forth in the Foreign Military Sales Act, as amended. While Section 7305, Title 10, U.S.C. permits the Secretary of the Navy, when in the best interest of the United States, to sell vessels stricken from the Naval Vessel Register after advertisement for sale, it specifically provides in Subsection 7305(L) for alternative disposal "as otherwise provided by law". Such other authorization is contained in Section 21 of the Foreign Military Sales Act with which we comply. Pursuant to this Act and the Presidential delegation of authority contained in Executive Order 11501, the Secretary of Defense is given broad authority to "sell defense articles . . . to any friendly country or international organization if such country or international organization agrees to pay not less than the value thereof in United States dollars".

After a thorough review of the ship transfer program was conducted last year, including hearings conducted by the House Armed Services Subcommittee on ship transfers, the Executive Branch is now emphasizing the policy of selling rather than leasing or loaning vessels that can be stricken from the Naval Vessel Register. This policy would, of course, also result in most ships that are now on loan or lease being sold. In emphasizing this policy we have been conscious of the necessity for prior considerations of the consequences of any such action. We look at each transfer from a point of view of both military and economic effects of the country concerned along with the impact of such actions on the relationships between the recipient country and its neighbors, and with the United States.

There is generally no relationship between ship transfers by loan or sale, and bases. There are, however, instances where ships might be provided as part of an agreement to use bases, as in the case of Portugal in the context of the Azores Base Agreement of 1971; and Spain in the context of the Agreement of Friendship and Cooperation of 1970.

Ship transfers do contribute to our mutual defense arrangements with our allies and enable emerging nations to devote needed resources to internal development, while maintaining adequate naval forces and without spending large amounts of money for the purchase of new ships. As you know, we are encouraging self-reliance. The purpose of our Security Assistance Programs is to assist the transition of friends and allies to greater national self-reliance. The increase in the number of former loan recipients which have lately been buying or requesting to buy ships indicates a willingness on the part of many of these nations to try to meet their own security needs with their own resources. Their

self sufficiency may stand us in good stead in the future as the strength of our friends and allies have done in the past.

In regard to including new combatant ships and weapon systems under Section 7307, Title 10 U.S.C., it is considered that the present existing laws and procedures gives us the flexibility to adjust to changing situations. There can be no doubt of the interest of Congress in Security Assistance, but the present delegation of authority in these matters permits this Congressional interest to be exercised with optimum effect.

The items you requested are being forwarded under separate cover to the Subcommittee since there is classified material included. If Admiral Zumwalt or I may be of any further assistance, please do not hesitate to call upon us.

Sincerely,

FRANK SANDERS,
Under Secretary of the Navy.

Senator BYRD. In my letter I expressed my concern not only about U.S. control of combatant vessels, but congressional control over loan ships which are later stricken from the register and sold without congressional authority. I wish to emphasize that I support the loan program. I think it is a good program. I also support the use of such ships by friendly nations in the furtherance of common defense goals. I am somewhat alarmed that the Navy may be employing this device of striking and selling ships under loan to avoid congressional control. I regret that we were unable to give you more advance notice of these hearings. However, I am sure you know the policy with respect to the disposal of ships by the Navy. These are matters which we wish to explore.

Mr. Secretary, you may take charge and proceed in any way you wish.

STATEMENT OF FRANK SANDERS, UNDER SECRETARY OF THE NAVY, ACCOMPANIED BY REAR ADM. H. E. GERHARD, U.S. NAVY, DIRECTOR, SECURITY ASSISTANCE DIVISION, OFFICE OF CHIEF OF NAVAL OPERATIONS; BENJAMIN FORMAN, ASSISTANT GENERAL COUNSEL (INTERNATIONAL AFFAIRS), DEPARTMENT OF DEFENSE; LAWRENCE S. EAGLEBURGER, ACTING ASSISTANT SECRETARY OF DEFENSE (INTERNATIONAL SECURITY AFFAIRS); AND THOMAS R. PICKERING, DEPUTY DIRECTOR, BUREAU OF POLITICO-MILITARY AFFAIRS, DEPARTMENT OF STATE

Mr. SANDERS. Senator, thank you very much for allowing us to be here today. The Secretary extends his deep regret and apologizes to you at his inability to be here personally. As I left the office today he just left for an extended trip to some of the Navy installations. And he asked me to convey his personal best wishes to you, sir.

Senator BYRD. Thank you very much.

Mr. SANDERS. I have a prepared statement that I would like to insert in the record at this point, and a statement from Mr. Pickering, if I might, sir. And then with your permission, and in order to save time, I would like to skip through it and just touch on the high points, sir.

Senator BYRD. Fine. The full statements will be published in the record.

Mr. SANDERS. Thank you, sir.

(The statements follow :)

STATEMENT OF HON. FRANK SANDERS, UNDER SECRETARY OF THE NAVY, BEFORE THE SENATE SPECIAL SUBCOMMITTEE ON TRANSFER OF NAVAL VESSELS TO FOREIGN COUNTRIES

I am pleased to have this opportunity to appear before this subcommittee in connection with your inquiry into matters associated with the transfer of naval ships to foreign countries.

The term "ship transfer" which I will use frequently includes the individual transactions of loan, lease, grant, or sale. Ship transfers to foreign countries have been an integral and advantageous part of the Security Assistance Program of the United States for over 25 years. They involve a wide range of types, including combatants, amphibious, and auxiliary ships, and a wide variety of craft.

Specifically, there are several advantages which accrue to the United States which favor ship transfers in a program of security assistance.

From the military standpoint, ship transfers are capable of extending the combatant capability of our Navy. This is not to say we exercise control of the ships involved, but in the hands of friendly governments they contribute to the common defense of sea lines of communications which must be taken into account by any potential enemy who might try to interrupt those routes. By increasing the naval strength of our friends, they raise the threshold from which the United States might be required to intervene or to assist in minor contingencies. They also improve the technical competency of friendly foreign navies.

Despite the fact that many of the ships and much of the equipment are relatively outmoded, these friendly foreign navies have demonstrated an ability to operate effectively within the capabilities of their material. Their effectiveness vis-a-vis similar deployed U.S. naval units is enhanced by their familiarity with local waters and by their ability to maintain a continuous presence with a smaller number of total ships; that is, in some areas of the world littoral nations do not have to maintain three ships for one ship regularly deployed off their coasts.

Also, the noncombatants and small patrol craft have been important assets in the economic development of many emerging nations, by providing the means to reach, assist, and protect remote population areas hitherto inaccessible. Among their varying employments are disaster relief, small boat and ship repair in isolated areas, logistic support of outlying communities, and patrols to control smuggling and infiltration.

From a fiscal standpoint, the transfer of ships spares us the cost of storage, maintenance, and the cost of inactivation. We do bear some expense, however, because military assistance funds are sometimes involved in readying the ship and her new crew for transfer. In other cases, the recipient government provides funds for the transaction.

Politically, ship transfers manifest our commitment to mutual defense objectives and in assisting the development of emerging nations. They are visible reminders of friendly alignments and relationships. They provide friendly governments, that might otherwise be unable to obtain them, with the means to police and defend their coastlines; thereby contributing to political independence and self-sufficiency.

There is also a multiplier effect that contains elements of all of the advantages mentioned. This effect stems from common training, common doctrine, common tactics, and common logistics support procedures. The CNO and I have seen this as we have traveled to different countries. The effect grows with time and has extensive benefits in strengthening our ties with friends and allies.

SHIFT IN EMPHASIS

Since the last hearings before this Subcommittee, the Executive Branch policy has changed to emphasize sales, though still permitting some loans (Art. 503, FAA) of ships and craft which form a part of our naval mobilization base. I hasten to point out here that such loans concern non-combatants.

The policy change reinforces our operation under the Nixon Doctrine, and is implemented through the Total Force Concept. Assisting friendly and allied nations toward greater national self-reliance is one of the key facets of that concept.

The increase in the number of formal loan recipients who have recently purchased or have requested purchase of ships indicates a willingness on the part of many of these nations to try to meet their own security needs with their own resources. This information should not imply to you that we are in any way trying to circumvent the will of the Congress. As our ships age, they become outdated technically, cost more to operate, and, in many cases, it is not fiscally or operationally advantageous to hold them in our mothballed fleets. Consequently, our assets are reviewed continuously as we search for ways to put the monies granted us to the best possible use. When the Inspection and Survey Boards ascertain that ships are no longer fit for naval service and no longer contribute to the defense requirements of the United States, the recommendation to strike from the Naval Vessel Register is made to the Secretary of the Navy—wherever those ships may be. When the ships are stricken from the Register, the ships are sold, with the approval of the Secretary of Defense, either under the provisions of Section 7305, Title 10, U.S. Code or through the alternative sales authority as recognized under subsection 7305L, Title 10, U.S. Code. Included within such alternative sales authority is the Foreign Military Sales Act.

When a given ship is to be sold—to the loan recipient country or for scrap—it is returned to temporary U.S. Navy custody at a location in the world designated by the Secretary of Defense. It is not fiscally prudent to steam these ships to the continental limits of the United States for disposition. Practically speaking, then, the disposition takes place in the same general location in the world where the asset was operated. The U.S. Government achieves remuneration commensurate with the size of the asset in the case of scrapping or, in the case of a sale, achieves not only appropriate monetary return but also provides a friendly foreign navy with a considerable upgrading of its naval capability. This, in turn, reflects in a salutary way upon the total capability of the Free World naval strength.

We believe that the emphasis on sales to be a sound decision—politically and economically. It is prudent to eliminate from the Naval Vessel Register those assets which no longer meet the Navy's standards and to provide those assets which qualify to friendly foreign navies through the medium of sale. Normally, those ships which have been declared unfit, we try to sell toward the end of the loan/lease period. A review of the applicable laws indicates that the periods of loan may be terminated on dates at less than the five year term if the ship in question no longer contributes to the defense requirements of the United States.

Finally, I would hope that I have convinced the Subcommittee that the Ship Transfer Program, and particularly those in the category of loan terminations in favor of sales, meets the intent of the Congress, operates within the framework of statutory regulations, and is a sound and viable facet of the Security Assistance Program.

Thank you, Mr. Chairman. I am prepared now to answer your questions.

STATEMENT BY THOMAS R. PICKERING, BEFORE THE SENATE ARMED FORCES
COMMITTEE ON SHIP TRANSFERS

Our security assistance program has been based on a view that the foreign policy interests and national security of the United States were best served and protected by a world in which nations were able to develop their economies and societies free from threats of force or aggression. To this end, we have provided large-scale assistance for over a quarter of a century to allied and friendly nations that did not have the economic resources to maintain adequate defenses. Ships transferred on loan or lease have been the principal means by which we strengthened the navies of these nations, and it therefore can be said that the ship transfer program has been a major instrument of United States foreign policy.

In retrospect, this program has worked well for all parties. It has enabled friends and allies to look after their maritime security without high initial capital outlays. Combat ships are major weapons systems and as such are extraordinarily expensive.

Many of our allies would have found it impossible to buy or build new ships, and would have been faced by the choice of either diverting scarce resources from their economies or foregoing maintaining their navies. United States interests:

have also been well served by the program. It has made it possible to maintain operable ships in active service available for immediate use instead of having to put them in mothballs or scrap them. It has strengthened our security by strengthening the security of our allies, and less tangibly but nevertheless of value, it has enabled our Navy to maintain close and confident relations with navies throughout the world.

In such areas as Western Europe and Japan, loaned or leased ships have played a significant military and psychological role in creating the atmosphere of security and stability necessary for recovery and economic growth.

Our allies in Turkey and Greece, who have received a large share of the ships on loan or lease, are now capable of coping with any aggression by their Warsaw Pact neighbors, other than the USSR, without direct involvement of U.S. forces. The Republics of China and Korea have been able to make substantial progress towards self-reliance because of our military assistance, including ship loans. Elsewhere in Asia and Latin America, the ship loan program has in the main been a positive factor in our bilateral relations.

While our ship transfer program has, we believe, been a success, we would be less than candid if we did not recognize that there have been problems.

In Ecuador and Peru, for instance, we have followed a policy of not renewing outstanding loans or alternatively seeking the return of the vessels because of differences over jurisdiction on the high seas. In addition, these countries have seized U.S. fishing vessels on the high seas, on occasion using U.S.-provided ships to do so.

These seizures have presented us with a serious dilemma: either we allowed the loaned or leased ships to remain in the hands of the seizing country, thereby contributing to the accusation that we were helping foreign countries damage U.S. interests, or we sought to recall the ships, thereby exacerbating our hemisphere relations, making negotiated solutions to major outstanding problems that much more difficult, and calling into question the value to other recipient nations of the vessel loan/lease program itself.

We have chosen not to recall vessels from Ecuador and Peru principally because such actions would not stop seizures of American fishing vessels; would raise insuperable obstacles in the way of finding a solution to the basic problem which, in this case, concerns issues involved in the Law of the Sea; and would generate sympathy for the country, which appeared throughout Latin America to be the underdog with adverse consequences to the totality of our interests in the hemisphere.

In a word, the act of recalling a vessel would, in most cases, have implications reaching far beyond the simple issue of naval security. For these reasons, we have refrained from recalling any vessel on loan or lease.

On the whole, however, the problems engendered by the ship transfer program have been small relative to the general benefits it has reaped.

But times change and so must programs. After extensive studies and discussions, we concluded we should bring this program more into line with the President's policy of encouraging our friends and allies to greater self-reliance. Our friends' economies have generally prospered, enabling most of them to meet increasingly their defense needs with their own resources, rather than depend on grant aid. This is the basis for our policy of shifting military assistance from grants to sales as rapidly as possible.

The requirement to retain loaned or leased vessels in the U.S. reserve fleet is, in many cases, no longer valid. Many of the ships now out on loan or lease date back a quarter of a century or more and the Navy has determined they are no longer required in the U.S. mobilization reserve. In short, because of these changes, we will no longer depend on ship loan legislation to help allies meet their naval requirements. However, we can conceive of situations where such legislation might still be helpful in the future.

We have decided, therefore, to shift our emphasis in the ship transfer program to a sales basis—selling those of our ships currently on loan or lease which are no longer required for the Reserve Fleet and, in most instances, making future transfers through sale rather than loan or lease.¹ There may still be countries where, because of economic or security considerations, we will implement the change from loan to sale over a period of years.

¹ A telegraphic notification to this effect was sent to our various Embassies in the countries concerned on October 19, 1972.

We are proceeding along these lines with care. In general, we plan to sell the ships upon the expiration of the loan or lease. However, there have already been instances where countries have themselves requested to purchase the ships which they had in their navies. This has been the case for example of Turkey, which last fall expressed its desire to buy all U.S. ships in its inventory. We believe that our interests are well served by being responsive to such requests.

Finally, I would like to emphasize that there still exists a valid need for naval ships by our allies and friends. We have discussed with you on many occasions the growth of Soviet naval strength in the Mediterranean and around the world. The augmentation of the naval strength of our allies is important if the United States and its allies are to maintain a sufficient naval deterrent. The extent to which these countries can now manage, with security assistance support from us, their own security problems raises the threshold at which direct U.S. participation might be needed.

In Latin America, the major nations are determined to obtain what they consider adequate naval forces to protect their interests. Some have purchased new construction ships from European suppliers. Often U.S. willingness to offer vessels can prevent diversion of economic resources to the purchase of expensive new ships, and maintain the U.S. as the principal source of military supplies to the hemisphere. It can also serve to preserve the close cooperative relationship which has been developed over many years between the U.S. and Latin America navies.

In sum, we believe we should continue to meet the security needs of our friends and allies by providing naval vessels. Instead of providing them on a loan or lease basis, however, we would in the future to emphasize the sale of ships whenever feasible. We would thus be evolving away from a borrower-lender relationship that at times has been a source of difficulty. We would also be making a modest contribution to the U.S. balance of payments, and, above all, we would contribute to overall U.S. security by maintaining the strength of allied naval forces.

Mr. SANDERS. First of all, we will be using today a good bit, I am certain, the term ship transfer. This includes the individual transactions of loans, leases, grants, and sales. I need not tell you that ship transfers to foreign countries have been an integral part of our security assistance program over the last 25 years. We feel that it has made a valuable contribution to this program.

There are several advantages which accrue to the United States when ship transfers are made an integral part of our security assistance.

Senator BYRD. Mr. Secretary, you are using the term all inclusive, including loans, leases, grants and sales?

Mr. SANDERS. Right, sir.

Senator BYRD. I want you to proceed as you wish. I have already stated that the committee favors the loan program.

Mr. SANDERS. All right, sir. Then let me move over to page 3 in the interest of time if I could, at the bottom of the page there.

Senator BYRD. If we could get to the meat of the argument—

Mr. SANDERS. I think this may get to your question quicker.

Since the last hearings before this subcommittee the executive branch policy has changed.

Senator BYRD. That is significant.

Mr. SANDERS. The bottom of page 3. It has changed to emphasize sales, though some loans are still permitted, particularly of ships and craft which forms a part of our Navy mobilization base.

Senator BYRD. Does it disconcert you if I interrupt at this point?

Mr. SANDERS. No, sir, please interrupt at your convenience.

Senator BYRD. This gets to the heart of the matter, it seems to me. No. 1, when did the policy change; and No. 2, why did the policy change?

Mr. SANDERS. Let me ask Mr. Pickering from the Department of State to speak to that, sir, if I may.

Mr. PICKERING. Senator, I am looking for the exact date so that I can give you a fixed point in time, talking about when it changed here. But we began a review of the policy in the spring of 1972, and it was consummated with a notification of the change to our various embassies overseas in the countries that are concerned with the program in October.

Senator BYRD. Let me interrupt there. When was the hearing on the legislation which the State Department and the Department of Defense sought?

Mr. PICKERING. I had the pleasure to appear before you as a witness on Thursday, February 17, 1972, on the subject of ship loans in which we discussed very briefly the possible shift in emphasis at that time in our discussions of ship loan legislation which was then pending.

Senator BYRD. You discussed it very briefly, you say?

Mr. PICKERING. We discussed it very briefly. I mentioned in my statement that we were considering this, and I believe you also discussed in part with Admiral Zumwalt the possibility of selling these vessels which are available for scrap sale to foreign countries in lieu of loaning them. There was a discussion in the record, which I don't need to repeat here on that subject.

Senator BYRD. Thank you.

Mr. PICKERING. To address the further questions of the rationale and reasons for the shift in emphasis, if I may call it that, two points should be mentioned. One is that the technical point on which the Secretary, I think, is far more qualified than I to discuss is the fact that more and more of the ships which are becoming available for transfer to foreign navies are becoming available in a status where they can no longer be kept in the naval register, and as a result they are available either for scrap sale or for transfer by sale.

Second, I might point out that the President's whole emphasis in the Nixon doctrine is toward a policy of self-reliance with respect to foreign countries maintaining their security and defense capabilities. The idea of moving vessels to foreign countries for transfer through sale we believe fits in very closely with that policy of self-reliance.

Senator BYRD. Has the Congress approved that policy?

Mr. PICKERING. I don't believe in terms of a resolution of approval of a specific point in the policy, but the Congress has from time to time approved legislation which has been presented to it by the executive branch in fulfilling that policy.

Senator BYRD. For specific sales?

Mr. PICKERING. Yes. In addition, I think it has approved the general thrust of that policy in the sales under the foreign military sales credit legislation and the military assistance programs, all of which have been justified to the Congress on the basis of moving countries toward the state of self-reliance.

Senator BYRD. The executive branch came to the Congress in February 1972, for authority to make loans. Did you come to the Congress last year for authority to make sales?

Mr. SANDERS. We have ample authority in existing law under the Foreign Military Sales Act, and also under the United States Code, sir.

I would like to ask Mr. Forman to answer that in some detail.

Mr. FORMAN. Section 7305, title 10, of the United States Code authorizes the Secretary of the Navy to sell ships stricken from the naval register pursuant to other provisions of the United States Code, stricken as no longer required and unfit for naval service, and after the Chief, Naval Operations, has certified the ships aren't essential.

Senator BYRD. Then you have authority to make sales to dispose of a ship, but you do not have authority to make loan of a ship?

Mr. FORMAN. We do not have authority to make loans of major combatant vessels.

Senator BYRD. But you have authority to give it away, to dispose of it?

Mr. FORMAN. If it is a major combatant vessel and it is on the naval register, we do not have authority either to give it away under the foreign assistance program, or to sell it.

Senator BYRD. Is this correct, you take a major combatant vessel, and you have the right to strike that from the list, and then sell it?

Mr. FORMAN. That is correct, sir.

Senator BYRD. Do you have a right to strike that ship from the list and then loan it?

Mr. FORMAN. It could be stricken from the register and granted under the authority of the Foreign Assistant Act; yes, sir.

Senator BYRD. So there is no restriction on which ships you may strike from the record, that is your own decision; is that right?

Mr. SANDERS. That is right, sir.

Mr. FORMAN. Of course, if the ship is in a status condition that results in the appropriate finding by the inspection board that it is unfit for naval service—it has to meet that requirement. The Department of the Navy does not have the authority to strike it from the naval register for other reasons.

Senator BYRD. It is unfit for what?

Mr. SANDERS. Could I outline this procedure for the record, sir?

Senator BYRD. Yes.

Mr. SANDERS. As you are well aware, perhaps better than I am, the Navy has a large number of vessels well past their useful life. These vessels are surveyed by a highly competent board under a rear admiral. The ship is found either fit for further duty or unfit. The unfit finding goes to the cost of repair, the physical condition of the ship, the modernity of it, the status of the powerplant, and things of this type. That so-called insury report, which is rather voluminous, and in minute detail, is then reviewed by the Chief of Naval Operations. He must ask that the ship be stricken from the naval register. The request goes to the Secretary of the Navy, where within his secretariat the pertinent documents are again reviewed. And a ship cannot be stricken until the Secretary or someone acting for him strikes it formally, sir.

Senator BYRD. What I am trying to get answered is, why it is necessary to come to the Congress for approval to make a loan of a ship

when it is not necessary, you say, to come to the Congress to make a sale of a ship, completely dispose of it, and take it away from the United States.?

Mr. SANDERS. Under existing law we have no authority whatsoever to loan or sell a major combatant ship which has not been stricken from the naval vessel register. We come to Congress for the authority to do that, just as was done last year in February of 1972. There is authority, as Mr. Forman has cited, for ships which are excess to the Navy requirement; that is, have been stricken from the naval register, to be sold, granted to foreign countries. And we will be happy, sir, to put the pertinent sections of the law in both instances in the record if we might.

Senator BYRD. I would appreciate it if you insert the pertinent sections of the law in the record. Along with it, I wish you would put a suggestion as to how that law might be tightened, where you would come to the Congress before you dispose of these combatant ships. I don't oppose the program, I favor the program. But, it seems to me that you have a blank check, according to your testimony, the law now gives you a blank check on what you can do with them.

(The information follows:)

THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

CHAPTER 2—MILITARY ASSISTANCE

SEC. 503.¹⁸⁰ GENERAL AUTHORITY.—The President is authorized to furnish military assistance on such terms and conditions as he may determine, to any friendly country or international organization, the assisting of which the President finds will strengthen the security of the United States and promote world peace and which is otherwise eligible to receive such assistance, by—

(a) Acquiring from any source and providing (by loan or grant¹⁸¹) any defense article or defense service;

(b) Making financial contributions to multilateral programs for the acquisition or construction of facilities¹⁸² for collective defense;

(c) Providing financial assistance for expenses incident to participation by the United States Government in regional or collective defense organizations; and

(d) Assigning or detailing members of the Armed Forces of the United States and other personnel of the Department of Defense to perform duties of a non-combatant nature, including those related to training or advice.¹⁸³

THE FOREIGN MILITARY SALES ACT, AS AMENDED

CHAPTER 2—FOREIGN MILITARY SALES AUTHORIZATIONS

SEC. 21.⁸ CASH SALES FROM STOCK.—The President may sell defense articles from the stocks of the Department of Defense and defense services of the Department of Defense to any friendly country or international organization if such country or international organization agrees to pay not less than the value thereof in the United States dollars. Payment shall be made in advance or, as determined by the President to be in the best interests of the United States, within a reasonable period not to exceed one hundred and twenty days after the delivery of the defense articles or the rendering of the defense services.

¹⁸⁰ 22 U.S.C. 2311.

¹⁸¹ The words "or grant" were substituted for the words " , lease, sale, exchange, grant, or any other means" by sec. 201(b) (1) of the FAAct of 1967.

¹⁸² Sec. 201(a) of the FAAct of 1965 struck out the words "in foreign countries", which appeared at this point.

¹⁸³ Sec. 201(b) (2) of the FAAct of 1967 substituted a period for " ; and". Former subsection (e) was amended and redesignated sec. 525 by sec. 201(b) (3) (A) of the FAAct of 1967. Sec. 525 was repealed by sec. 45(a) of the Foreign Military Sales Act, P.L. 90-629. For text, see Statutes Repealed, p. 174.

⁸ 22 U.S.C. 2761.

TITLE 10, UNITED STATES CODE

CHAPTER 633—NAVAL VESSELS

7304. Examination by board; unfit vessel stricken from Naval Vessel Register

(a) The Secretary of the Navy shall designate boards of naval officers to examine vessels of the Navy. Each vessel shall be examined by a board at least once every three years, if practicable.

(b) When a board, in conducting an examination under this section, finds that any vessel is unfit for service or that an unfinished vessel in any naval shipyard cannot be finished without disproportionate expense, it shall submit a written report to the Secretary stating fully the reasons for its opinion. If the Secretary concurs, he shall strike the name of that vessel from the Naval Vessel Register. Aug. 10, 1956, c. 1041, 70A Stat. 451.

HISTORICAL AND REVISION NOTES

Source (United States Code).—34 U.S.C. 491.

Source (Statutes at Large).—August 5, 1882, ch. 391 2 (last 2 sentences), 22 Stat. 296; August 7, 1946, ch. 770 (par. 24), 60 Stat. 868.

EXPLANATORY NOTES

In subsection (a) the provision as to the examination of "all vessels on their return from foreign stations" is omitted as obsolete because ships are no longer assigned to foreign stations, but to fleet commands. No distinction is made in inspection procedures between vessels in fleets operating abroad and those in other fleets.

In subsection (b) the words "in opinion with said report" are omitted as surplusage. The words "naval shipyard" are substituted for the words "navy yard" to conform to current terminology. The name "Navy Register", is changed to "Naval Vessel Register", the present name of the publication, to avoid confusion with another official document known as the "Navy Register".

Disposal of Certain Uncompleted Vessels. Pub. L. 85-438, May 29, 1958, 72 Stat. 154, authorized the Secretary of the Navy to strike from the Naval Vessel Register and to dispose of the following uncompleted naval vessels: U.S.S. Kentucky; U.S.S. Hawaii; U.S.S. Lansdale; U.S.S. Seymour D. Owens; U.S.S. Lancefish; U.S.S. Unicorn; U.S.S. Walrus.

NOTES OF DECISIONS

1. Status of vessel stricken from Register. Although a board to examine vessels of the Navy, under former section 491 of Title 34, found a vessel "unfit for further service as a cruiser," and her name was stricken from the list of ships in the Navy Register, that did not necessarily muster her out of the service, and a vessel condemned by a board as unfit for a cruiser, but subject to the usual naval routine and put to kindred uses, her officers being subject to the same rules as before she was condemned, remained, as to those serving on her, as much a vessel of the Navy as before. *Pierce v. U.S.*, 1898, 33 Ct. Cl. 294.

7305. Sale of vessel stricken from Naval Vessel Register

(a) This section does not apply to a vessel the disposal of which is authorized by the Federal Property and Administration Services Act of 1949, as amended (40 U.S.C. 471 et seq.), if it is to be disposed of under that Act.

(b) The Secretary of the Navy shall appraise each vessel stricken from the Naval Vessel Register under section 7304 of this title. If he considers that the sale of the vessel is in the best interest of the United States, he shall advertise it for sale.

(c) The advertisement shall ask for sealed bids for the purchase of the vessel and shall be published for at least three months in newspapers used by the Department of the Navy for other advertisements. It shall—

- (1) state the name, location, and appraised value of the vessel to be sold;
- (2) state the day, hour, and place for the opening of the bids;
- (3) state that the sale will be for cash to the bidder submitting the highest bid above the appraised value of the vessel; and

(4) specify the period of time, after the opening of the bids, within which the successful bidder will be required to pay the remaining 90 percent of the amount bid by him.

(d) The Secretary shall—

(1) require that each bid be accompanied by a cash deposit of not less than 10 percent of the amount of the bid; and

(2) require that each bid be accompanied by a bond, with two or more sureties to be approved by him, conditioned on the payment of the remaining 90 percent within the time specified in the advertisement.

(e) The bids shall be opened at the time and place stated in the advertisement, and a record shall be made of them.

(f) If the bidder whose bid is accepted defaults in the payment of all or part of the remaining 90 percent of the amount of his bid within the time specified, his cash deposit of 10 percent of that amount shall be forfeited to the United States and the Secretary shall advertise the vessel again and resell it in the manner prescribed in this section.

(g) The cash deposit forfeited by a defaulting bidder shall be applied, first, to the payment of the expenses of the advertisement and resale of the vessel and, second, to the payment of the difference, if any, between the amount bid by the defaulting bidder and the amount for which the vessel is resold. Any balance remaining shall be covered into the Treasury.

(h) This section does not prevent a suit for breach of any condition of a bond furnished by a bidder.

(i) Each vessel sold as prescribed in this section shall be delivered to the purchaser upon full payment to the Secretary of the amount bid.

(j) The net proceeds of each sale under this section shall be covered into the Treasury.

(k) A sale under this section of a vessel the disposal of which is authorized by the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), is subject to regulations under section 205 of that Act (40 U.S.C. 486).

(1) Except as otherwise provided by law, no vessel of the Navy may be sold in any other manner than that provided by this section, or for less than its appraised value, unless the President so directs in writing. Aug. 10, 1956, c. 1041, 70A Stat. 451.

HISTORICAL AND REVISION NOTES

Source (United States Code).—34 U.S.C. 492.

Source (Statutes at Large).—March 3, 1883, ch. 141 5, 22 Stat. 599; October 31, 1951, ch. 654. 4(5), 65 Stat. 709.

EXPLANATORY NOTES

Subsection (a) and (k) are substituted for the first 17 words of 34 U.S.C. 492 to make it clear that these words have a dual purpose. In the case of a surplus vessel the disposal of which is covered by the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), these words authorize the vessel to be sold either (1) by the Administrator of General Services under that Act, or (2) by the Secretary of the Navy under 34 U.S.C. 492, subject to regulations issued by the Administrator of General Services under Section 205 of the Federal Property Act.

In subsection (b) the name "Navy Register" is changed to "Naval Vessel Register", the present name of the publication to avoid confusion with another official document known as the "Navy Register".

In subsection (h) the words "This section does not prevent" are substituted for the words "Nothing herein contained shall be construed to prevent".

NOTES OF DECISIONS

Bids less than appraised value—2.

Conclusiveness of bids—3.

Exchange of vessels—6.

Mandamus to compel delivery of vessel—4.

Removal of equipment from vessels—5.

Sale to foreign governments—7.

Terms and manner of sale—1.

1. *Terms and manner of sale.*—Under former section 492 of Title 34, providing for the sale of naval vessels, and stating that no vessel shall be sold in any other manner than the appraised value, unless the President of the United States shall otherwise direct in writing, the power of the President to direct a departure from said former section was not confined to a sale for less than the appraised value, but extended to the manner of sale. *Levinson v. U.S.* 1922, 42 S. Ct. 275, 258 U.S. 198, 66 L.Ed. 563.

2. *Bids less than appraised value.*—Former section 492 of Title 34 provided for the advertisement and sale of condemned vessels of the Navy and no such vessel shall be sold for less than the appraised value, and where the Secretary of the Navy had endeavored to comply with said former section, but no one was willing to pay the appraised value, the case was one not specifically covered by any statute, and in the absence of any such statute, the Secretary by virtue of his office and because of his general duty to care for and preserve the property of the Government under his control, had the right to reject all bids submitted and to dispose of such condemned vessel in such way as may seem to him to be most advantageous to the Government. 1910, 28 Op. Atty. Gen. 470.

3. *Conclusiveness of bids.*—The declaration of the Secretary of the Navy, acting under an Executive order authorized by former section 492 of Title 34, that a specific bid for a vessel offered for public sale was the highest, his approval of the price, and his execution of a bill of sale to the bidder, were conclusive in favor of such bidder, although a higher bid had in fact been sent in, which had been misplaced and overlooked. *Levinson v. U.S.* N.Y. 1922, 42 S. Ct. 275, 258 U.S. 198, 66 L.Ed. 563.

4. *Mandamus to compel delivery of vessel.*—The United States, as the owner in possession of a naval vessel, cannot be interfered with behind its back; nor can the courts compel the Secretary of the Navy who has the custody of such vessel, to surrender it in a mandamus proceeding to which the United States is not and cannot be made a party. *Goldberg v. Daniels*, Dist. Col. 1913, 34 S. Ct. 84, 231 U.S. 218, 58 L.Ed. 191.

Mandamus will not lie at the instance of one who, in response to advertisement, has made the highest bid for a vessel, to compel the Secretary of the Navy to deliver the vessel. *Id.*

The discretion of the Secretary of the Navy is not ended by receipt and opening of bids for a condemned naval vessel, even though they satisfy the conditions prescribed, and mandamus will not lie to compel him to accept the highest bid. *Id.*

5. *Removal of equipment from vessels.*—It is customary to remove from condemned naval vessels before sale such articles of outfit and equipage as may still be serviceable to the Government, and this custom does not depend upon any statute authorizing it, but is based upon the exercise of the general official power which the Secretary of the Navy has, in virtue of his office, to property committed to his control and to prevent unnecessary waste of Government property. 1910, 28 Op. Atty. Gen. 470.

The Secretary of the Navy may legally remove the engine and boiler from a naval barge for the future use by the Government, since the vessel has been found unfit for further service, and the highest bid received for the vessel was much less than the value of the engine and boiler. The hull, being valueless, may be sunk or destroyed. *Id.*

6. *Exchange of vessels.*—Secretary of the Navy could not exchange a vessel belonging to the Navy, which had been condemned as unfit for naval purposes, for another vessel, notwithstanding the exchange might be of advantage to the public service. 1874, 14 Op. Atty. Gen. 369.

7. *Sale to foreign governments.*—Under former section 492 of Title 34 vessels stricken from the Navy register may be sold to foreign governments. 1946, 40 Op. Atty. Gen. 436.

7307. *Restriction on disposal*

(a) Notwithstanding any other provision of law, no battleship, aircraft carrier, cruiser, destroyer, or submarine of the Navy may be sold, transferred, or otherwise disposed of, unless the Chief of Naval Operations certifies that it is not essential to the defense of the United States.

(b) Without authority from Congress granted after March 10, 1951, no battleship, aircraft carrier, cruiser, destroyer, or submarine that has not been stricken from the Naval Vessel Register under section 7304 of this title, nor any interest

of the United States in such a vessel, may be sold, transferred, or otherwise disposed of under any law. Aug. 10, 1956, c.1041, 70A Stat. 452.

HISTORICAL AND REVISION NOTES

Source (United States Code).—(a) 34 U.S.C. 546e (as applicable to ships); (b) 34 U.S.C. 493a-1.

Source (Statutes at Large).—June 28, 1940, ch. 440, 14 (as applicable to ships), 54 Stat. 681; August 7, 1946, ch. 770, (para. 29, 57), 60 Stat. 868, 871. March 10, 1951, ch. 4, 4, 65 Stat. 4.

EXPLANATORY NOTES

In subsection (a) the words "in any manner whatsoever", "Nothing herein shall be construed to repeal or modify sections 33 and 36 of Title 18", and the words "exchanged" and "hereafter" are omitted as surplusage. 34 U.S.C. 546e is superseded by the Act of June 30, 1949, ch. 288, 63 Stat. 378 (40 U.S.C. 471-514) as to property which may be declared excess and disposed of under the latter Act. The 1949 Act (40 U.S.C. 472(d)) excludes from its application "naval vessels of the following categories: battleships, aircraft carriers, cruisers, destroyers, and submarines." For this reason the words "No battleship, aircraft carrier, cruiser, destroyer, or submarine" are substituted for the words "no naval weapon, ship, . . . or which have been contracted for".

In subsection (b) the words "any law" are substituted for the words "Notwithstanding the provisions of the Mutual Defense Assistance Act of 1949, as amended, or the provisions of any other law".

Mr. SANDERS. Last year the special Subcommittee on the Transfer of Naval Vessels to Foreign Countries of your sister committee in the House conducted rather detailed hearings, and issued a report in October of 1972 in which they recommended that emphasis be placed on the sale of vessels rather than the loan, including those outstanding on loan. They also made a suggestion that Congress be notified in advance of the transfer—let me use that word again—of any ship to a foreign country. That report was just submitted to the Department of Defense in the past several weeks for comment, and is being evaluated now. A comment will be forthcoming shortly.

We would of course be happy to have a copy of our reply to the House Armed Services Committee made available to you, sir.

Senator BYRD. Correct me if I am wrong. There are now five statutes setting forth procedures for transfer of U.S. ships to foreign countries. Only one of those five laws, section 7507, title 10, U.S. Code, requires congressional approval. This law deals with loans of major combatant ships. Is that statement correct?

Mr. FORMAN. No; that law also applies to sales as well. It doesn't matter how you transfer the ship, whether it be a loan, sale, lease or any other transfer. As long as it is a major combatant ship on the naval register, it cannot be disposed of without an act of Congress.

Senator BYRD. Have any sales been made under that section of the law?

Mr. FORMAN. Yes, sir, there have been cases in the past where, in coming up to the Congress, we have asked for authority both to loan certain ships and to sell. For example, Public Law 89-324 authorizes in title 1 certain loans and in title 2 certain sales.

Senator BYRD. Why was it that the Defense Department, the Department of the Navy, as the case might be, came to the Congress last year in support of H.R. 9526, which proposed to loan five destroyers and two submarines to the Government of Spain, one destroyer and

two submarines to the Government of Turkey, two destroyers to the Government of Greece, two destroyers to the Republic of Korea, and two submarines to the Government of Italy. Why did you come to the Congress for that authority? Why didn't you exercise that under one of these five statutes?

Mr. FORMAN. Because those vessels at that time, and for the foreseeable future, were vessels which were fit for service, were on the naval register, and therefore, pursuant to section 7307, could not be disposed of by either loan or sales without congressional approval.

Senator BYRD. The distinction you make, then, is that these vessels were fit for service, that they could be fully utilized by the U.S. Government.

Mr. FORMAN. Yes, sir; assuming that the Navy had operation and maintenance funds to operate them.

Senator BYRD. Whereas you contend that those other vessels are not fit for service?

Mr. SANDERS. Right, and have been stricken from the naval register.

Senator BYRD. How many ships are involved?

Mr. SANDERS. We have some 287 ships out on loan or lease now.

Senator BYRD. Could we differentiate between loans—speaking now of sales—how many ships have been sold?

Mr. SANDERS. We have sold, sir, roughly from 1968 through 1973, 44 ships. We will be happy to insert the list with the countries involved in the record at this point if you would like, sir.

Senator BYRD. I believe I would like to do more than insert it in the record. Let's take the year 1968. How many ships were sold?

Mr. SANDERS. In 1968 there was one, sir.

Senator BYRD. 1969?

Mr. SANDERS. Eight, sir.

Senator BYRD. 1970?

Mr. SANDERS. Five.

Senator BYRD. 1971?

Mr. SANDERS. Fifteen, sir.

Senator BYRD. 1972?

Mr. SANDERS. Twenty six, sir.

Senator BYRD. What about this year, 1973?

Mr. SANDERS. Eight. And 11 in 1973, sir.

Let me add two tables. You would add 12 to your figure for 1972, sir. That is other than major combatant, the first figures I gave you were major combatants.

Senator BYRD. You say these are other than major combatants?

Mr. SANDERS. The last ones I gave you, sir.

Senator BYRD. But all of these ships, then, except four were major combatants?

Mr. SANDERS. Yes, sir; except in 1973. In 1972 we had 12 other than major combatants, that were sold. In 1973 we have sold 12 other than major combatants, 11 of which are very small crafts.

Senator BYRD. You gave me a total of 11 for 1973.

Mr. SANDERS. Yes, sir.

Senator BYRD. But it should be 13?

Mr. SANDERS. It should be more than that. I am sorry, I didn't realize I had the others. The total for 1973 should be 20; 8 major combatants and 12 others.

Senator BYRD. Eleven of those thirteen were major combatants, or 2 of the 13 were major combatants?

Mr. SANDERS. Eight major combatants, sir, in 1973. And I think those figures indicate the shift in policy.

Senator BYRD. Senator Nunn, do you have any questions?

Senator NUNN. Thank you, Mr. Chairman. I have no questions so far.

Senator BYRD. Let me change the subject just a moment. I think it is fair to say that the Defense Department and the Department of the Navy each was rather unhappy, should we say, that the Congress last year refused to give to the President the authority to extend the loans. Isn't that a fair statement?

Mr. SANDERS. I think a fair statement, sir, is that the administration requested the 5 year option, and an additional 5 year extension, and Congress saw fit in its wisdom not to give us that additional option, sir. We live by the laws that Congress writes. We are most happy to have had the loan itself.

Senator BYRD. What passes through my mind is that since the Congress refused to give the authority to extend the loans unilaterally without coming back to the Congress, then you are beginning to act under another section of the law which you contend makes it unnecessary to come to the Congress.

Mr. SANDERS. Senator, I don't think that is quite fair.

Senator BYRD. I don't want to be unfair, I just want to give you my impression.

Mr. SANDERS. We must differentiate between the two types of ships and the laws which Congress has given us and in fact directed us to operate under. We cannot and will not make loans of major combatant ships on the register of the Navy without specific approval by Congress. As Mr. Forman says, we cannot. Congress has given us ample authority to proceed with the sale or grant vessels not on the naval register, very clearly in the Foreign Military Sales Act, and in the section of the United States Code cited by Mr. Forman. We have notified in various forms or otherwise kept Congress informed when we do this thing, annually or as they have otherwise requested.

There is no intent whatsoever on the part of the Navy—and I think I can speak for State and the Office of the Secretary of Defense—to circumvent at all the will of Congress. That is the very last thing that any of us would desire to do. Certainly from my personal long background here on the Hill it would be unthinking on my part to attempt to circumvent the will of Congress. If Congress sees fit to change the authority which is on the statute books at this time, of course, we would abide by anything that it does. The authority is very clear, unmistakable in law as to the authority of the President that has been delegated to the Secretary of Defense to dispose of vessels not on the naval register.

Senator BYRD. Take these ships that the Congress approved to be loaned last year, if the Department of Navy were to strike those ships from the register then they could be disposed of without coming back to the Congress, could they not?

Mr. SANDERS. Under existing law that is right, sir.

Senator BYRD. Are you paid cash on those sales?

Mr. SANDERS. Let me ask Admiral Gerhard to speak to that.

Admiral GERHARD. Yes sir, we are paid cash, whether it is a FMS undertaking or not. The money will be deposited to the Treasury of the United States.

Senator BYRD. Have you been paid cash by the country to which you sell?

Admiral GERHARD. Yes sir.

Senator BYRD. Does any of that cash come from U.S. aid to that particular country?

Admiral GERHARD. To the best of my knowledge at this moment, no sir, not for the sale of the vessel. They may use MAP funds for renovation and repair work that they want done to the ship while it is in this country.

Senator BYRD. Are most of the sales to nations which are drawing financial assistance from the United States?

Admiral GERHARD. That would be awfully tough to answer off the top of my head. But the ones I am thinking of at the moment are pretty well spread across the spectrum. Those who are financially responsible—nowadays, for example, the more sophisticated European countries do not, there is no need for them to. There are countries that need our help, for example, Turkey and Korea.

Senator BYRD. I think it is a very good way to help our allies.

Admiral GERHARD. Yes sir.

Senator BYRD. Certainly I am not complaining about that aspect of it. The point that I am concerned about is whether the Defense Department should have the right to do this or whether it should require legislation of the Congress, just as it did last year to make these loans to our friends in Spain, Greece, Turkey, Italy, and Korea. That took legislation but apparently this doesn't. How do you set a price on the vessels?

Mr. SANDERS. The price is set, sir, basically at the scrap value if the ship has been stricken, plus equipment which is left on the ship, which would be of more than scrap value. It will vary with the price of scrap in the area where the ship is sold.

Admiral GERHARD. We do that, sir, if I may elaborate a little bit on the Secretary's comments, not in a vacuum by ourselves, we do that in conjunction with our Defense Surplus Sales Office on either east and west coasts. They know what the values are, the day-to-day values, we can say, in the various regions of the world. So it is more than just a guesstimate, it is a fairly accurate figure.

Senator BYRD. Do you know when these laws were enacted giving this wide discretion?

Mr. FORMAN. The Foreign Assistance Act itself was passed in 1961, but it goes back to 1951 in prior form.

Senator BYRD. That is what I am getting at. This is done under a part of the Foreign Assistance Act, is that correct?

Mr. FORMAN. The loans, if we lend it, other than through special legislation, that is done under the Foreign Assistance Act. And let me correct myself, it goes back to the Mutual Defense Assistance Act of 1949. Sales of the stricken vessels are done under the authority of

the Foreign Military Sales Act which was enacted in 1968. But that was just a recodification of language going back again to 1949. I am not sure when section 7305 was enacted. I assume it is an old statute with regard to the striking of ships from the naval register, because it is related to section 7304, which is the one which requires a survey every 3 years.

Section 7307 was passed in 1951 at the insistence of Carl Vinson, who realized, after the 1949 Mutual Defense Assistance Act had been passed, that that act constituted a blanket authority to dispose of any assets of DOD, and being concerned about the major combatant ships, he introduced this provision 7307 in 1951 to limit our general authority to make loans or sale of ships by a specific exclusion for major combatant ships of the naval register. So the law has been approximately in this position for the past 23 years.

Senator BYRD. That is what I was trying to think of.

It seems to me this is a case very much like something we ran into in the Defense Production Act of 1950. Under the Defense Production Act of 1950, the Department of Defense gave consideration to making a loan to the Pennsylvania Railroad for \$200 million. I submit that practically no Member of the Congress knew that that law was open to that extent. I presented an amendment in the Senate to put a \$20 million limit on the loans that could be made.

It occurs to me that we have another open-ended act enacted at approximately the same time. That was 1950. These laws were 1949, 1950, and 1951. I would be interested in the comment of any of you as to whether maybe these laws should be changed to require that the Defense Department come to the Congress before disposing of this Government property.

Mr. SANDERS. Let me comment, if I could, on that, sir, just very briefly.

We are talking about ships today. What you are mentioning would be equally applicable to other items of foreign military sales, including some of our aircraft sales. I question whether or not the Congress would want to be burdened by law with approval of the vast volume of foreign military sales. I can't give you a figure offhand as to how much this amounts to, but it is fairly substantial.

Mr. FORMAN. There are about 3,000 cases a year.

Senator BYRD. In ship sales?

Mr. FORMAN. No, all items of equipment. As to the 3,000 cases, I don't mean 3,000 particular items—I mean 3,000 separate sales contracts. A particular contract may cover, let's say, 50 airplanes, or 100 airplanes, and so forth.

Senator BYRD. This is another form of foreign assistance, isn't it?

Mr. PICKERING. I might add, Senator, Congress does approve the money amounts and the program figures in this program. This is a program that one has to go before the appropriate committee to get authorization for and an appropriation of the money amounts and the program ceilings involved in foreign military sales.

Senator NUNN. Might I ask one or two brief questions at this point?

Senator BYRD. Senator Nunn.

Senator NUNN. On the latter question of the chairman regarding whether or not this is foreign assistance in effect on a sale, do you try to arrive at a fair market value if there is any such fair market value—I don't know how you could arrive at it on a ship anyway, used ship—or do you consider yourself subsidizing a foreign nation on a sale, and do you consider yourself getting the best price you can for this country?

Mr. SANDERS. Basically, sir, two things. The purpose of the ship transfer program is to strengthen the friendly navies of the world in order that we might push ahead with the fulfillment of the Nixon doctrine, and make these navies, and small countries in particular, more self reliant.

Senator NUNN. Of course this came into effect long before the Nixon doctrine, didn't it?

Mr. SANDERS. Yes, sir. But I think if you will notice, the increase in sales has picked up very drastically, as the chairman said a minute ago, in 1972 and 1973. The ships are sold at a value, fair value, which generally is the scrap value, located where it is.

It has been mentioned that if we could ever shift over to a competitive bid, there might be some slight increase in return. I would question that. But we would face then the inability to make these ships properly available to smaller countries which simply cannot afford to bid against those with larger sources of income. This would defeat our basic purpose of trying to strengthen the navies of the free world so that they could take on some of the workload from the U.S. Navy, which is shrinking in size.

Senator NUNN. So even a sale, depending on how you value the particular item, is to some degree military, is that right?

Mr. SANDERS. Yes, I would say that.

Senator NUNN. And of course, clearly, loans would be in the form of military aid.

Mr. FORMAN. If I may respond to that, Senator. Basically under the Foreign Military Sales Act we are guided by pricing directives which were in force, when the sales program was part of it under the Foreign Sales Assistance Act. We are selling what might be described as three categories of equipment. First, equipment which comes from new procurement, where we go out and buy it specifically for a foreign country, in effect acting as their agent. And there are a number of ships being built in the U.S. shipyards today for foreign governments. The price we charge that foreign government is the contract cost to the U.S. Government plus a surcharge for administrative and other overhead costs.

If we are selling it from inventory, we sell the item at a standard price which will pertain to a comparable transaction between one military department and another. For example, if you were transferring a helicopter from the Army to the Marine Corps, the Marine Corps would pay the Army the same price that we would charge the foreign customer. With respect to long supply or excess property, there we are obviously dealing not with first line equipment, but with equipment that is generally used and in some state of disrepair. For most such items we have condition codes. And depending on the condition of the

equipment, and its state of obsolescence, we determine a price, which may go from, let's say, 90 percent down to 5 percent.

These ships are somewhat in that latter category. We don't apply the condition code to them, because there is no point in applying a condition code to something which is unfit for service. When you are talking about a naval ship, a warship, it obviously doesn't have a commercial market such as a steamship or a tanker. And therefore your basic market value would be scrap value. And as the Secretary has described, this is what we get. So I would say in essence that really, when we are talking about sales, we are not talking about any subsidy or military assistance.

We have for the purpose of reporting to the Congress generically included the foreign military sales program and the military assistance program within the context of our term "security assistance," in the broad framework. But FMS is not a subsidy program, and is not assistance in that sense.

Senator NUNN. That is all I have.

Senator BYRD. Thank you, Senator Nunn.

Mr. Pickering, you mentioned that this matter is subject to congressional appropriation.

Mr. PICKERING. The funds under the Foreign Military Sales Act that are used for credit—for example, for rehabilitating the ships—if we were to use that money for rehabilitating ships, it would be subject to congressional appropriation authorization.

Senator BYRD. But the sale of the ship itself presumably is paid for by the other countries; it is not an appropriation.

Mr. PICKERING. That is right. Subject to the rules which Mr. Forman has outlined in the legislation. But beyond that it is not subject to an approval by the Congress, other than reporting arrangements which the Secretary has talked about.

Mr. FORMAN. I might add that there are, of course, limitations in the statute governing sales. There are, apart from the problem of obtaining new obligational authority for credit and guarantees, a number of congressional constraints on the whole program, including sales. There are requirements for Presidential findings as to eligibility of a country to purchase. There are certain ceilings imposed with regard to the total amount of grants of assistance and sales and vessels loaned to the Latin American and the African regions.

There are constraints with regard to the controls on use, and third country transfers which we must obtain the other countries' agreement to. And there are certain constraints with regard to the furnishing of sophisticated weapons to less developed countries. There is a special sense of Congress against aiding dictators, and a caveat, a caution to us not to engage in arms races. All in all, there are about 40 congressional restrictions in that one statute that we have to comply with, Senator. We appear annually, of course not before this committee, but we do appear before the Foreign Relations Committee of the Senate, the Foreign Affairs Committee of the House, and the two Appropriations Committees. Our programs are thoroughly reviewed by the Congress, and every year we usually have one or more restrictions added to it. So it is not a program which is free of congressional control by any means.

Senator BYRD. Maybe I don't understand it, then. I was under the impression that you told us sometime ago, early in this hearing, that you have the authority to make the sales without coming to Congress.

Mr. FORMAN. Congress has given us the authority to make the sales without coming back on a case-by-case basis. However, the Congress has, in giving us that authority, imposed, as I said, about 40 restrictions which we must comply with in making those sales. If, for example, we were to strike one of those ships from the naval register for sale to a Latin American country, the amount of that sale would have to be charged against the regional ceiling we have for Latin American transactions. So there is congressional control.

Senator BYRD. You say that you are prohibited by the Congress from selling ships to dictator-controlled countries?

Mr. FORMAN. I didn't say there was a prohibition against doing it, but it was the sense of the Congress that we should not.

Senator BYRD. Have you been complying with that sense of the Congress?

Mr. FORMAN. Yes, sir. I was very abbreviated when I mentioned that. And I prefer to give you the exact text.

Senator NUNN. May I ask you if Congress defined dictator?

Mr. FORMAN. No, they didn't. But it is not just a matter of prohibition.

Let me read the language. This is section 1 of the Foreign Military Sales Act. And it is the last paragraph:

It is further the sense of Congress that sales and guarantees under Sections 21, 22, 23 and 24 shall not be approved where they would have the effect of arming military dictators who are denying the growth of fundamental rights of social progress of their own people, provided that the President may waive this limitation where he determines that it would be important to the security of the United States, and properly so report to the Speaker of the House and the Foreign Relations Committee of the Senate.

And we do comply with that. This section of law is taken into account before we make such sales. We, of course, are guided by the State Department in this respect.

Senator BYRD. In this House bill which was passed last year, H.R. 9524, the United States may lend five destroyers and two submarines to the Government of Spain. That was enacted in the spring of 1972. I note that the U.S.S. *Capp*, DD-550, was stricken from the naval vessels register on October 1, 1972, as the ship was unfit, and not essential to the defense of the United States. It was sold on December 27, 1971, to the Spanish Navy as surplus equipment. That is a correct statement, I assume.

Mr. SANDERS. Yes, sir.

Senator BYRD. Now, how many destroyers have been loaned to Spain under this act?

Mr. SANDERS. Under the act to which you referred, sir, there have been two destroyers loaned to Spain.

Senator BYRD. How many destroyers have been sold to Spain?

Mr. SANDERS. Under the act you referred to, there have been no destroyers sold to Spain.

Senator BYRD. The act didn't have anything to do with sales. It was only loans.

Mr. SANDERS. Since the act, there have been five destroyers sold to Spain, one of which was the *Capp*.

Senator BYRD. It seems to me that that in itself justifies my impression that the sales are being used to get around what the Congress denied the Defense Department the right to do, namely, to renew the loans at the end of the 4 years.

Mr. SANDERS. Let me point out, sir, that the *Capp* was authorized for loan to Spain in May 1957. The loan was extended on three other occasions by the Congress.

Senator BYRD. Leave the *Capp* out of it. You just testified a moment ago that five destroyers were sold to Spain.

Mr. SANDERS. That is right, sir; all of them on loan to Spain, with the initial transfer date having been from 1957 through 1960.

Senator BYRD. If they had not been sold, you would have had to come back to Congress before the loan could have been renewed, wouldn't you?

Mr. SANDERS. I would have to check the extent of those loans, sir. In the instance of two of those they would have expired, the loan would have expired anywhere from 1972 to 1977 without additional authorization.

Senator BYRD. But, at the end of that time——

Mr. SANDERS. They would have had to come back; yes.

Senator BYRD. Under this new law?

Mr. SANDERS. Yes, sir.

Senator BYRD. But, by selling them it was not necessary to comply with the provisions of the new law?

Mr. SANDERS. I believe the provisions of the new law, sir, with reference to no options and no extensions, applied only to the loans authorized under that act, and it was not retroactive for any other act.

Senator NUNN. Would you yield for one question, Mr. Chairman.

Senator BYRD. I yield.

Senator NUNN. Not having been here, I am not sure of what the intent of Congress was. Do you interpret the intent of cutting off the loan as being one to encourage the sales that did take place, is that what Congress was saying, or were they trying to terminate in effect the ship being in those particular countries?

Mr. SANDERS. I think that on these ships set out in Public Law 92-270 we interpret that the Congress would like for these loans to be for 5 years. Now, subsequent to this enactment, the House Armed Services Committee filed a report which encouraged the Department of Defense to sell ships on loan.

Senator NUNN. It would seem to me that nobody would ever want to buy one if they could continue to borrow them.

Mr. SANDERS. I think the facts are a little bit to the contrary, sir, and I will ask Admiral Gerhard to expand on this, if you would like. A number of countries who have ships on loan would like very much to buy the ships that they have out on loan, so that they can become their property.

Senator BYRD. They are buying these vessels at salvage value and are paying very little for them.

Senator NUNN. I would think that having a limitation on a loan would encourage the sale.

Mr. SANDERS. That is right, sir.

Senator NUNN. If they felt it would be a perpetual loan it would be a different thing.

Senator BYRD. That is right. Up to last year, the President had the authority to unilaterally renew the loan without coming to Congress.

The law requires termination of ship loans when the President determines they no longer contribute to the defense needs of the United States. If the ships are sold, both the Congress and the Nation lose control. Would you care to comment on that observation?

Mr. SANDERS. I will comment, sir, and then ask Mr. Forman once more to add to this.

When a ship is sold it is sold with very specific restrictions on it, some of which were discussed with you last year. The Department has recently taken steps to further strengthen the sales agreement.

For example, our new agreement provides that the use of the ships sold shall be only for the purpose specified in the Mutual Defense Assistance Agreement between the U.S. Government and the purchaser, or any bilateral or regional defense treaty which we might have with them, that it must be limited to internal security, self defense, and/or civic action.

Ben, would you like to elaborate on that?

Mr. FORMAN. Yes. That goes, of course, to the question of what use they put it to. In addition to that, we have the same control as to their disposition of it, when they no longer require it. They cannot sell it, give it away, or scrap it without our consent.

Senator BYRD. If you sell to X country 5 years later, X country can sell it if it wishes to?

Mr. FORMAN. That is correct, but they have to come back to the U.S. Government and get our permission if they want to sell to another country.

Senator BYRD. In 1971 the United States sold 15 major combatant vessels and 1 nonmajor combatant vessel.

So that is 16 vessels, 15 of which were major combatant vessels; is that right?

Mr. SANDERS. I now note that I included one ship twice, so there is actually only a total of 15, all major combatants.

Senator BYRD. Now, how much money did the United States get in cash for those vessels?

Mr. SANDERS. Could I give you a rough idea of the cost of the ships, and then supply the total? Because I don't have it added.

Senator BYRD. Surely.

Mr. SANDERS. The destroyers which were sold, sir, in that time frame were sold for between \$150,000 and \$225,000.

Senator BYRD. Each?

Mr. SANDERS. Each; yes, sir.

The total cost received was \$2.68 million.

Senator BYRD. What does a destroyer cost these days?

Mr. SANDERS. I am not too sure whether you are talking about a DD-963, sir, or one of our others. The 1052-DE class, if my memory is right, is running somewhere around \$31 million. The DD-963, the more modern class, is running around \$93 million. Obviously we are

building modern up-to-date ships with modern equipment, armament, and everything else. These ships which are sold, I repeat again, are unfit for service. They are also uneconomical to overhaul and repair.

There has to be a detailed finding by our insurv board as to the ability of this ship to do its job. And when those conditions are met, that the ship is of no value to the United States at all, it is sold for basically the scrap value, unless there is equipment on board which is of value, and that of course is added to the scrap value.

Senator BYRD. These figures that you mentioned, did the United States actually receive money for that, or was a certain amount deducted from the foreign aid assistance that that particular country would get?

Mr. SANDERS. Let me repeat. Our sales program is straight transactions.

Admiral Gerhard has just done a little research which might help you in your question, that the original cost of the ships that were sold ran between \$3 to \$7 million.

Senator BYRD. Do the proceeds from the sale of ships go to the U.S. Treasury?

Mr. SANDERS. Yes, sir. It is a very complicated affair. The basic proceeds from the sale of ships of this type go into miscellaneous receipts of the Treasury. It gets fairly complicated as to how other ships sold under other programs are handled. There is a slight change where we are actually selling a ship with the intent to replace it. And to be quite frank with you, I can't remember that happening, except in some small craft, where that money would go back into our shipbuilding and conversion Navy appropriation.

In the following budget to the Congress we would, of course, show that as reimbursable in our budget column, and the money would be looked at as Congress acts on the budget requests.

Senator BYRD. Let's take 3 years, 1971, 1972, and 1973. Which countries were involved in those years?

Mr. SANDERS. Let me take 1971 first, if I could, sir.

First, Greece, Iran, Mexico, the Republic of China, Spain, Argentina, and Turkey. That is it.

Senator BYRD. What about 1972?

Mr. SANDERS. In 1972, Venezuela, Iran, Brazil, Turkey, Greece, Argentina, Colombia, Republic of China, Uruguay, Spain, Chile, and Mexico again.

Senator BYRD. And 1973?

Mr. SANDERS. In 1973, Argentina, Turkey, Indonesia, Chile, and Mexico.

Senator BYRD. I don't know whether Generalissimo Franco would like being classified as a non-dictator or not.

One of the most interesting days I ever spent was with him. I was doing some newspaper work. I had just been with Premier Salazar in Portugal, and I mentioned to the Generalissimo, I said, "I just had a most interesting time last week with Premier Salazar."

And he said: "Yes, you know, I told Salazar, I said 'Salazar, you don't act enough like a dictator.'"

How many ships are currently on loan pursuant to section 7307, title 10?

Mr. SANDERS. I am not too sure, sir, at this time. I can differentiate between—

Senator BYRD. Would you provide it for the record?

Mr. SANDERS. I can tell you the number of ships we have on loan—68 on loan.

Senator BYRD. Would you provide a list of all ships under lease to foreign navies?

Mr. SANDERS. I would be happy to.

(The information follows:)

LISTING OF U.S. NAVY SHIPS AND CRAFT ON LEASE TO FOREIGN NAVIES AS OF
MARCH 31, 1973

ARGENTINA

Dry Tortugas (ATF-H001), *Sombereo Key* (ATF-G001), *Salish* (ATA-187), *Catawba* (ATA-210), YTL-426, YTL-441, YTL-445, YTL-446, YTL-443, YTL-444, ARD-23.

BRAZIL

Outagamie County (LST-1073), *Grant County* (LST-1174), AFDL-39, ARB-12, ARD-14, YFN-903.

CHILE

Aventinus (ARVE-3), *Tekesta* (ATF-93), LSM-44, *Arikara* (ATF-98), *Genesee* (AOG-8), ARD-32.

COLUMBIA

Ruckamkin (LPR-89), *Tonti* (AOG-6), *Choctaw* (ATF-70), YR-66, YTL-231, YFR-443, YFND-6, ARD-28, C-5866 hydrosound boat.

COSTA RICA

C-30407, hydrosound boat.

DOMINICAN REPUBLIC

Sagamore (ATA-208), YO-213, YO-215, *Kiowa* (ATF-72), YTL-600.

ECUADOR

Cusabo (ATF-155), *Enright* (APD-66), FS-525, AN-27, ARD-17, YR-34, YW-131.

EL SALVADOR

C-30412, hydrosound boat.

GREECE

Fort Mandan (LSD-21), *Page County* (LST-1076), MSL-33, MSL-35, MSL-39, *Tombigbee* (AOG-11), MSL-40, *Gibbs* (AGOR-1), YTM-767.

GUATEMALA

YR-40.

HAITI

Tonawanda (AN-89).

HONDURAS

C-30408, hydrosound boat.

ICELAND

C-30411, hydrosound boat.

INDONESIA

LST-601, LST-839, AD-31, MSC-193, MSC-195, MSC-196, MSC-192, MSC-191, C-25385 35' P-boat.

IRAN

Amphion (AR-13), ARCO (ARD-29).

ITALY

Whitley (AKA-91), *Bannock* (ATF-81), *Desoto County* (LST-1171), *York County* (LST-1175).

KOREA

Tillamook (ATA-192), AKL-28, *Benica* (PG-96), C-304 hydrosound boat, C-30410 hydrosound boat, YO-59, YO-179.

MALAYSIA

Hunterdon County (LST-838).

MALTA

PCF (C-6823), PCF (C-6823).

MAURITIUS

26-ft motor whale boat.

MEXICO

Park County (LST-1077), YPD-43, YD-180, YD-203, YD-156, YD-157, YD-183, ARD-15, AFDL-28.

NEW ZEALAND

Davis (T-AGOR-5).

NICARAGUA

30-ft motor whale boat.

PARAGUAY

AFDL-25, YR-37, YTL-211, YFB-82, YFB-86.

PERU

Pinto (ATF-90), YW-122, ARD-8, YR-59.

PHILIPPINES

USCGC *Netile*, *Caddo Parrish* (LST-825), *Madera County* (LST-905), a *Krishina* (ARL-38), *Kukui* (WAK-186), *Firm* (MSO-444), *Energy* (MSO-436), LST-222, LST-488, LST-546, AFDL-20, YOG-73, AFDL-44, YD-191, YTL-427.

REPUBLIC OF CHINA

Namakagon (AOG-53), *Mahopac* (ATA-196), *Mark* (AKL-12), *Cahokia* (ATA-186), *Elkhorn* (AOG-7), *Winsor* (ARD-22), *Keathley* (AGS-35).

SINGAPORE

Holmes County (LST-836).

SPAIN

Dynamic (MSO-432), *Pivot* (MSO-463), *Persistent* (MSO-491), *San Marcos* (LSD-25), LCU-1471, LCU-1491.

ST KITS

LCU-1609.

THAILAND

Stone County (LST-1141).

TURKEY

ARD-12, *Sioux* (ATF-75), API-47.

URUGUAY

Chickadee (MSF-59), LCM-6.

VENEZUELA

Marietta (AN-82), *Quirinus* (ARL-39), *Tunxis* (AN-90), *Waxsaw* (AN-91), *Utina* (AFT-163), ARD-13, *Oswegatchie* (YTB-515), *Sassacus* (YTM-193), *Wannalancet* (YTM-385), YR-48.

VIETMAN

YD-230, *Coconino County* (LST-603), *Bolloch County* (LST-509), *Prowess* (IX-305), *Harnett County* (LST-821), *Jerome County* (LST-848).

Senator BYRD. Is it a reasonable assumption that the loan procedures are a means of disposal of unwanted ships by the Navy?

Mr. SANDERS. They are really a means of making ships which the Navy can no longer afford to operate but which are still fit for service available to foreign navies and with a capability to operate them, whether or not they are operating at the great distances that we have. Obviously, to dispose of one, it is a ship which is unwanted by the Navy.

Senator BYRD. Recent Navy notifications indicate that major combatant vessels on loan are being stricken from the register and sold. You have commented on that.

Mr. SANDERS. Yes, sir.

Senator BYRD. What ships, if any, have been recalled by the United States at the expiration of the loan?

Mr. SANDERS. There has never been a ship recalled by the United States, sir, at the expiration of a loan.

Senator BYRD. At that point, I would like to refer again to the act of last year which authorized the lending of five destroyers and two submarines to Spain. As I recollect your reply to one of my questions, three destroyers under that section have been loaned to Spain?

Mr. SANDERS. Two, sir.

Senator BYRD. What about the submarines?

Mr. SANDERS. Two.

Senator BYRD. That act also authorizes one destroyer and two submarines to Turkey. How many of those have been loaned?

Mr. SANDERS. One destroyer and two submarines, sir.

Senator BYRD. Two destroyers were authorized to the Government of Greece. Have those two destroyers been loaned?

Mr. SANDERS. No, sir, they have not, sir.

Senator BYRD. Have any sales of destroyers to Greece been made during 1972 and 1973?

Mr. SANDERS. In 1972, sir, July, there was a sale of one destroyer. None in 1973.

Senator BYRD. So while the act of last year authorizes the loan of two destroyers, Navy has sold three destroyers, but made no loans.

Mr. SANDERS. That is right, sir.

Senator BYRD. Now, two destroyers were authorized to the Republic of Korea. Have those two destroyers been loaned?

Mr. SANDERS. Two, sir.

Senator BYRD. They have been loaned?

Mr. SANDERS. Yes, sir.

Senator BYRD. And two submarines were authorized to the Government of Italy.

Mr. SANDERS. They have been loaned, sir.

Senator BYRD. Would you provide for the record the directives which prescribe the procedures for the recall of ships?

Mr. SANDERS. Yes, sir.

(The information follows:)

PROCEDURES FOR RECALL OF NAVAL VESSELS

Any decision for the recall of a ship on loan or lease to a foreign country would originate from the Secretary of State, after consultation with the Secretary of Defense, because of the international political implications of such a decision. As no vessel has ever been recalled, there is no precedent for procedures for recall. A specific procedure for the recall of a vessel would be developed for each case at the time recall was being considered. Such case-by-case consideration would take into account the political, economic, and security factors affecting U.S. relations with both the country and the region concerned. Such a procedure would address the reason for the recall (such as the outbreak of war in which the United States were involved, or a political decision to impose sanctions on the government concerned), the method of implementing the decision (diplomatic notification, negotiations with the government concerned, and notification through military channels), and the circumstances of the moment (such as the security of sea lanes, the condition of the vessel and the feasibility of measures to recover the vessel).

Senator BYRD. These would include ships on loan, or lease, as a result of its improper utilization by the nation having custody. But, you have recalled no ships?

Mr. SANDERS. We have recalled none. We have had some 33 returned to us, sir.

Senator BYRD. They were on loan?

Mr. SANDERS. On loan, yes, sir.

Senator BYRD. In view of these recent announcements on striking ships from the naval register, can we conclude that in the future loaned ships under Public Law 92-270 will not be returned as the law requires when the loan expires?

Mr. SANDERS. I think it is too early to make a statement like that, sir, at all. We haven't even finished lending the ships which the law authorized us to lend.

Mr. FORMAN. If I may interject at that point, technically, of course, before a ship could be sold, if we were to sell any of these ships, they would in fact be returned to the U.S. Navy, so there would not be any inconsistency between what happened in that hypothetical case and the requirement of the case, because the ship would in fact be returned.

Senator BYRD. Is it reasonable to conclude also that the Navy will not also be seeking congressional authority for loan extensions.

Mr. SANDERS. I know of no request that we have for loans at this time, sir. That doesn't mean we will not request more.

Senator BYRD. But you have no plans for any more?

Mr. SANDERS. Not as of this moment.

Senator BYRD. Does the law now permit the Navy to strike any capital ship and to dispose of all stricken ships without any congressional authority?

Mr. SANDERS. Yes, there are no questions on that, sir.

Senator BYRD. If that is so, would you agree that the executive branch has deprived the legislative branch of its authority?

Mr. SANDERS. No, sir, I would not at all. We have taken these actions under specific laws passed by the Congress.

Senator BYRD. You feel that the Congress has given authority?

Mr. SANDERS. Complete and ample authority, yes, sir.

Senator BYRD. That brings up the question which we started to discuss before and didn't. Do you feel the law could be changed in any

reasonable way to preserve the authority of the Congress, and not get into the very small transactions? I don't think the Congress, as you said a moment ago, wants to get into a multitude of small transactions. Could anyone recommend a reasonable change in the law which would be satisfactory both to the executive branch and to the congressional branch?

Mr. SANDERS. Let me point out, sir, if I might—and speaking only with reference to ships if I could—the House Armed Services Committee has, as I mentioned, filed a report of October of 1972. In the last couple of weeks it asked the Department of Defense to comment on the recommendations in that report. This matter is being studied in some detail now. One of those recommendations was that the Department of Defense notify the Congress prior to the transfer—and I use “transfer” as a general term—of any ship. We are trying to work out a reply and a reaction to that at the present time. I think I would be a little forward if I were to speak for the Department now. I will be more than happy, sir, to see that your committee is furnished with a reply that goes to the House Armed Services Committee, and that might well be the vehicle to meet your problem.

I would once more strongly urge all of us to look very carefully at statutory requirements in their respect. We have a way of becoming very, very hamstrung, bogging down ourselves with the transfer of property and things of this type.

Senator BYRD. We are talking about the property of the taxpayer.

Mr. SANDERS. Yes, sir.

Senator BYRD. Statutory authority also needs to be watched very carefully because of the broadness to which it can be construed.

Mr. SANDERS. There is no question on that, sir.

Senator BYRD. If we might discuss Public Law 92-270 for a moment, the law is clear that those ships be returned at the expiration of the loan. Can the committee have assurance that these will be returned in accordance with the law?

Mr. SANDERS. I would hesitate, sir, in the light of other existing laws, which would, if these ships are stricken from the naval register while they are on loan, and therefore eligible under law for sale, to make any assurance at this time. Obviously under the laws as they exist we have the options only of selling or returning.

Mr. FORMAN. Again, the Secretary is talking about return in the sense of bringing them back to the United States and mothballing them. As to that, he is not willing to give you any assurance.

But unquestionably they will be returned to the United States, to U.S. custody. And the only unanswered question he doesn't know at this point is whether we would bring them back here to be mothballed, or request the Congress for an extension, or, depending upon the status of the ships, whether they might be boarded and declared unfit for service and sold. But in any event, the law will be complied with, and the ships will be returned.

Senator BYRD. Would you provide the committee with a list of all loans which have already expired?

Mr. SANDERS. Yes, sir.

(The information follows:)

LISTING OF THOSE MAJOR COMBATANTS ON EXPIRED LOAN TO FOREIGN COUNTRIES UNTER TITLE 10, UNITED STATES CODE, SEC. 7307

Country and ship	Authority	Expiration	Remarks
Brazil: Lewis Hancock (DD-675)	Public Law 89-324	July 2, 1972	Sales negotiations underway.
Chile:			
Spot (SS-413)	Public Law 85-532, extended by Public Law 90-224.	Jan. 12, 1972	Preparations for sale negotiations have been initiated.
Wadleigh (DD-689)	do	July 26, 1972	Do.
Rooks (DD-804)	do	do	Do.
Greece:			
Lapon (SS-260)	Public Law 83-188 as amended by Public Law 84-948 extended by Public Law 90-244.	Aug. 10, 1972	Do.
Brown (DD-546)	Public Law 87-387, extended by Public Law 90-224.	(Sept. 27, 1972 do)	Do.
Bradford (DD-545)	Public Law 90-224.		
Peru: Isherwood (DD-520)	Public Law 85-532, extended by Public Law 90-224.	Oct. 8, 1966	Status under review by State.
Philippines: Booth (DE-170)	Public Law 89-324	Dec. 15, 1972	Sales negotiations underway.
Republic of China: Kimberly (DD-521)	Public Law 89-398	June 2, 1972	Preparations for sales negotiations have been initiated.
Pakistan: Diablo (SS-479)	Public Law 87-387, extended by Public Law 91-682.	June 30, 1969	Status under review by State pending exchange on diplomatic notes with Pakistan.

Senator BYRD. Are there many on that list? I don't want to take very much time, but do you have an approximate number?

Mr. SANDERS. I couldn't guess at it, sir.

Senator BYRD. A good many ships?

Mr. SANDERS. Loans have expired, and the ships have been returned to us, no, sir.

Senator BYRD. What loans have expired and the ships have not been returned, what loans have expired and the ships have been returned?

Mr. SANDERS. Congress has authorized the loan of 132 ships, sir. We have loaned under that authorization 101; 33 of those have been returned. We have 68 out on congressional authorized loans now. Of the 33 that were returned to us, in the context that Mr. Forman is using return in a legal sense rather than a return to the continental United States physically, 12 have been sold to the countries that originally held them for continued operations, and the remainder have been sold for scrap.

Senator BYRD. And the United States received the money for that?

Mr. SANDERS. Yes, sir.

Senator BYRD. What is the Department of Defense policy with respect to loaning and leasing ships?

Mr. SANDERS. I think I mentioned that our basic policy for ship transfers is of course set out by the State Department. We follow this program to build up the navies of the friendly forces of the free world, loaning, making them available to them by transfer, ships generally speaking which are no longer required by the U.S. Navy, except where we come to Congress for specific authority for those on the naval register.

Mr. Pickering may want to elaborate on that.

Mr. PICKERING. I think with the earlier statement I made, Mr. Secretary, on the new emphasis in the policy amply states our intentions.

Senator BYRD. What does the law on lease agreements provide as to the return of ships under lease at the expiration of the lease?

Mr. SANDERS. Admiral Gerhard.

Admiral GERHARD. On loan and lease agreements, loan being the article 503 of the Foreign Assistance Act, and the lease, in those general provisions we indicate the time of termination by mutual agreement between the parties, by the borrower government on 30 days' written notice, by the lender government on any national emergency declared by the President or Congress, or upon 30 days' written notice to the borrower government. And it is to be returned to the United States.

Senator BYRD. Could you tell the committee the Department of Defense plans for the disposal of major combatant vessels in fiscal 1974.

Admiral GERHARD. We have no firm plans, sir. We have tentative plans, as far as particular sales that you are addressing. We have a list of ships that are currently on loan that recipient countries have requested to purchase through foreign military sales. And these at the present time are loan terminations ranging from 1975 through 1977 for Turkey. And these are all submarines. And this request was received here very recently.

Senator BYRD. That is a request for sales, and not for loans?

Mr. SANDERS. Yes, sir.

Admiral GERHARD. For loans we don't have anything at the moment, sir, there are no plans for loans except for three destroyers to Spain and two destroyers to Greece which were authorized by Public Law 92-270.

Senator BYRD. During last year's hearings the Departments of State, Defense, and Navy emphasized that the ship loan arrangements with friendly nations were essential to our foreign policy. I assume that it is still so regarded.

Mr. SANDERS. No question, sir.

Senator BYRD. But there are no plans for loans during fiscal 1974?

Mr. SANDERS. At the present time there are none, sir.

Senator BYRD. However, there are plans for sales which are not subject to congressional action?

Mr. SANDERS. There are potential sales which have been requested, sir, which will be made under the authority of the law that presently exists.

Senator BYRD. An additional congressional act is not required?

Mr. SANDERS. No, sir.

Senator BYRD. An additional congressional action for loans is required?

Mr. SANDERS. No, sir. Only if there are major combatants still on the rolls of the Navy. The ships that we are discussing here to which Admiral Gerhard refers are ships which have been stricken from the naval register.

Senator BYRD. I understand. But they are major combatant vessels?

Mr. SANDERS. Yes, sir, very definitely.

Senator BYRD. They have been stricken unilaterally by the executive branch?

Mr. SANDERS. Yes, sir, no question.

Senator BYRD. So by unilateral action, the executive branch can make loans or sales merely by striking the ship from the register?

Mr. SANDERS. That is right, sir, only in the case of sales.

Senator BYRD. That seems to be the point at issue, whether it is wise to continue that open-ended arrangement.

Mr. SANDERS. Yes, sir. And this, as I mentioned, is a policy which is under discussion in the several departments concerned at the present time, as requested by the Congress.

Senator BYRD. It is a program that seems to me to have a great deal of merit and appeal. It is a good way of helping our allies. The broadness of the authority that the executive branch has is the only aspect that I question.

Mr. SANDERS. Let me suggest for the record—I know I don't need to do this with you, sir—in case there is any idea implanted in the minds of anyone reading this hearing that the policy of striking ships that is exercised promiscuously, it is not. There are very solid, careful criteria spelled out before a ship is stricken from the record, as I outlined earlier, with the very detailed survey, and then the approval of the Chief of Naval Operations and the Secretary as required by the law.

Senator BYRD. I would hope so, and I would assume so.

Mr. SANDERS. Yes, sir.

Senator BYRD. Be that as it may, under the law as it exists, or under the law as you interpret it, and under the law as you explained it, the unilateral authority exists with the executive branch.

Mr. SANDERS. Yes, sir.

Senator BYRD. I want to thank all of you very much for being here today. I think it has been a very helpful hearing.

Before closing, counsel has a question.

Mr. GARCIA. What are the procedures for striking from the register and subsequent sale? Do you strike first and then sell, or sell before you strike?

Mr. SANDERS. No, we must strike before we have the authority to sell.

Mr. GARCIA. In response to the chairman's letter yesterday I noted the John R. Perry, a destroyer being sold to Indochina. The offer is dated January 26 by the Navy. The acceptance of the offer is January 26, 1973, but it is not scheduled for strike until February 20, 1973.

Mr. SANDERS. The offer is subject to the insurv report being made at that time. It is very long and voluminous. We know from the age of the ship that something like there is an excellent, probably an 80- or 85-percent chance or higher, that it is no longer required. The ship, however, cannot be sold until it has actually been stricken. And if the John R. Perry is not stricken, the normal—and Admiral Gerhard, you correct me on this—the normal tendency is to look for an additional destroyer which might be stricken.

Mr. GARCIA. It may be fine print which is not here, but what we have is an offer made on the 26th of January, accepted on the 26th of January, and the strike date is February 20. So where you have an offer and an acceptance, I presume under international law it is the same as it would be anywhere else, it constitutes a contract.

Mr. SANDERS. No, the offer and acceptance is keyed to the ship being surveyed and declared excess to the U.S. Navy.

Mr. GARCIA. It doesn't say that it is subject to that strike, it merely says that it is scheduled for strike.

Admiral GERHARD. May I elaborate for the record, please?

Senator BYRD. Yes.

Admiral GERHARD. To try to clear up a point that you are raising, Mr. Garcia, this is mainly an administrative procedure whereby the Secretary of the Navy will decide as of what date the ship will actually be stricken from the register. In this case the Secretary of the Navy on December 15, 1972, approved the strike of Perry effective February 15, 1973. The insurv report that Mr. Sanders has talked about quite a bit is the motivator by which we make the offer, and the strike date is an administrative function. So although there appears to be a dichotomy there, it really is not.

Mr. GARCIA. Getting back to Spain, Mr. Secretary, the ships loaned under last year's law, according to newspaper reports, have been rejected, ships offered to Spain had been rejected.

Senator BYRD. Excuse me just a minute. I thought you had testified that two ships had been loaned to Spain.

Mr. SANDERS. I did, sir. But there were three that have not been loaned to them.

Senator BYRD. But three have been sold to them?

Mr. SANDERS. Five have been sold.

Senator BYRD. Five have been sold, and two have been loaned?

Mr. SANDERS. Yes, sir.

Senator BYRD. And three preferred loans have been rejected?

Mr. SANDERS. Let me ask Admiral Gerhard to discuss that, sir. The story is accurate.

Admiral GERHARD. I think the numbers are confusing us.

In 92-270 the Congress provided the Department of Defense with authorization to transfer by loan five destroyers. We have partially completed that transaction with two destroyers.

Senator BYRD. You have completed it with two?

Admiral GERHARD. With two. And we still have three more to go.

Senator BYRD. But you also have sold five?

Admiral GERHARD. We have sold five in December of 1972, that is right, sir.

Senator BYRD. In December of 1972, after this law was enacted?

Admiral GERHARD. Correct. But again, if I may go back to the Secretary's words earlier, that law, 92-270, did not apply to these five. They were apart—

Senator BYRD. I understand that. If Spain has taken the *Hanson*, the *Shelton*, and the *Keys* which had been offered to Spain on loan, then at the expiration of that loan the Congress would have had the opportunity to ratify any extension.

Mr. SANDERS. That is right, sir.

Senator BYRD. But by selling five in December of 1972, Congress has no authority or opportunity to either affirm or—

Mr. SANDERS. Let me differentiate if I might, sir, for a moment.

The Navy sold to Spain in December of 1972 five destroyers. In addition to those five, Congress gave us authority under the Public Law 92-270 to loan five additional ships to Spain.

Senator BYRD. That is right.

Mr. SANDERS. We have loaned two of those ships. We offered them three others, which they found unsatisfactory. So there is still outstanding authority to loan three additional ships.

Senator BYRD. I understand that fully. But I also understand that by selling them five destroyers they don't have to come back to the Congress.

Mr. SANDERS. That is right, sir.

Senator BYRD. And yet if you had loaned them the three destroyers, which they turned down, they would have to come back.

Mr. PICKERING. May I clarify one point, Senator. It is my understanding that the Spanish are still interested in three additional destroyers, that the refusal, as it has been in other countries and other cases in the past, was based in part on the material condition of the vessels, and not necessarily the fact that the Spanish had decided not to accept any loans of any additional destroyers.

Is that right, Harry?

Admiral GERHARD. That is correct.

Senator BYRD. There sticks in my mind the testimony of Admiral Zumwalt, and the testimony of others a year ago, in which they said that if the Congress put this restriction on, and did not permit the President unilaterally to renew the loan, that some countries may not be interested in the loan.

Mr. SANDERS. I believe he testified to that, yes, sir.

Senator BYRD. So one way to get around that is to reject the loan and accept the sale.

Admiral GERHARD. But they want to do both, sir. That is Mr. Pickering's point of view.

Senator BYRD. They have indicated that they want to—but they haven't done it.

Admiral GERHARD. It has not come to official attention, but it has come to the attention of the Navy that they will do so. They have every intention of completing that loan agreement.

Mr. FORMAN. May I also add that it is not really a question of three out of five not having been accepted, it is a question of three out of seven. The Navy, in typical naval fashion, is using the word "ship" and not "boat." There are also two submarines that were authorized by the Congress in that Public Law for loan, and those two subs have been loaned. So if you use the generic word "vessel," there are a total of seven authorized, and four have already been loaned, and there are three to go.

Senator BYRD. But to keep the record straight, the fact is that the Congress authorized the loan of five destroyers. Spain accepted the loan of the two destroyers, and refused three destroyers, but in December 1972, after the law became effective, the Defense Department sold five destroyers to Spain.

Mr. SANDERS. Let me clarify one point there and agree with you completely as to the facts.

The five destroyers which Congress authorized to be loaned to Spain were destroyers which could be taken from the rolls of the Active Navy. The five destroyers which were sold to Spain in December of 1972 had been clearly stricken from the Navy's rolls.

Senator BYRD. Why would the Navy want to take out of inventory that it can use itself destroyers to loan to Spain if they have obsolete ships that they can't use that they can sell to Spain?

Mr. SANDERS. Let me just speak briefly to this for a moment and then ask Mr. Pickering to elaborate. But I believe that this loan program is part of the base agreement with Spain.

Mr. PICKERING. That is right. As you remember, we discussed at considerable length in our hearing last year the fact that as part of our treaty of friendship and cooperation we agreed to make available, subject to congressional authorization, the loan of a number of ships. And so we were carrying out part of our international obligation in coming to you to seek those loans. And in your approval of the following Public Law you authorized us to proceed with that.

Senator BYRD. That is right.

Mr. FORMAN. It also should be clarified, Senator, that the ships that were sold to Spain in December were not ships which were taken out of our mothball fleet in December and offered to Spain for the first time. As the Secretary previously pointed out, these were ships that earlier had been loaned to Spain, two ships in 1957, and one in 1959, and two in 1960. These were ships that the Spanish had already had for some 13 to 15 years, and were now willing to buy rather than continue on a loan basis, even though the loans had not yet expired. The loan was still good for another 3 to 5 years on those older ships.

Senator BYRD. You are saying, then, that Admiral Zumwalt and others who testified in opposition to the restriction which the Congress put on last year that it has not had any effect on other countries in regard to the loan programs.

Mr. SANDERS. Harry, could you comment on that? I am not that intimately acquainted with it.

Admiral GERHARD. I am afraid that I must confess, Mr. Chairman, that I missed the point of your question. You said that it reflects unfavorably on other countries?

Senator BYRD. No, not reflects unfavorably. Admiral Zumwalt and others who testified last year opposed what the Senate committee did. The Senate committee stated that the loan would be for 5 years, and at the end of 5 years, if the Navy wanted to renew the loan, congressional action would be required.

Admiral GERHARD. Yes, sir.

Senator BYRD. Whereas Admiral Zumwalt and others wanted it to be made possible that the executive branch unilaterally could renew the loan for 5 years.

Admiral GERHARD. Yes, sir.

Senator BYRD. The statement was made a number of times, I believe, that that would discourage other countries from accepting the loan of these vessels. Now I take it that you argue the other side of the question, that it hasn't discussed that.

Mr. PICKERING. I could argue that, because I was up here testifying at the time, and as a result of our discussion today I could be presumed to be on both sides of the issue.

I submit that the evidence isn't clear. It is just too early to tell. All of the other peoples to whom loans were offered accepted them.

Senator BYRD. That is the part I argued last year.

Mr. PICKERING. And I think at this point it is too early to know. I think the basis of the Chief of Naval Operations' argument was that as a military man, given the military judgments that he had to make,

if he were a foreign chief of naval operations, he would rather have the maximum assurance that he could have the vessel in his Navy for a period of 10 years as opposed to 5 years. And I can't argue with that, that is an eminently sound position.

Senator BYRD. I certainly wouldn't argue that. And if I were sitting on your side of the table I would say, let the Chief Executive do what he wants to do. But, I am not sitting on your side of the table, I am sitting on the congressional side.

Mr. SANDERS. We are well aware of that, sir.

I think Mr. Pickering's statement is very fair, sir; the law was only enacted in April of 1972, and we really haven't had time to observe the effect of it.

Senator BYRD. Is there anything else?

Mr. GARCIA. No, sir.

Mr. SANDERS. Thank you very much, sir, for your usual unfailing courtesy. We deeply appreciate it.

Senator BYRD. Thank all of you.

The meeting is adjourned.

(Whereupon, at 12:45 p.m., the subcommittee was adjourned.)



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